

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

1993-01-28
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Entergy Services, Inc. and) Docket Nos. EC92-21-000
Gulf States Utilities Company) and ER92-806-000

SUPPLEMENT TO
LOUISIANA ENERGY AND POWER AUTHORITY'S
REQUEST FOR REHEARING

On January 28, 1993 the Commission issued its Order on Applications that declined to set certain issues for hearing in the application of Entergy Services, Inc. ("Entergy") for approval for it to merge with Gulf States Utilities Company ("Gulf States"). 62 FERC ¶ 61,073. Numerous parties, including the Louisiana Energy and Power Authority ("LEPA") filed rehearing requests. The Commission issued a tolling order on March 12, 1993. Subsequently, on May 13, 1993, during the limited hearing that the Commission did order in this proceeding, certain evidence was developed that undermines the cornerstone of the Commission's rationale for declining to set competition issues for hearing in this proceeding. Accordingly, LEPA supplements its request for rehearing by presenting this evidence.

BACKGROUND

The cornerstone of the Commission's decision not to set competitive issues for hearing in this docket was that any increase in market power over transmission that would result from the merger would be sufficiently mitigated by Entergy's open access tariff. In this proceeding, and in the earlier open access or market-based pricing case, Docket No. ER91-569-000, the

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Commission found, without holding even a paper hearing, that all first tier utilities, i.e. all utilities that were directly interconnected with an Entergy company, were in the same geographic market because the open access tariff provided sufficient access to transmission to enable each of these utilities to engage in transactions with one another. In such a large geographic market Entergy had, according to the Commission, minimal market power. In so holding the Commission rejected contentions from many intervenors, including LEPA, that many of the provisions of the open access tariff were so burdensome and uncertain, and placed so many limitations on the transmission service that was being made available, that a hearing was needed to determine whether the tariff, in fact, mitigated Entergy's market power sufficiently to authorize market based pricing and to not require any transmission conditions on the merger.

THE NEW EVIDENCE

As part of its presentation in the merger proceeding, Entergy and Gulf States presented a study sponsored by Mr. Frank F. Gallaner, a primary Entergy witness, that allegedly demonstrated significant savings would result from merger. To determine the alleged merger savings, Entergy/Gulf States compared the costs of meeting their loads if they were two stand-alone utilities with the costs of meeting their loads if they were merged. In calculating the cost of Gulf States meeting its loads on a stand-alone basis, Entergy/Gulf States assumed that Gulf States would engage in some economy transactions but only

with Entergy and with other utilities with which Gulf States was directly interconnected. In the merged case scenario, however, Entergy/Gulf States assumed that Gulf States would also engage in significant economy transactions with first tier utilities -- those with which it was interconnected through Entergy but not directly.

During Staff's cross-examination of Mr. Gallaher, he was asked why he did not include economy energy transactions with first tier utilities in calculating the cost of operating Gulf States as a stand-alone utility. He stated that he did not include economy transactions with utilities with which Gulf States was not directly interconnected because Gulf States' own projections showed a practice of only engaging in economy energy transactions with utilities with which it is directly interconnected. Tr. 862.¹

Then, he was asked whether he thought it was prudent for Gulf States, as a stand-alone company, not to take advantage of Entergy's open access tariff to engage in economy transactions with all first tier utilities, given the wide price disparity between Gulf States' self generating costs and the costs of the first tier utilities. His reply is extremely illuminating.

He stated:

Well, for the reasons that I have stated, I think it is difficult for Gulf States to try to tap this market that we have identified. Most of the market is to the North of [Entergy], and it is a long way from

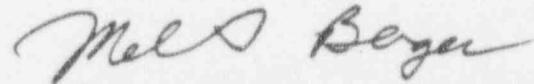
¹ The pertinent portions of Mr. Gallaher's testimony are attached for the convenience of the Commission.

Gulf States, even though they could use the open access tariff, it is still difficult to make decisions on a real time basis when you have to utilize the open access provisions of an intervening utility to make economy purchases as you are dispatching the system. It is more likely that you would use the utilities that you are connected with as sources for that economy purchases. So I really don't see that it would be imprudent on the Gulf State's side. There are a lot of other factors that go into it rather than just there being an availability of economy energy, and that Entergy has an open access provision. (Emphasis added.) Tr. 863.

In essence, Mr. Gallaher confirmed that the mere existence of the open access tariff, even if it did not suffer from so many defects, DOES NOT mean that all first tier utilities could or would use it to engage in economy transactions. Yet this is exactly the assumption that the Commission had to make, and did make, in declining to set competitive issues for hearing. Mr. Gallaher's testimony demonstrates conclusively that Entergy's own expert believes that the mere existence of the open access tariff does not mean that it is practical for all first tier utilities to deal with one another, since there are many other factors that must be considered. At the very least this testimony requires an evidentiary inquiry into the extent, if any, to which the existence of the open access tariff facilitates transactions between all first tier utilities and defines the scope of the geographic market. Mr. Gallaher's testimony flatly contradicts the cornerstone of the Commission's decisions in the open access case and this one too. This testimony requires the Commission to grant rehearing and set competitive issues for an evidentiary hearing.

WHEREFORE for the foregoing reasons and for the reasons stated in LEPA's Request for Rehearing, LEPA urges the Commission to grant rehearing.

Respectfully submitted,



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Dated: June 18, 1993

DIRECT EXAMINATION

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BY MR. BOUKNIGHT:

Q Would you state your name, please?

A My name is Frank F. Gallaher.

Q And by whom are you employed, sir?

A Entergy Services, Incorporated.

Q And what is your position with Entergy Services?

A Senior Vice President Fossil Operations.

Q Now, Mr. Gallaher I call your attention to documents that have been marked APP-15 through APP-28 which is marked -- which is your direct testimony. APP-78 through APP-83 which is your supplemental testimony, APP-91 through APP-103 which is your additional supplemental testimony, APP-110 through APP-133 which is your rebuttal testimony.

Sir, was this testimony prepared by you or under your supervision?

A Yes, it was.

MR. BOUKNIGHT: Your Honor, at this time I have a sheet of corrections to this testimony which I think might save us some time over Mr. Gallaher going through it line by line so if Ms. Sullivan can get you copies I would hand one to you, and one for the reporter and one for the witness.

BY MR. BOUKNIGHT:

Q Mr. Gallaher, I have just handed you a sheet that is entitled corrections to the testimony of Frank F.

P R O C E E D I N G S

[9:03 a.m.]

1
2
3 PRESIDING JUDGE: Good morning. Please be seated.

4 The hearing will come back to order. This is a
5 continued hearing in the matter of Entergy Services, Inc.,
6 and Gulf States Utilities Company, Docket Number EC-92-21-
7 000, and ER-92-806-000.

8 At the close of yesterday's hearing, Mr. Gallaher
9 was on the witness stand. Let the record show that he has
10 resumed his place on the witness stand.

11 [Witness resumes stand.]

12 PRESIDING JUDGE: Mr. Witness, you have been
13 previously sworn. You understand you are still testifying
14 under oath?

15 THE WITNESS: Yes, I do understand that.

16 PRESIDING JUDGE: All right, very well.

17 Are we ready for cross-examination, counselor?

18 Whereupon,

19 FRANK F. GALLAHER,

20 resumed the stand as a witness herein, and, having been
21 previously duly sworn, was further examined and testified as
22 follows:

CROSS EXAMINATION

23
24 BY MR. HERTZ:

25 Q Mr. Gallaher, I'm Mitchell Hertz, counsel for the

1 megawatts of Grand Gulf capacity was not included in the
2 retail rates, then we began to make the attempt to find some
3 way in which that capacity could be sold off-system. That
4 resulted from increased focus in the bulk power marketing
5 area that resulted from the change in management.

6 Q So it was fortuitous that the change in focus came
7 at the time of the change in management?

8 A I don't know that it was fortuitous. The change
9 in management resulted in a change in the focus that we had
10 in our off-system marketing efforts in the bulk power arena.

11 Q Please turn to page 78 of your rebuttal testimony.

12 You state there, starting at line 20, that it is
13 reasonable to accept GSU's projections as to the amount of
14 off-system energy it will purchase in its continuing
15 practice of only buying economy energy from utilities with
16 which it is interconnected.

17 A Really, that was included in the question. I
18 guess my real feeling is that the Gulf State planners and
19 operators are in the best position to determine what off-
20 system economy purchases they should make, and if that is
21 what they use to determine it, I felt like they were in the
22 best position to make that determination.

23 Q Given the enormous spread you have projected
24 between gas and coal prices, and the large amount of surplus
25 coal energy available in the off-system market, you consider

1 it prudent for a stand-alone GSU not to take advantage of
2 Entergy's open access transmission to tap this off-system
3 market?

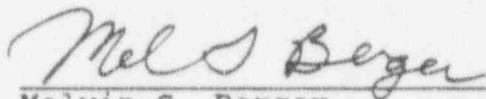
4 A Well, for the reasons that I have stated, I think
5 it is difficult for Gulf States to try to tap this market
6 that we have identified. Most of the market is to the North
7 of us, and it is a long way from Gulf States, even though
8 they could use the open access tariff, it is still difficult
9 to make decisions on a real time basis when you have to
10 utilize the open access provisions of an intervening utility
11 to make economy purchases as you are dispatching the system.
12 It is more likely that you would use the utilities that you
13 are connected with as sources for that economy purchases.
14 So I really don't see that it would be imprudent on the Gulf
15 State's side. There are a lot of other factors that go into
16 it rather than just there being an availability of economy
17 energy, and that Entergy has an open access provision.

18 Q Let's assume for a moment that you became
19 President and CEO of Gulf States, Gulf States remains a
20 stand-alone utility, wouldn't you vigorously pursue the use
21 of Entergy's open access tariff to obtain as much surplus
22 coal energy as possible from the off-system market if it
23 made economic sense to do so?

24 A I would to the extent that it would not violate
25 the reliability of my existing system and, as I state, that

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure (18 C.F.R. § 385.2010).



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Dated: June 18, 1993

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of)
Gulf States Utilities) NRC Docket No. 50-458
)

CERTIFICATE OF SERVICE

I, Melvin G. Berger, hereby certify that on this 9th day of July, 1993, I served on the following, by first class mail, postage pre-paid, a copy of the following:

Reply of Terrebonne Parish Consolidated
Government to Response of Gulf States
Utilities Company to the Comments on
Antitrust Issues

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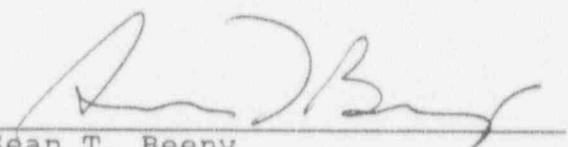
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