

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

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Southwest Power Pool, Inc.)	Docket No. RT01-34-000
)	
Entergy Services, Inc.)	Docket No. RT01-75-000
_____)	

COMMENTS OF INDUSTRIAL CONSUMER INTERVENORS

I. INTRODUCTION AND SUMMARY

Industrial Consumer Intervenors, the Electricity Consumers Resource Council (“ELCON”), the American Iron and Steel Institute (“AISI”), the American Forest and Paper Association (“AF&PA”), and the American Chemistry Council (“ACC”) offer comments on the pending RTO proposals of Southwest Power Pool, Inc. (“SPP”) and Entergy Services, Inc. (“Entergy”).

In summary, the SPP and Entergy filings should be rejected in the form proposed. The independent SPP should exercise control over Entergy’s transmission assets. Given the limited regional scope and configuration of the Entergy system, FERC should impose the same standard for the ISO/transco relationship within the Southwest region as it applied in its recent approval of the RTO West/TransConnect binary model.

II. BACKGROUND ON THE SPP RTO COMPLIANCE FILING

FERC rejected the SPP RTO proposal in a March 28, 2001 Order. Southwest Power Pool, Inc., 94 FERC ¶ 61,359 (2001). FERC stated that the “bulk power sales and purchase figures in the regions in which SPP and Entergy operate indicate that natural markets extend beyond the SPP RTO borders. There are significant sales and purchases between the proposed SPP RTO participants and companies in SERC and to a lesser extent, companies in the Midwest.” 94 FERC at 62,295. To obtain “final approval, the Applicants must persuade us that they have been diligent in complying with Order No. 2000 for RTO regions. We want to see evidence of serious efforts to form RTOs that combine a number of current RTO proposals to form major RTO regions in the South, in the East, in the Midwest, and in the West.” 94 FERC at 62,296. FERC directed SPP and Entergy to engage in serious discussions with their neighbors concerning the possibility of combining with currently proposed RTOs and concerning the addition of heretofore uncommitted transmission owners. FERC directed SPP and Entergy to file a joint report no later than May 25, 2001, on the progress made in these discussions.

On May 25, 2001, SPP and Entergy submitted filings, claiming that the existing RTO structure is sufficient in scope. The filings request that FERC issue an order by July 31, 2001, approving the SPP Partnership RTO. SPP and Entergy claim that the RTO structure, under which a transco and SPP would share responsibilities for operating the transco’s transmission system, is similar to the independent transmission company (ITC) proposed by the participants in Midwest ISO and to the recently-approved RTO/transco proposal submitted by RTO West and TransConnect.

Entergy and SPP recite their efforts to join forces with other entities in the South. According to the filings, Entergy/SPP met with Southern Companies to discuss the possibility of:

1) the development of a large independent transmission company to operate in the southeastern region of the country; 2) the development of separate ITCs that would operate under the umbrella of one RTO; and 3) the inclusion of Southern Companies within the SPP Partnership RTO. Entergy and SPP claim the discussions were positive but were terminated when Southern Companies decided to develop a separate RTO. Entergy and SPP also entered into an MOU with TVA, similar to the pact reached between TVA and Southern Companies, that will lead to a market, seams, and coordination agreement. Entergy and SPP hope to reach a similar MOU on seams coordination with Southern Companies in the absence of developing a cohesive RTO.

Entergy and SPP contend that FERC should approve its RTO as currently configured because “while there is a good chance for the negotiation of seams or coordination agreements, there does not appear to be an opportunity at this time to develop a combined regional transmission organization that extends beyond the borders of the current SPP members and Entergy.” Entergy May 25, 2001 Filing, p. 4.

III. COMMENTS OF INDUSTRIAL CONSUMERS

A. Entergy Should Cede Control Of Transmission Assets To SPP

FERC commented on the efforts of SPP to expand the scope of the SPP RTO by developing an MOU with Entergy to form an SPP “Partnership” RTO in the March 28, 2001 Order, 94 FERC ¶ 61,359. This Partnership failed to satisfy Order No. 2000’s scope and configuration requirements. In addition, the Commission also expressed concerns with the specifics of the agreement between SPP and Entergy, stating: “The MOU, the main document of agreement between Entergy and SPP on the formation of the RTO does not provide convincing detail that the two entities will operate seamlessly and effectively and as a single RTO. SPP and

Entergy need to clarify their proposal to demonstrate that the minimum requirements of an RTO such as operational authority, ATC calculation and planning and expansion will be met.” 94 FERC at 62,296.

Industrial Consumers have two major concerns with the “scope and configuration” aspects of the SPP-Entergy “partnership” RTO proposal. The first concern is that the applicants purport to model their relationship on the RTO West/TransConnect binary structure without satisfying all of the particulars of that arrangement. It is essential that Entergy provide SPP with the same operational control over transmission assets as TransConnect cedes to RTO West. The virtue of the RTO binary model is that TransConnect offers a for-profit ownership structure but it is RTO West that independently operates the assets. Industrial Consumers believe that it is the substance of the RTO West paradigm -- not the “binary” label -- that should become the standard for applications like Entergy/SPP.

While the latest filings from SPP and Entergy urge the Commission to find the SPP Partnership RTO compliant with Order No. 2000 based on the precedent set by FERC’s provisional approval of the binary RTO model established by RTO West and TransConnect,¹ in fact SPP and Entergy have failed to meet the bar established by RTO West and TransConnect. The Commission observed in its April 26 Order: “TransConnect Applicants indicate that they intend to participate in RTO West as a single transmission owner by transferring control over its transmission assets to RTO West.” 95 FERC at 61,322. The Commission accepted the proposal of TransConnect to file its own Section 205 schedules within the RTO tariff. TransConnect will then coordinate with RTO West so that its rate schedules are compatible with RTO West and

¹ Avista Corp., 95 FERC ¶ 61,114 (2001).

conform to RTO West requirements for tariff administration. “[I]t is the responsibility of RTO West, as the sole administrator of the transmission tariff for the region, to incorporate the revenue requirements of each of its members...into a single, cohesive transmission tariff it will administer for the region.” 95 FERC at 61,339. With respect to planning and expansion of the transmission system, the Commission directed RTO West and TransConnect to submit a plan in their Stage 2 filings this summer that will explain “how they will share the transmission planning and expansion responsibilities and how non-wires solutions will be considered in the decisionmaking process.” 95 FERC at 61,341.

Despite the warning in FERC’s March 28, 2001 Order, Entergy is still unwilling to give up operational control over its transmission assets to an independent SPP. Cooperation between SPP and Entergy is simply not enough, and the Commission should not accept anything less than the SPP Partnership RTO gaining full operational control over the Entergy Transco’s transmission assets.

While Entergy and SPP have developed elaborate protocols to govern their relationship, the Entergy Transco will still operate as a separate entity rather than turning the operational control over to SPP. Entergy’s May 25, 2001 filing outlines the Operation Procedures envisioned by the Entergy/SPP protocol. Under this plan, SPP is responsible for the security of the transmission system, and will:

- Review the Entergy Transco Operating Procedures from an RTO security perspective;
- Apply the Entergy Transco security constraints and limits as constraints to the real-time market systems;

- Publish the Entergy Transco's operating limit constraints as part of market data.

On the other hand, Entergy Transco retains the following operational authorities:

- Development of operating guidelines for the operation of the transmission facilities in the Entergy Transco control area;
- Coordination of planned and maintenance outages of transmission facilities, including coordinating those outages with related generation outages;
- Maintenance of the reliability of the bulk transmission system in the Entergy Transco control area, including all transmission facilities operating within the control area;
- Protection of the investment in the transmission facilities; and
- Development and provision to SPP of constraint equations to be used in market systems to ensure operating limits are not violated.

See Entergy May 25, 2001 Filing, p. 7-8.

The preliminary protocols established between Entergy and SPP also retain an undue role for Entergy in the development of the congestion management system, OASIS management, calculation of ATC, and market operations. As compared with the clean transfer of these responsibilities from TransConnect to RTO West, Entergy has insisted upon a coordination role that has led to a complex series of protocols and procedures, some of which are still not fully developed. The newly submitted Entergy/SPP protocols demonstrate that Entergy continues to insist on being treated differently than the other transmission owners in the SPP Partnership RTO, and shows the same "go it alone" mentality as Southern Companies. Contrast

the SPP-Entergy cooperative agreement with the following commitment from TransConnect's October 16, 2000 filing: "RTO West will have operational authority over all transmission facilities in RTO West. RTO West will be responsible for short-term reliability of the grid that it operates. TransConnect, LLC does not seek authority to operate transmission facilities or to assume responsibility for the short-term reliability of the grid to a different degree than any other transmission owner in RTO West." TransConnect October 16, 2000 Filing, p. 18.

FERC must look behind the "partnership RTO" rhetoric. The fatal flaw in the SPP-Entergy proposal is that Entergy seeks to avoid faithful compliance with Order No. 2000.

B. FERC Should Convene A Settlement Conference to Promote A Consolidation Of Southern Regional RTOs

SPP's May 25, 2001 filing states, "The SPP RTO, if approved, will allow the elimination of rate pancaking over a broader region today, with the addition of Entergy, CLECO and perhaps others...." SPP May 25, 2001 Filing, p. 12. Industrial Consumers urge FERC not to settle for this limited elimination of rate pancaking in the small portion of the South covered by the SPP/Entergy RTO proposal.

SPP and Entergy report the fact of their meetings with Southern Companies to form a single RTO but state that these meetings were not fruitful. Neither FERC nor interested stakeholders nor state commissioners were at the table for these discussions.

In the "sunshine" of a settlement conference at which all stakeholders are present, progress may be made that is not possible when investor-owned utilities meet behind closed doors. A FERC ALJ can add the necessary supervision to forge a true regional solution.

CONCLUSION

While SPP and Entergy may attempt to rely on the apparent protection of the Commission's preference for a "voluntary approach" to RTO formation, Order No. 2000 contains some teeth and indicates that the Commission will, in individual cases, take action to deal with utilities that fail to comply with Order No. 2000:

We are not adopting as a generic policy in this Final Rule either that RTO participation is required in order to retain or obtain market-based rate authorization for wholesale power sales, or that RTO participation is required for a disposition of jurisdictional facilities to be in the public interest. However, in response to those who argue that the Commission has a statutory responsibility to remedy undue discrimination and anticompetitive effects when evaluating market-based rate and merger requests, we recognize that we may have to consider, in individual cases, issues that arise as to whether market power has been mitigated in the absence of RTO participation or as to whether a merger would be in the public interest without RTO participation.

Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 810, 834 (January 6, 2000).

FERC also makes clear that even under the "voluntary approach," compliance with Order No. 2000 criteria is mandatory:

While we have concluded on this record that it is in the public interest to provide for a voluntary approach to RTO formation that relies upon encouragement, guidance, and support from the Commission, this does not mean that all aspects of this Rule are voluntary. The filing requirements set forth in section 35.34(c) of the new regulations are mandatory. In other words, public utilities must file either an RTO proposal or a report on the impediments to RTO participation. In addition, to qualify as an RTO, an applicant must comply with the minimum characteristics and functions and other specific RTO requirements set forth in the new regulations. We will also expect that all transmission owners will participate in good faith in the collaborative process that we are establishing herein.

Id. (emphasis added).

SPP and Entergy have failed to comply with RTO “scope and configuration” criteria. The Commission should not hesitate to require the entities to conform to Order No. 2000.

Respectfully submitted,

/signed/

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Comments of Industrial Consumer Intervenors were today mailed to parties on the service list of this proceeding by U.S. mail, postage prepaid.

Dated at Washington, D.C., this 18th day of June, 2001.

/signed/

Kari Vander Stoep
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