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What Does the Future Hold for Electric Cooperatives and Municipally-Owned Utilities?

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Is it Easier for a Non-Opt In Entity to Move Into ERCOT than for an Investor-Owned Utility?

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Transitioning part or all of a utility's system into the Electric Reliability Council of Texas ("ERCOT") footprint can be an extremely complicated undertaking that does not always succeed. Recently, two non opt-in entities ("NOIEs"), Lubbock Power & Light ("LP&L") and Rayburn Country Electric Cooperative ("RCEC"), have proposed to move part of their respective systems from the Southwest Power Pool ("SPP") into ERCOT. These recent proposals beg the question: Do NOIEs have a simpler path to ERCOT entry than others? While there is no absolute answer to this question, certain market design elements may make it easier for NOIEs to enter the market than others. Specifically, unlike investor-owned utilities ("IOUs"), NOIEs do not need to develop the technical infrastructure, *e.g.*, Texas SET-related systems, etc., to support competitive retail activity or to develop a transition plan for existing retail customers into a competitive retail environment. This paper examines four examples of efforts to move all or part of a utility's system into ERCOT, including LP&L and RCEC, and seeks to identify certain attributes that are common among those who have succeeded in a move.

I. PUCT Docket No. 33687 & Entergy's 2006 Proposed Move Into ERCOT

On December 29, 2006, Entergy Gulf States, Inc. ("EGSI") filed a proposed Transition to Competition Plan ("TTC Plan") with the Public Utility Commission of Texas ("Commission or "PUCT"). This TTC Plan was filed in accordance with provisions in the Public Utility Regulatory Act ("PURA")[1] that required IOUs operating solely outside of ERCOT to file a TTC Plan. EGSI

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[1] PURA § 39.102(d)-(e).

requested that the filing be processed in a Commission project as a petition for rulemaking, rather than as a contested case.[2]

As a part of the TTC Plan, EGSI provided information regarding two alternatives to achieving full customer choice: join ERCOT or join SPP. However, EGSI noted in this initial filing that it strongly believed that joining ERCOT was the only viable path to achieving the goal of retail choice. The TTC Plan included an estimate of the costs involved with the move to ERCOT and a request for recovery of those costs, a list of certain milestones and "off-ramps" which EGSI believed to be critical to a successful implementation of the plan, and explanation of expected reliability and security benefits that EGSI would gain from such a move. The "off-ramps", or events which were necessary for EGSI to proceed with the plan and without which EGSI would be authorized to terminate the plan, included: issuance of a Federal Energy Regulatory Commission ("FERC") order that interconnecting to ERCOT would not subject ERCOT to FERC jurisdiction, receiving approval of the plan by the PUCT in a form agreeable to EGSI, enactment of Texas legislation to provide cost recovery, approval of jurisdictional separation of EGSI into two business units (creating Entergy Texas Inc. ("ETI")), and other requirements.

On October 2, 2007, the PUCT formally rejected the TTC Plan, calling it "absurd" and stating that the plan would provide no benefits to the existing electricity customers within ERCOT. The Commissioners, as well as PUCT Staff and a variety of other intervening parties, also took exception to EGSI's projected costs for building the necessary infrastructure to effectuate the move to ERCOT. In particular, the Commissioners and the PUCT Staff disagreed with the assignment of costs for building infrastructure physically located outside of ERCOT, which EGSI sought to

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[2] *See* Docket No. 21957, Application of Entergy Gulf States, Inc. for Approval of Business Separation Plan Filing Package (January 10, 2000); *See also* Docket No. 33687, Application of Entergy Gulf States, Inc's for Transition to Competition Plan ("TTC Plan").

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