



Department of Justice

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JUSTICE DEPARTMENT STATEMENT ON ENTERGY CORP.'S TRANSMISSION SYSTEM COMMITMENTS AND ACQUISITION OF KGEN POWER CORP.'S PLANTS IN ARKANSAS AND MISSISSIPPI

Department Will Not Challenge Entergy's Proposed Acquisitions of Hinds and Hot Spring Power Plants; Investigation into Alleged Exclusionary Conduct Remains Open

WASHINGTON – The Department of Justice's Antitrust Division issued the following statement today regarding Entergy Corp.'s commitments to join a regional transmission organization (RTO) and divest its transmission system; Entergy's proposed acquisitions of the Hinds and Hot Spring generating facilities in Mississippi and Arkansas, respectively, from KGen Power Corporation; and the division's open investigation into Entergy's alleged anticompetitive conduct:

"After a thorough review, and in light of the forthcoming changes in Entergy's service area, the Antitrust Division has determined that Entergy's acquisitions of KGen's power plants in Jackson, Miss., and Hot Spring County, Ark., are unlikely to substantially lessen competition, and is closing its investigation into the proposed transactions.

"In addition to the merger investigation of the KGen transactions, the division has been examining allegations that Entergy has engaged in exclusionary conduct in its four-state utility service area spanning parts of Arkansas, Louisiana, Mississippi and Texas. That investigation remains open. The conduct investigation has focused on whether certain of Entergy's power generation dispatch, transmission planning and power procurement practices constitute exclusionary conduct under Section 2 of the Sherman Act.

"If Entergy follows through on its transmission system commitments, the Antitrust Division's concerns will be resolved.

"The division has been investigating the effect of several of Entergy's practices on competition and barriers to entry. The division has also evaluated professed efficiency and regulatory justifications, which have not been persuasive.

“Specifically, the division has been exploring whether Entergy has harmed consumers by exercising its control over its transmission system and dominant fleet of gas-fired power plants to exclude rival operators of low-cost combined-cycle gas turbine (CCGT) power plants from competing to sell long-term power. In particular, the division has been evaluating whether Entergy’s practices have effectively foreclosed these more efficient rivals from obtaining long-term firm transmission service, a necessary input for selling long-term power products to wholesale customers in the Entergy service area. As part of the conduct investigation, the division has also been reviewing the competitive impact of, and circumstances surrounding, Entergy’s serial acquisition of rivals’ CCGT power plants, including the KGen plants.

“Since the division began its investigation, Entergy announced that it intends to join the Midwest Independent Transmission System Operator (MISO) RTO and has entered into an agreement to divest its electric transmission business to ITC Holdings Corp. (ITC), an independent transmission company. In recent months, Entergy has initiated the state and federal regulatory processes in support of these significant structural changes, secured conditional MISO approval from several state regulators, and committed its utilities to a target MISO integration date of December 2013.

“Entergy’s commitments to obtain membership in an RTO and divest its transmission system to a third party with the incentive to make efficient transmission investments are significant steps towards restoring competition in the Entergy service area. If Entergy follows through on its commitments, these measures will address the Antitrust Division’s concerns by eliminating Entergy’s ability to maintain barriers to wholesale power markets, ensuring that all Entergy service area generation is dispatched independently and at lowest cost, increasing market transparency and oversight, and properly aligning incentives for the construction of transmission. Such measures will also directly benefit consumers, who will ultimately enjoy lower electricity prices and improved reliability as a result of RTO integration and the transmission system divestiture. The division does not endorse any particular RTO or independent transmission company.

“The division will closely monitor developments, and in the event that Entergy does not make meaningful and timely progress, the division can and will take appropriate enforcement action, if warranted.”

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