

Revised  
Proposed Transition Plan for  
Retail Competition in the  
Electric Industry

June 1998

Mississippi Public Service Commission  
Post Office Box 1174  
Jackson, MS 39215-1174

June 17, 1998

Docket No. 96-UA-389

IN RE: ORDER OF THE MISSISSIPPI PUBLIC  
SERVICE COMMISSION ESTABLISHING A  
GENERIC DOCKET TO CONSIDER COMPETITION  
IN THE PROVISION OF RETAIL ELECTRIC SERVICE

To: Parties of Record and Interested Persons

Pursuant to our request, the Mississippi Public Utilities Staff filed a *Proposed Transition Plan for Retail Competition in the Electric Industry* (Proposed Plan) with the Commission on November 3, 1997. Shortly thereafter, the Commission ordered the parties to file comments on the plan and conducted hearings thereon in April of 1998.

We are very appreciative of and impressed with the Staff's conscientious efforts, knowledge and professionalism, culminating in such a comprehensive product. We also thank all of the parties and other participants in this process for their helpful insights and information.

After study of the Proposed Plan and consideration of the evidence submitted by the parties, we offer this *Revised Proposed Transition Plan for Retail Competition in the Electric Industry* (Revised Plan). The Commission will continue to gather information, conduct hearings on specific issues outlined in the Revised Plan and seek the Staff's expertise and advice as this process evolves to determine the electric industry structure that best serves the public interest.

Respectfully,

MISSISSIPPI PUBLIC SERVICE COMMISSION

/s/ Bo Robinson \_\_\_\_\_

BO ROBINSON, CHAIRMAN

/s/ George Byars \_\_\_\_\_

GEORGE BYARS, VICE-CHAIRMAN

/s/ Nielsen Cochran \_\_\_\_\_

NIELSEN COCHRAN, COMMISSIONER

## TABLE OF CONTENTS

### INTRODUCTION

- I. General
- A. Procedural Background
- B. Historical Background - The Emergence of Competition in the United States
- C. Mississippi Electric Industry Structure
- D. Mississippi Electric Rates
- I. Competitive Market Structure
  - A. Market Power
  - B. Energy Service Provider
  - C. Independent System Operator
  - D. Restructuring Models

### REVISED PLAN

- I. Applicability
- II. Objectives of Retail Competition
- III. Summary
- IV. Implementation Schedule
- V. Definitions
- VI. Electric Power Associations and Municipal Utilities
- VII. Market Power Considerations
- VIII. Mergers, Consolidations, Acquisitions or Dispositions
- IX. Affiliate Structure
- X. Energy Service Provider
  - A. Energy Service Provider Certification
  - B. Pre-Enrollment Information Provided by Company
  - C. End-Use Consumer Enrollment by Energy Service Provider
  - D. Energy Service Provider Decertification
- I. Standards of Conduct
  - A. Provision of Products and Services

- B. Tying
- C. Information
- D. Promotion of Affiliate
- E. Shared Resources
- F. Books of Account
- G. Dispute Resolution Procedure
- H. Penalties

- I. Residential and Other Small Customers
- II. Wires Services

- A. Transmission Services
- B. Distribution Services
- C. Other Services
- D. Losses

- I. End-Use Consumer Billing

- A. General
- B. Billing Policies
- C. Charges, Information and Notices

- I. Metering and Meter Reading
- II. Forecasting, Scheduling and Reconciliation

- A. General
- B. Preschedule Forecast
- C. Scheduling
- D. Reconciliation

- I. Special Contracts
- II. Revalued Assets

- A. Authority
- B. Market Valuation
- C. Mitigation
- D. Recovery Mechanisms

- I. Tax Effects
- II. Consumer Protection

- A. Rules and Regulations Governing Public Utility Service
- B. Low-Income Customer Protection
- C. Universal Service
- D. Customer Education

## XXI. Holding Company Issues

## I. GENERAL

Restructuring the electric industry to accommodate retail competition is a task of historic significance. The Congress of the United States is debating the associated issues. All states are addressing restructuring in some fashion. The electric utilities and hopeful market participants are positioning themselves for competition. The industry makes up a large share of the nation's economy with combined assets estimated at \$500 billion and annual revenues exceeding \$200 billion. The magnitude of the issues is unparalleled, economically and socially, since reliable electric service is essential to the economy and to our quality of life.

The Public Utilities Staff (Staff) filed the Proposed Transition Plan for Retail Competition in the Electric Industry with the Mississippi Public Service Commission (Commission) on November 3, 1997. After extensive deliberations and discussions with the parties and the Staff, the Commission hereby issues this revision of the Staff's Plan which is entitled the Revised Proposed Transition Plan for Retail Competition in the Electric Industry (Plan).

This Introduction describes procedural aspects of the process, summarizes the historical background of the electric industry, and discusses key implementation issues of market structure design. The Revised Plan sets out a detailed mechanism for a possible orderly transition from regulation to competition in the generation and marketing sectors. The Revised Plan focuses on establishing competitive markets to avoid the possibility of simply moving from a regulated monopoly to an unregulated monopoly.

### A. Procedural Background

By Order dated August 22, 1996, the Commission opened a generic docket, 96-UA-389, to consider electric restructuring. Shortly thereafter, the Executive Director of the Staff established an Electric Restructuring Committee initially composed of five staff members and subsequently expanded to 11 members. The committee performed all electric restructuring functions attributed to the Staff herein. After receiving comments and reply comments on various issues listed in the Order, the Commission conducted hearings from April 14 through April 17, 1997. The Commissioners and members of the Staff questioned witnesses at the hearings.

By Order dated July 1, 1997, the Commission requested the Staff to produce a "proposed transition plan which could allow for the implementation of retail electric competition." The Commission further requested that the Plan be submitted to them by November 1, 1997, which was subsequently changed to November 3, 1998. The Staff immediately developed a questionnaire comprised of 89 questions, which was mailed to the parties to the docket on July 11. After reviewing all responses to the questions, the Staff conducted meetings with the parties and others.

From August 11 through September 11, 1997, the Staff met with the following 19 entities:

- Attorney General of Mississippi
- Chevron U.S.A., Inc.
- Clarksdale Public Utilities Commission
- East Mississippi Electric Power Association
- Electric Power Associations of Mississippi
- Energy Consumers for Choice in Mississippi, Inc.
- Energy Rated Homes of Mississippi
- Enron Capital & Trade Resources Corporation
- Entergy Mississippi, Inc.
- Mid-Continent Oil & Gas Association of Mississippi and Alabama
- Mississippi Manufacturers Association
- Mississippi Municipal Association
- Mississippi Power Company
- Mississippi Valley Gas Company

- Municipal Energy Agency of Mississippi
- Northeast Mississippi Public Power Association
- South Mississippi Electric Power Association
- Tennessee Valley Authority
- Tennessee Valley Public Power Association

The Staff organized each meeting so that the parties could answer key additional questions to supplement their responses to the initial questionnaire. Parties received advance notice of the additional questions through an issues list provided by the Staff. As a result, the discussions provided specificity on the issues and often generated insightful viewpoints not previously addressed.

On November 3, 1997, the Staff's plan was filed with the Commission, who ordered comments thereon to be filed by the parties. Hearings were then conducted by the Commission from April 20 through April 23, 1998. As was the case in the April 1997 hearings, the Commissioners and members of the Staff questioned witnesses at the hearings. The witness list included:

- Alliance for Fair Competition
- Dr. Charles Campbell
- Chevron U.S.A., Inc.
- Clarksdale Public Utilities
- Electric Power Associations of Mississippi, Inc.
- Energy Consumers for Choice in Mississippi, Inc.
- Enron Energy Services, Inc.
- Entergy Mississippi, Inc.
- Dr. Mark Halpin
- Mid-Continent Oil & Gas Association
- Mississippi Power Company
- Municipal Energy Agency of Mississippi
- South Mississippi Electric Power Association
- Utility Management Corporation
- Xencom Energy Services

### **B. Historical Background - The Emergence of Competition**

From 1930 to 1974, the electric power industry experienced tremendous growth throughout the United States. The network expanded in an attempt to provide electric service to all. Personal incomes were rising. Numerous work-saving appliances became available. Usage went up and prices came down. Investors could count on a stable return from utility stocks. The real residential price of electricity fell 87% nationally.

However, starting in the 1970's and continuing into the 1980's, some unfortunate events conspired to bring about a reversal of fortune. The Arab Oil Embargo (1973) and later the Iranian Crises (1979) caused energy prices to soar. Inflation and interest rates exploded (some rates over 20%). The increases in electricity productivity that we had become accustomed to began to disappear. The growth in electricity demand fell off drastically as rates increased. Environmental, health and safety regulations were born. These programs had large appetites, and they grew rapidly. The extra costs were passed along to consumers.

Nuclear power was promoted as being so cheap that meters were unnecessary. Unfortunately, the Three Mile Island incident (1979) increased safety requirements and costs drastically. Of 107 nuclear plants ordered in the 1972-74 period, eighty-six were cancelled by 1982 because of cost and excess capacity. Mistakes were made. As a result, investment disallowances in the billions of dollars were imposed on utilities. Utilities stopped building generation facilities to reduce risk.

From 1974 to 1990, the real residential price of electricity rose 31% nationally.

In the late 1970's, Congress enacted the Public Utilities Regulatory Policies Act (PURPA) which filled the generation building gap. One purpose was to foster renewable energy, such as windmills, solar and small dams,

by non-utilities. A non-utility (unregulated) could generate electricity and sell the electricity to a regulated utility. The utility had to buy at regulated prices. The cost was set at the cost the utility would have had to pay if it built the facility itself. Later, a bidding process was introduced. As a result, it was demonstrated that generation did not have to be produced under a regulated monopoly process. These PURPA generators were outside the system, yet the electricity they produced was just as good as that produced by the utility. So, the actual result of PURPA was to build generators that might otherwise have not been built. Edison International (formerly Southern California Edison) has one-third of its electricity produced through PURPA contracts.

As a result of the Energy Policy Act of 1992 and the Federal Energy Regulatory Commission's (FERC) Order 888, wholesale transactions were extended. Now utility and non-utility generators can sell to any utility and use any utilities' transmission lines as a common carrier at non-discriminatory transmission prices.

While these developments occurred in the electric industry, a wave of administrative and legislative reform swept through other regulated industries. The Airline Deregulation Act of 1978 was a major legislative limitation on federal regulatory authority which proved to be a catalyst for regulatory reforms in the natural gas, telecommunications, trucking, railroad, banking and securities industries.

Technology has continued to advance in both generation and transmission of electricity. Computer and telecommunication technology has also advanced. It is apparent that new gas fired high-tech generators, assuming gas prices in the present range, are more efficient than older, non high-tech generators currently used in many places around the country.

Therefore, it is both technologically and economically possible to have generation produced outside the confines of the regulated monopoly utility. In addition, in some jurisdictions competition in generation may bring lower prices to consumers than a continuation of the present regulated monopoly regime. Of course, it will still be necessary to regulate the transmission (high voltage) lines and distribution (low voltage) lines that continue to exhibit monopoly characteristics.

### **C. Mississippi Electric Industry Structure**

The present structure for electric service in Mississippi is somewhat unusual in that the majority of customers purchase bundled electric service from Electric Power Associations (EPAs) and municipal utilities (MUs) (55%), while a minority (45%) purchase from regulated, vertically integrated Investor Owned Utilities (IOUs). For IOUs, the rates which consumers pay for bundled electric service recover fixed and variable costs plus a return on capital employed in a Performance Based Regulation (PBR) format.

Furthermore, each of the IOUs is part of a holding company that operates a centrally dispatched multi-state system based in another state.

The Tennessee Valley Authority (TVA) operates a centrally dispatched multi-state system based in Tennessee that covers 13 EPAs in Northeast Mississippi. Eleven EPAs are on a centrally dispatched system based in Mississippi. One EPA receives wholesale power from TVA and Mississippi Power Company (MPCo). EPAs set their own rates to allow for payment of Rural Utility Service (RUS) loans and for payment of the cost of long-term contracts. For TVA EPAs, the TVA "fence" requires TVA to consent to transmission access. Consent would not solve the problem of reciprocity since TVA does not have authority to compete outside the fence.

MUs, like EPAs, are not subject to the jurisdiction of the Commission (with some exceptions). It is recognized that EPAs and MUs may be faced with difficult choices due to the nature of their government financing and non-profit status. These are obvious potential impediments to their participation in a competitive environment. For these reasons, EPAs and MUs should be allowed the choice to participate. EPAs, however, have the choice of promoting federal legislation to solve some of these problems or pursuing possible negotiated or legal remedies that would smooth the path for participation. In the development of the Plan, the Staff has considered that non-profit utilities may ultimately join the competitive arena.

### **D. Mississippi Electric Rates**

Mississippi was the first state in the nation to implement performance based ratemaking when in 1986 the Commission approved the Performance Evaluation Plan for MPCo. The Commission approved the performance based Formulary Rate Plan for EMI in 1994. These plans have been a successful alternative to traditional regulation and have benefited ratepayers. Mississippi's cost, calculated as average revenue per kWh over all customer classes, is below the national average. That cost is expected to at least be maintained in the foreseeable future. In October 1998, as a result of the end of the Grand Gulf Nuclear Plant's deferral charge, Entergy Mississippi, Inc. (EMI) will have a substantial decline in cost which will reduce consumer cost by about 18.5% per kWh. On the other hand, TVA is raising its charges to its captive EPAs and other distributors in the Tennessee Valley by about 7% per kWh to reduce its sizeable debt. Most of the states that have implemented or are nearing implementation of retail competition are high cost states that have costs substantially higher than Mississippi and in some cases as much as double Mississippi's figure. The high cost states include California and a number of states in the Northeast. Mississippi is fortunate to be in a comparatively low cost position nationally and regionally, thus enabling it to address electric restructuring issues in a reasonable timeframe, closely monitoring the activities, successes and failures of the implementation states as they test the restructuring theories.

Why should Mississippi consider retail competition for electricity? First, federal legislation may require competition by a date certain. Various versions of bills have been introduced in the U.S. House of Representatives and Senate addressing the issues. All states may be forced into a decision.

Second, the questions and issues are complex. Electric restructuring requires state enabling legislation. Technical and legal issues must be discussed. This all takes time.

Third, once some states introduce retail competition, other states may be pressured to follow. If consumers see the possibility of buying at a lower price, they may want the privilege to exercise choice.

Finally, any short term consumer benefits may be dwarfed by the future benefits. Dynamic changes will be driven by competition. Changes that would never have occurred in the static, regulated regime may occur when the market allows many different innovative approaches. For example, synergies of electricity, gas and telephone may generate cost savings.

Mississippi is moving forward more rapidly than other states in the region, taking a steady, studied approach which will maintain, if not enhance, our competitive position in the region for economic development and our attractiveness to business and industry. This approach reflects Mississippi's stable regulatory environment in the 1990's and should reinforce confidence of ratepayers, investors and policymakers alike.

## **II. COMPETITIVE MARKET STRUCTURE**

A competitive market structure is one in which customers, at their discretion, can choose to buy from many different suppliers and change suppliers with relative ease. Restructuring the electric industry may be accomplished in different ways. Some suggest simply increasing the competitiveness of the existing wholesale power market and continuing monopoly utility franchises. Others argue that retail customers should have the freedom to choose their power suppliers and pay market-based rates. These proponents believe customer choice will impose the discipline of the competitive market and provide greater incentives for both short and long run efficiencies than is provided by economic regulation.

### **A. Market Power**

Market power means the ability of a seller, or group of sellers, to influence price for a significant period of time. Market power is either horizontal or vertical. Horizontal market power results when a high concentration of the productive assets in a market (e.g., generation capacity) is under a single ownership. Vertical market power can exist when a single entity controls successive stages of production (e.g. generation, transmission, and distribution). The degree to which generation must be legally or functionally separated from transmission and distribution to eliminate concerns arising from vertical market power is dependent on the nature of market power. Similarly, the nature of any horizontal market power must be determined before mitigation can be designed.

Therefore, it is necessary to have market power studies conducted by the incumbent utilities and filed with the Commission for hearing.

Market power, and its potential adverse effects, is clearly a problem that should not be ignored. Market power can only be mitigated ultimately by competitive markets. The Commission must carefully guard against turning regulated monopoly into unregulated monopoly.

A decision to maintain the regulated monopoly status of the wires companies raises the possibility that such companies could utilize their privileged position to gain advantages in the competitive arena. Potential anti-competitive abuses include (1) favorable pricing arrangements for affiliate suppliers, (2) sharing of customer information with affiliate suppliers, and (3) cross-subsidies from regulated to competitive affiliates.

Some proponents of electric retail competition argue that legal divestiture of the generation function in association with an Independent System Operator is the correct solution to vertical market power concerns. To avoid unregulated monopoly, it is necessary at a minimum to divide the present monopoly utilities into three distinct affiliates: an energy service provider affiliate, a wires company affiliate and a system operator affiliate. These entities must follow strict standards of conduct to ensure that the energy service provider affiliate does not benefit from its company status and that all energy service providers are treated equally.

### **B. Energy Service Provider**

In order to sell directly or indirectly to Mississippi retail customers, competitive suppliers should be certified by the Commission. Under this proposal, suppliers would be required to meet specific technical and financial requirements. These requirements will ensure that competitive suppliers, with firm load obligations, have adequate power supply resources to cover both their firm load and an appropriate amount of reserves.

An Energy Service Provider (ESP) can be any entity meeting the certification requirements of the Commission as an approved supplier of electric generation services, including electric generators, brokers, marketers, or aggregators.

Since the ESP affiliate has no operational connection with the wires company affiliate, it is not possible for the ESP affiliate to claim that its former status as the monopoly utility has any bearing on wires service provided to the consumer. The wires company affiliate cannot claim that its former association with the utility has any bearing on generation services provided. The wires company is a common carrier providing the same service to all ESPs. Stated another way, the former monopoly utility has ceased to exist, by definition, under retail competition. Therefore, consumers choose from ESPs who all guarantee exactly the same quality of wires services and a minimum quality of product.

### **C. Independent System Operator**

The FERC and others argue that an effective means to remedy undue discrimination is by the utilization of an Independent System Operator (ISO). Such an entity would independently operate the transmission system (either directly or indirectly), ensure short-run reliability of the system, identify system constraints and take action to relieve such constraints. An ISO may or may not provide dispatch and load control functions.

The SPP and the SERC are exploring the development of ISOs within their respective regions and in combination with other regions. The parties generally agree that multiple ISOs (SPP and SERC) operating within the state would not be a hindrance to retail access. One option is to allow regional ISOs to develop under the auspices of the NERC, the encouragement of the FERC, and the support and cooperation of the states. This option could require a long time period for ISOs to evolve. A second option is to require a state ISO. The high costs for creating such an entity coupled with its limited geographic coverage are serious drawbacks to this option.

A third option, which is proposed in the Exemplar, is to allow the companies, through an affiliate system operator, to operate their respective transmission systems independent of an ISO. If the companies fail to provide arms-length transactions to alleviate market power concerns, then the Commission should proceed to adopt a

workable ISO arrangement.

## **D. Restructuring Models**

Efficient retail competition will require introducing significant changes in the generation sector. Across the country, three major industry models are being discussed as alternatives to the current command and control, cost of service regulation. The three models are (1) poolco, (2) bilateral contracts and (3) a hybrid model allowing for both bilateral contracts and pool transactions.

There are several features common to each of these models: competition among generation providers, the continued regulation of monopoly transmission and distribution functions and the establishment of a regulated entity responsible for operating the transmission grid and maintaining power system reliability. While each of these models is designed to promote competition in the bulk power market, they differ in their approach. For instance, each model envisions a central entity to direct traffic over the transmission system, thus enhancing reliability; however, the extent of the control exercised by this entity differs significantly among the models. Consequently, these different applications will yield different outcomes in a restructured industry.

### **1. Poolco Model**

The poolco model is comprised of competitive suppliers as mandatory members of a power pool; regulated distribution companies; regulated transmission companies; and a single and separate entity responsible for establishing bidding procedures, scheduling and dispatching generation resources, acquiring necessary ancillary services to assure system reliability, administering the settlements process and ensuring non-discriminatory access to the transmission grid. Most poolco models require the entity operating the transmission grid, the ISO, to be independent of the owners of transmission and generation assets. A poolco model is most efficient in a large market.

An ISO would forecast short run regional energy demand and physically dispatch the generation units in the region to simultaneously meet demand and maintain system reliability. Under this structure, competitive generators would submit bids to the ISO on a day ahead basis specifying the amount of energy available, the price and the delivery point.

While definitions of poolco market clearing prices differ, the most widely used definition involves the highest selected bid. The final price for spot market power will exceed the market clearing price because the ISO will charge the spot market purchaser for the associated ancillary services and some contribution to ISO overhead costs. Proponents of these types of auction schemes assert that such auctions induce suppliers to bid their true marginal costs.

Most poolco models allow market participants to enter into financial instruments called Contracts for Differences (CFDs). CFDs were included in the poolco model in response to criticism by bilateral contracts proponents that the pure poolco approach does not allow for physical dispatch of individual generating units by their owners and does not allow individual consumers to establish prices over long periods. The poolco with CFDs model is sometimes referred to as virtual direct access.

### **2. Bilateral Contracts Model**

The bilateral contracts model differs from the poolco model in two important respects: the ISO's role is more limited, and buyers and sellers directly negotiate in the marketplace for energy and capacity.

Under this industry structure, the transmission system serves as a common carrier allowing mutually beneficial, voluntary trades to occur. After having agreed upon price and other contract terms, the competitive supplier informs the ISO how its generators will be dispatched hour-to-hour. The ISO ensures that sufficient resources exist to complete the transaction and to maintain system reliability. The ISO may acquire capacity from competitive suppliers and increase or decrease, on a real time basis, the energy supplied to the grid to balance generation and load or to accommodate transmission constraints.

The bilateral contracts model assumes that spot markets and forward markets will emerge if unimpeded by regulations or entities with market power. While spot markets reflect short-run marginal costs, it is futures markets which provide the financial tools to hedge risk and speculate, and therefore, to attract capital for capacity expansions. Consequently, proponents of this approach argue that long-run reliability is tied intrinsically to the robustness of the futures market.

In this model, aggregation is essential to ensure that small customers are able to benefit.

### 3. Bilateral Contracts with Power Pool (Hybrid Model)

The hybrid model incorporates the direct access attributes of the bilateral contracts model and adds to it the concept of a voluntary or mandatory pool. The pool serves participants (both buyers and sellers) who cannot or choose not to sign bilateral contracts.

Competitive generators choosing to supply energy to the pool submit bids to the ISO as in the poolco model. Unless there are transmission limitations, all bilateral contracts are scheduled to meet their load, and the remaining load is met by economically dispatching units that have bid into the pool. If there are transmission constraints that preclude the scheduling of all bilateral contracts, the ISO must implement established protocols to resolve these conflicts.

Under a hybrid model comprised of bilateral contracts with a power pool, the ISO acts as grid operator, accepting and transporting energy supplied through bilateral contracts and one or more spot markets. An industry structure which emphasizes bilateral contracts and allows for spot market purchases could allow the market to determine which of the two trading mechanisms provides greater value.

The ISO functions discussed above under the Restructuring Models sub-heading can be performed by the system operator affiliate of the company under strict standards of conduct.

# Revised Proposed Plan

## I. APPLICABILITY

The Revised Proposed Transition Plan for Retail Competition in the Electric Industry (Plan) shall govern the operations of Entergy-Mississippi Incorporated (EMI), Mississippi Power Company (MPCo) and other participants, including those who elect to come under the Plan.

## II. OBJECTIVES OF RETAIL COMPETITION

The Plan shall support the following objectives of retail competition to the greatest extent practicable:

- (1) Maintain a reliable supply of electricity but allow customers, when possible, to have direct input into their level of reliability and cost of supply.
- (2) Ensure that access to electricity is not diminished for any customer classes.
- (3) Treat transition costs/benefits in a just, efficient and competitive manner.

(4) Result in electric prices that send improved signals and proper incentives to customers and encourage economic and efficient use of resources.

(5) Be efficient and effective.

(6) Maintain or enhance Mississippi's position relative to the region and nation with regard to energy prices and reliability of supply.

(7) Take account of the necessity of electricity and the vulnerability of certain customers.

(8) Address retail competition for all retail electric customers in Mississippi.

(9) Protect the public interest.

### **III. SUMMARY**

(1) Legislation is required to authorize the Mississippi Public Service Commission (Commission) to implement retail competition in the electric industry.

(2) Electric Power Associations (EPAs) and municipal utilities (MUs) may choose to participate in retail competition or they may continue to operate as they presently do. Participation may be somewhat limited because of Rural Utility Service (RUS) conditions, long-term power contracts and/or Internal Revenue Service (IRS) rules governing the tax-exempt status of non-profit organizations. Without federal legislation, Tennessee Valley Public Power Associations (TVPPAs) have even more difficult problems.

(3) Retail market power on the part of EMI and MPCo is a rebuttable presumption. Market power studies by EMI and MPCo are required for the Commission to make this determination. The existence of market power requires mitigation.

(4) The Commission shall exercise its authority to defend competition in its review and decisions regarding mergers, consolidations, acquisitions or dispositions, and to consider the issue of market power and any possible anti-competitive or discriminatory ramifications.

(5) Each company, through an affiliate system operator, will manage the electric transmission system in a strict arms-length fashion designed to treat all parties requiring access to the network, including company affiliates, in an impartial, fair and equitable manner.

(6) A bilateral contracts model is adopted without the implementation of an Independent System Operator (ISO). The Commission may, if it deems necessary at a later time, adopt a different solution to the management of electric transmission systems. The Commission will work with other states in this region to determine if future implementation of a regional ISO or other options are in the public interest.

7. The public interest requires that small customers have access to retail competition, as do large customers.
8. Unbundled distribution rates are to be determined on a case-by-case basis as the result of a full cost of service study to be filed by each incumbent utility.
9. Distribution will continue to be regulated by the Commission under a Performance Based Regulation (PBR) format.

(10) The parties who have entered into special contracts approved by the Commission may agree to renegotiate such contracts in light of competition. Renegotiated contracts shall be treated as new contracts

for which Commission approval is required.

(11) The Commission has the authority to address the issue of revalued assets due to retail competition. Any net losses due to revaluation of assets may result from several sources but will include the EMI contract with Systems Energy Resources, Incorporated (SERI). Each incumbent electric utility that seeks the recovery of losses may petition the Commission. After notice and an opportunity to be heard by all interested parties, the Commission shall determine if there shall be any recovery of losses on a case-by-case basis. During the hearing on each case, the Commission will determine if any net, verifiable, prudent, non-mitigable losses exist.

The Commission shall also be authorized, on its own motion, to open a proceeding to address any needed revaluation of assets due to electric restructuring.

Any recovery of losses allowed by the Commission shall be recovered through a competitively neutral, non-bypassable wires charge of limited duration or other alternatives deemed appropriate by the Commission on a case-by-case basis.

12. Tax effects of electric restructuring should be thoroughly studied by the Legislature to determine the impact on market participants and potential revenue losses for the state and local governments.
13. Education of consumers regarding retail competition shall be a high priority.

#### **IV. IMPLEMENTATION SCHEDULE**

**November 3, 1997:** Staff files its plan with the Commission.

**November 4, 1997:** Commission orders the parties to file comments and reply comments on Staff's plan on or before the due dates established in this Section and notifies the parties of the April 20 through April 24, 1998, hearing on the plan.

**January 16, 1998:** Parties file comments on the plan.

**February 27, 1998:** Parties file reply comments on the plan.

**April 20 through April 23, 1998:** Hearing on the plan.

**May 7, 1998:** Commission orders EMI and MPCo to perform retail market power studies and reliability studies (e.g., energy capacity and transmission capacity availability). Studies to be filed by August 7, 1998.

**May 7, 1998:** Commission orders EMI to produce cost of service study. Study to be filed by December 1, 1998. Hearing set for March, 1999.

**May 7, 1998:** Commission orders MPCo to produce cost of service study. Study to be filed by February 2, 1999. Hearing set for May, 1999.

**May 7, 1998:** Commission orders EMI to submit a detailed proposal on how a Transco would be constituted and operated. Proposal to be filed by August 7, 1998.

**May 15, 1998:** Commission orders hearing for retail market power (including market structure), reliability and Entergy's Transco proposal for September 21-25 and September 28-October 2, 1998.

**May 22, 1998:** Commission orders EMI and MPCo, and invites interested parties, to submit proposals for the following:

1. Establishing the certification requirements for Energy Service Providers (ESPs).
2. Establishing the process for load dispatch and control and the associated rules and requirements for ESP's,

aggregators, and brokers.

Proposals to be filed by September 3, 1998. Hearing set for November 4 - 6, 1998.

**May 22, 1998:** Commission orders EMI and MPCo to submit studies and comments regarding holding company issues. Studies and comments to be filed by January 4, 1999. Hearing set for April, 1999.

**September 21 - 25, 1998 and September 28 - October 2, 1998:** Hearing on market power, market structure, reliability, and Entergy's Transco.

**November 4 - 6, 1998:** Hearing on ESP certification requirements and systems requirements.

**January, 1999:** Legislature addresses tax issues. Addresses authorization issue by Year 2000.

**January, 1999:** Commission orders EMI and MPCo to file transmission vs. distribution findings for Commission review and for the Federal Energy Regulatory Commission (FERC) approval. Findings to be filed by March 31, 1999. Filing with FERC by June 1, 1999.

**March, 1999:** Hearing on EMI cost of service study.

**March, 1999:** Commission orders EMI and MPCo and all interested parties to submit proposals for modifying the Commission's current "Rules and Regulations Governing Public Utility Service" and "Public Utilities Rules of Practice and Procedure." Proposals to be filed by June 1, 1999. Hearing set for October, 1999.

**April, 1999:** Hearing on holding company issues.

**April, 1999:** Commission invites EMI and MPCo to file any claims for stranded costs due to retail competition. Claims to be filed by June 15, 1999. Separate hearings to begin in November, 1999.

**May, 1999:** Hearing on MPCo cost of service study.

**June 1, 1999:** Filing for FERC approval of transmission v distribution findings.

**July, 1999:** Commission orders EMI and MPCo to produce compliance filings to include generation cost rate caps and PBR aspects of distribution tariffs. Filings to be submitted by October 5, 1999. Hearing set for February, 2000.

**October, 1999:** Hearing on modifying "Rules and Regulations Governing Public Utility Service" and "Public Utilities Rules of Practice and Procedure."

**November, 1999:** Hearing on stranded costs.

**January, 2000:** Legislature addresses authorization issue.

**February, 2000:** Hearing on rate caps and PBR.

**May 1, 2000:** Rates are unbundled for all customers.

**May 1, 2000:** ESPs initiate the bilateral contracting process.

**January 1, 2001:** Retail competition is initiated.

**July 1, 2002:** Commission initiates a review of retail competition to include market power, recovery of any losses, and other considerations.

## V. DEFINITIONS

**Aggregation:** Forming a group of consumers who together can bargain for the lowest possible electric rates.

**Aggregator:** An entity that puts together customers into a buying group for the purchase of electricity.

**Ancillary Services:** Those services other than scheduled energy, which are required to maintain system reliability and meet the North American Electric Reliability Council (NERC) operating criteria. Such services include spinning, non-spinning, and replacement reserves, regulation, voltage control and black start capability.

**Bilateral Contract:** A contract between an ESP and an end-user. This Contract is a type of market mechanism in which ESPs and end-users enter into contracts explicitly stating price and conditions for the physical dispatch of power, and paying intermediate transmission and distribution providers for the delivery service. The contract may or may not be through a retailer and may or may not involve aggregation.

**Broker:** An entity that acts as an agent or intermediary in the sale and purchase of electricity but that does not take title to electricity. The broker may also aggregate customers and arrange for transmission and other ancillary services as needed.

**Company:** The electric utility affiliate or affiliates responsible for the wires services.

**Cost of Service Analysis/Study:** The model used by a utility to determine how costs should be allocated among different customers. Also used to establish the relative magnitude of the costs associated with each element of an unbundled charge.

**Day of Flow:** The day upon which energy deliveries will be made and measured for a 24 hour period beginning at one o'clock a.m. (1:00 a.m.) Central Prevailing Time.

**Direct Access:** Retail, bilateral contracts between sellers and buyers.

**Distribution Services:** The regulated electric utility function of taking delivery of energy from the transmission grid and distributing it to the End-Use Consumer. This function consists of the distribution wires services and the customer services functions of meter reading, billing, accounting, and collection.

**Divestiture:** The stripping off of one utility function from the others by selling (spinning off) or in some other way changing the ownership of the assets related to that function. Most commonly associated with spinning off generation assets so they are no longer owned by the shareholders that own the transmission and distribution assets.

**Divest:** The legal transfer of ownership and control to an entity that is not an affiliated interest.

**End-Use Consumer:** A customer in the electric industry who buys electric power to be consumed as a final product (not for resale) for consumption within their physical location. It may include residential, commercial, agricultural, and industrial load.

**Energy Service:** The provision of energy by an ESP to an End-Use Consumer.

**Energy Service Provider (ESP):** An entity certified by the Commission as an approved supplier of electric generation services. An ESP may be an electric generator, broker, marketer, or aggregator. ESPs are further classified as "Scheduling ESPs" and "Non-Scheduling ESPs" where scheduling refers to electric load scheduling.

**Enrollment Notice:** Notification provided by an ESP to the Company that an End-Use Consumer has selected said ESP for purposes of receiving Energy Service.

**Market Power:** Market power means the ability of a seller, or group of sellers, to influence price for a significant period of time.

**Marketer:** An entity that, as an intermediary, purchases electricity and takes title to electricity for sale to retail customers.

**Power Delivery Service (PDS):** The provision of the wires services by the Company for an ESP under an approved tariff.

**Service Agreement:** A contract for service between the Company and an ESP.

**System Operator:** The entity responsible for the operation of the transmission grid within a control area. The control area is an electrical region which regulates its generation in order to balance load and maintain planned interchange schedules with other control areas and assists in controlling the frequency of the interconnected systems. The System Operator dispatches generation output to balance with actual load to meet reliability criteria established by the NERC.

**Transmission Services:** The wires services and associated ancillary services necessary for receiving energy from an ESP and reliably transporting it for distribution.

**Unbundling:** Separating the single bundled rate charged to the End-Use Consumer into its individual parts of generation, transmission, and distribution, and identifying the costs of each.

**Wires Services:** All electric utility functions except the generation (energy production) function. Typically refers to the transmission and distribution services necessary for the transporting and delivery of electric energy to the End-Use Consumer.

## **VI. ELECTRIC POWER ASSOCIATIONS AND MUNICIPAL UTILITIES**

Electric power associations (EPAs) and municipal utilities (MUs) have the choice of participating in retail competition. If an EPA or an MU chooses to participate, it shall file with the Commission, for approval, a plan in substantial conformity with this Plan taking into consideration issues peculiar to EPAs and MUs, such as rate regulation provisions, uneconomic costs, default providers and determination and recovery of losses. Any losses revealed by retail competition, as well as any associated charge under a competitively neutral, non-bypassable wires charge, shall be determined by the EPA or MU.

If an EPA or MU does not choose to participate, it is precluded from accessing the distribution system, and thus customers, of other utilities that have opened up their system.

## **VII. MARKET POWER CONSIDERATIONS**

Sellers with market power may reduce competition along dimensions other than price, such as product and service quality and technological innovation. Ultimately, the result of an entity's exercise of market power is a transfer of wealth from buyers to sellers or a misallocation of resources. Under competition in the long run, market forces tend to minimize price and maximize quantity relative to other market structures. Consequently, market power does not exist in a competitive market.

Market power is either horizontal or vertical. Horizontal market power results when an entity owns or controls a high concentration of the productive assets in the relevant market. Vertical market power can exist when a single entity controls successive stages of production. For example, when a utility controls both competitive and regulated components of electric service, the regulated function may be used to gain advantage in the competitive arena.

Retail market power on the part of EMI and MPCo is a rebuttable presumption. Therefore, if those companies desire to prove otherwise, they will have the burden of proof to show that horizontal and vertical market power are nonexistent. EMI and MPCo shall file separately with the Commission a detailed economic study of these issues according to the Implementation Schedule. The Commission shall conduct separate hearings on these issues, which will include consideration of mitigation measures.

## **VIII. MERGERS, CONSOLIDATIONS, ACQUISITIONS OR DISPOSITIONS**

In the exercise of its authority, the Commission may be requested to approve the mergers or consolidations of electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers. In such event, the Commission shall determine, in addition to current applicable law, whether the proposed merger, consolidation, acquisition or disposition is likely to result in anti-competitive or discriminatory conduct, including the unlawful exercise of market power, which would prevent retail electricity customers in Mississippi from obtaining the benefits of a properly functioning and competitive retail electricity market.

Upon request for approval, the Commission shall provide notice and an opportunity for open, public evidentiary hearings. If the Commission finds, after a hearing, that a proposed merger, consolidation, acquisition or disposition could lead to anti-competitive or discriminatory conduct, including the unlawful exercise of market power, the Commission shall not approve such proposed merger, consolidation, acquisition or disposition, except upon such terms and conditions as it finds necessary to preserve the benefits of a properly functioning and workable competitive retail electricity market.

Furthermore, the Commission should be given the authority and responsibility to review retail competition in electricity on a continuing basis to determine that the market is working to promote the public interest. Any anti-competitive activity found to exist in the market shall be prohibited.

## **IX. AFFILIATE STRUCTURE**

Under retail competition, each investor-owned company (EMI and MPCo) shall divide, at a minimum, into three functionally separate entities of the following form: an ESP affiliate, a wires affiliate and a system operator affiliate.

The ESP affiliate shall be the default provider, unless the Commission determines otherwise under Section XII. The ESP affiliate may also have customers signed up under the ESP enrollment process or under special contract, until those contracts expire or are terminated. See Sections X, XII and XVII.

The wires affiliate shall maintain the same service territory as the present utility IOU. See Section XIII.

The system operator affiliate shall be responsible for operating a reliable electric system in coordination with the ESPs. See Section XVI.

No affiliate shall favor the ESP affiliate in any transaction or operation over another ESP. See Section XI.

## **X. ENERGY SERVICE PROVIDER**

### **A. Energy Service Provider Certification**

To provide an orderly transition from the current form of regulation to retail competition, the Commission shall certificate all energy service providers in accordance with this Section. An entity which undertakes the sale of electricity at retail in Mississippi without first receiving a certificate from the Commission may be subject to the assessment of a substantial penalty by the Commission.

1. Prior to providing energy service and receiving service under applicable schedules, the energy service provider must be certified.
2. The Non-Scheduling ESP shall designate a Scheduling ESP as the scheduling entity.
3. An affiliate of a utility which is not subject to economic regulation may be certified as an ESP.
4. The following are the criteria for certification. The petitioner for ESP status shall:
  - a. Obtain all necessary approvals to do business in the State of Mississippi;

- b. Establish creditworthiness as discussed below in Paragraph 5;
- c. Abide by the NERC and either the Southwest Power Pool (SPP) or the Southeast Regional Council (SERC) standards and requirements;
- d. Agree to the terms and conditions of the Company's Power Delivery Service (PDS) tariff, as approved by the Commission;
- e. Be in compliance with all applicable laws, rules, notification requirements and policies of the Commission;
- f. Have a dispute resolution process for complaints registered by End-Use Consumers;
- g. Prevent an enrollment or change in ESP unless authorized by an End-Use Consumer through the use of an independent third party or written verification process; and
- h. Be authorized to receive service under the FERC Open Access Electric Tariff.

5. Subject to review of the Commission, the petitioner must satisfy and maintain the following creditworthiness criteria:

- a. At least a long-term bond (or other senior debt) rating of BBB- or an equivalent rating. Such rating may be obtained in one of two ways:
  - i. The rating will be determined by Standard & Poors or another recognized U.S. or Canadian debt rating service; or
  - ii. The petitioner may, at its own expense, obtain a private rating from a recognized debt rating service or request that an independent accountant or financial advisor prepare an equivalent evaluation based on the appropriate financial rating methodology, criteria, and ratios as published by the above rating agencies from time to time.
- b. The petitioner must provide the immediate preceding two years of audited financial statements to the Commission.
- c. The Commission, on a case-by-case basis, may require the following:
  - i. A guarantee of the petitioner's financial performance in a form satisfactory to the Commission from a corporate affiliate of the petitioner or a third party, either of which meets the creditworthiness standard set forth above; or
  - ii. A letter of credit, prepayment arrangement, surety bond, or other credit support arrangement.

6. The Commission will determine by Order whether the petitioner will be certificated. If a petitioner is denied certification, the Order shall set forth the reasons or deficiencies in the filing. After reviewing the filed petition, the Commission will notify the petitioner in writing of any deficiencies within five days of the filing date of the petition. A hearing will be conducted only in contested matters. A petitioner who is denied certification may refile with the Commission.

7. The Commission may periodically review an ESP's certification. If the Commission determines that an ESP's certification, including credit, is not adequate for its current service level or that the ESP is not in compliance with the applicable tariff or rules, the Commission may require the ESP to submit updated information relative to certification. The Commission may also require an ESP requesting to materially expand service to update its certification.

8. An ESP shall maintain sufficient information and records to be able to verify claims it makes as to the environmental characteristics of its power source.

## **B. Pre-Enrollment Information Provided by Company**

The Company will provide the ESP with access to generic load profile information. Upon completion of the certification process, the Company will provide the ESP with a listing of End-Use Consumer Account numbers, addresses and current retail service rate schedules to facilitate enrollment. If requested by an End-Use Consumer, account-specific information, including 12 months of usage history, will be provided to the ESP.

## **C. End-Use Consumer Enrollment by Energy Service Provider**

### Solicitation and Enrollment

1. ESPs may solicit End-Use Consumers subject to the following:

- a. The ESP shall not engage in any unfair or deceptive act in trade or commerce;
- b. The ESP shall require any person with whom the ESP contracts for marketing or solicitation purposes to adhere to the terms of the PDS tariff relating to End-Use Consumers;
- c. The ESP shall take all reasonable steps to ensure that independent contractors hired by the ESP for marketing or solicitation purposes adhere at all times to the terms of the PDS tariff relating to End-Use Consumers; and
- d. The soliciting ESP shall indemnify and hold harmless every End-Use Consumer who has suffered any ascertainable loss as a consequence of having been switched from one ESP to another ESP in violation of the solicitation or verification provisions of the PDS tariff, regardless of whether the person doing the marketing or solicitation was an independent contractor of the soliciting ESP.

2. An ESP is responsible for retaining proof of verification of enrollment for all End-Use Consumers. ESP verification records may be audited by the Commission upon reasonable notice. An End-Use Consumer or ESP that believes enrollment has occurred in violation of the solicitation or verification provisions of the PDS tariff and this Plan may submit a written complaint to the Commission, in accordance with its rules, within six months of the initial billing for the new ESP.

- a. The Commission shall conduct an investigation of the complaint.
- b. The ESP shall provide the Commission and any local, state, or federal law enforcement agency with such records as may be requested.
- c. Upon a determination by the Commission that End-Use Consumers have been enrolled in violation of the solicitation or verification provisions of this Plan or the PDS tariff, the Commission may assess penalties, including a decertification action, where appropriate.

3. Right to Rescind

An End-Use Consumer has the right to rescind, without charge, a choice of ESP no later than midnight on the third calendar day following such choice by the End-Use Consumer. The End-Use Consumer's right to rescind may be exercised orally and directed to the ESP to which the End-Use Consumer would have been switched if the End-Use Consumer had not rescinded the transaction.

4. Enrollment Notices

The ESP shall submit to the Company an Enrollment Notice which includes the name, service

address and Point of Delivery identification number for each End-Use Consumer that elects service from the ESP. The Company will activate up to one Enrollment Notice per End-Use Consumer per meter reading cycle. Where multiple Enrollment Notices for the same End-Use Consumer are received during the same meter reading cycle, the Company will activate the last Enrollment Notice received. Enrollments shall become effective on the date of the next regular meter reading, commencing not less than five working days and not more than 38 days after the Enrollment Notice has been received unless the ESP agrees to pay for a special meter reading to be conducted within five days of the date of the request. The ESP shall immediately notify the Company of the identity of any End-Use Consumer who exercises the right to rescind their choice of ESP.

## 5. Refusal of Enrollment

The Company may refuse to accept an Enrollment Notice until:

- a. The Company receives full payment from the End-Use Consumer of any of the following:
  - i. Overdue amounts or other obligations related to an End-Use Consumer's prior retail service account(s); or
  - ii. Any outstanding balance on an existing time payment agreement.
- b. The Company receives full payment or an arrangement is made to pay the balance on an existing budget payment option.
- c. The Enrollment Notice is deemed complete pursuant to Paragraph 4 of this Section.
- d. The End-Use Consumer has remedied any conditions that would prevent normal scheduled meter readings.

## 6. End-Use Consumer Information

Upon acceptance of an Enrollment Notice, the Company will provide to the ESP account-specific information, including 12 months of usage history.

## 7. Changes in Energy Service Providers

An End-Use Consumer's election to change ESPs will be subject to the terms and conditions of the solicitation and enrollment provisions of this Section. End-Use Consumers that elect to change ESPs may request, and the former ESP (or the Company in the case of an initial choice of an ESP) shall provide them, a letter describing the End-Use Consumer's payment history. The Company will inform the former ESP of the End-Use Consumer's switch.

## **D. Energy Service Provider Decertification**

1. ESP Notice - A petition to decertify an ESP may be filed with the Commission. The petitioner must provide written notice to the affected ESP simultaneously with the filing of its petition. An original and 14 copies of the petition, along with a Certificate verifying that written notice was provided to the affected ESP must be filed. Also, the Commission may, on its own motion, initiate a decertification proceeding. In such case, the Commission shall immediately notify in writing the affected ESP. In either case, the Executive Secretary of the Commission shall furnish notice in the affected areas by publishing notice in a newspaper of general circulation therein.

The affected ESP shall file with the Commission an original and 14 copies of a written response to the decertification action no later than 20 days after the filing date of the decertification action. Prior to any decertification by the Commission, the affected ESP and all interested parties shall be given notice of a hearing and an opportunity to be heard.

A decertification action may be filed which alleges that an ESP has:

- a. Failed to deliver energy according to the preschedule forecast;
  - b. Submitted Enrollment Notices not authorized by End-Use Consumers;
  - c. Failed to comply with the terms and conditions of the PDS tariff;
  - d. Become 30 or more days in arrears for service rendered by the Company;
  - e. Received two or more notices from financial institutions of insufficient funds for payment;
  - f. Become 30 days or more delinquent or in arrears for any taxes, fees, or other assessments due the State of Mississippi or any political subdivision thereof;
  - g. Made a general assignment or arrangement for the benefit of creditors;
  - h. Become bankrupt, a debtor in a bankruptcy or reorganization proceeding, insolvent, however evidenced, or become unable to pay its debts as they fall due;
  - i. Filed a petition or otherwise commenced a proceeding under any bankruptcy, insolvency, reorganization or similar law, or had any such petition filed or commenced against it;
  - j. Had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets;
  - k. Failed to pay or perform, when due, any credit support obligations undertaken pursuant to the creditworthiness provisions of the PDS tariff;
  - l. Failed to provide adequate assurance of its ability to perform all of its outstanding material obligations to the Company under the PDS tariff, or otherwise, within a period not to exceed 48 hours of a demand therefor when the Company has reasonable grounds for insecurity;
  - m. Failed to perform any obligation under the Service Agreement;
  - n. Failed to adopt and maintain an approved verification process to prevent an enrollment or change in ESP that was not authorized by an End-Use Consumer;
  - o. Failed to establish and maintain a dispute resolution process for complaints registered by End-Use Consumers;
  - p. Been adjudicated by a court to have violated applicable Mississippi laws;
  - q. Failed to comply with all rules, regulations, requirements, orders and policies of the Commission; or
  - r. Conducted itself contrary to the public interest.
2. The Company may file a petition requesting decertification of an ESP by the Commission for the failure of an ESP to schedule energy for 24 consecutive hours.
3. Upon decertification, the energy service provider may no longer provide energy services in Mississippi, and all amounts billed or owed for services received by the energy service provider shall be immediately due.

#### 4. End-Use Consumer

a. End-Use Consumers who do not elect a new ESP by the effective date of decertification shall be assigned to the default provider. (See Section XII.) As soon as reasonably practical thereafter, the Company will provide notice to the End-Use Consumer.

b. Where discontinuance of service occurs because of an ESP's failure to schedule, an End-Use Consumer shall immediately be assigned to the default provider. (See Section XII.) As soon as reasonably practical thereafter, the Company will provide notice to the End-Use Consumer.

5. An energy service provider that has been decertified may petition for recertification by the Commission in accordance with the rules to be adopted by the Commission. One of the requirements shall include proof that the energy service provider has remedied all of the causes that led to the decertification.

### **XI. STANDARDS OF CONDUCT**

The following standards of conduct pertain to the Company's relationship to the ESPs:

#### **A. Provision of Products and Services**

1. The Company shall provide just and reasonable rates and charges for regulated services without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices.

2. The Company shall not sell or otherwise provide regulated services to any ESP affiliate without either posting the offering electronically on a well-known source or otherwise making a sufficient offering to the market for that regulated service.

3. The Company shall process all similar requests for regulated services in the same manner and within the same period of time.

#### **B. Tying**

The Company shall not condition or tie the provision of any regulated service or rate agreement by the Company to the provision of any product or service in which an ESP affiliate is involved.

#### **C. Information**

1. The Company shall process all similar requests for information in the same manner and within the same period of time. The Company shall not provide information to an ESP affiliate, without a request, in cases where information is made available to non-affiliated ESPs only upon request. The Company shall not allow an ESP affiliate preferential access to any non-public information regarding the distribution system or End-Use Consumers that is not made available to non-affiliated ESPs upon request, and shall instruct all of its employees not to provide ESP affiliates or non-affiliated ESPs any preferential access to nonpublic information.

2. Employees of the Company are prohibited from sharing with any ESP affiliate or any non-affiliated ESP (1) any market information pertaining to End-Use Consumers participating in retail competition that was acquired from the ESP affiliate or from any non-affiliated ESP; or (2) any market information pertaining to End-Use Consumers participating in retail competition that was developed by the Company in the course of responding to requests for distribution service.

3. The Company shall not release any proprietary End-Use Consumer information without the prior written or other approved authorization of the End-Use Consumer.

#### **D. Promotion of Affiliate**

The Company shall not promote any ESP affiliate. Neither the Company nor an ESP affiliate shall in any way represent that any advantage accrues to an End-Use Consumer or others in the use of the Company's regulated services as a result of that End-Use Consumer or others dealing with the ESP affiliate. The Company shall not engage in joint advertising or marketing programs with any ESP affiliate, nor shall the Company promote or market any product or service offered by any ESP affiliate. The Company shall maintain a current list of all ESPs. If an End-Use Consumer requests information about ESPs, the Company shall provide a copy of the list with ESP names appearing in random sequence and not in alphabetical order, but the Company shall in no way promote any ESP affiliate.

#### **E. Shared Resources**

It is intended that the ESP affiliate, in competition with other ESPs, share no services, facilities, or employees with the Company which could in any way provide or produce a competitive advantage to the ESP affiliate. The Company and the ESP affiliate shall function independently of each other and shall not share services or facilities unless such services or facilities are dedicated to corporate support. The Company and the ESP affiliate shall not jointly employ or otherwise share the same employees except in relation to the providing of corporate support or services.

#### **F. Books of Account**

The Company and its ESP affiliate(s) shall keep separate books of accounts and records.

#### **G. Dispute Resolution Procedure**

The Company shall establish and file for Commission approval a dispute resolution procedure to address disputes alleging violations of these Standards of Conduct. The procedure, at a minimum, shall provide for the designation of a person to conduct an investigation of the dispute and communicate the results of the investigation to the aggrieved party in writing within 30 days after the dispute was received, including a description of any action taken and the aggrieved party's right to file a complaint with the Commission if not satisfied with the results of the investigation. However, a complaint shall be filed with the Commission only after the parties have made a good faith effort to resolve the dispute. The complainant shall certify that it has made a good faith effort to resolve the dispute.

The Company shall maintain a record of all new, resolved, and pending disputes. The record shall be subject to review by the Commission and shall include, at a minimum, the written statement of the aggrieved party, the resolution of the dispute or the reason why the dispute is still pending.

#### **H. Penalties**

Any violations of this Plan may be subject to an assessment of a penalty by the Commission as it deems necessary.

### **XII. RESIDENTIAL AND OTHER SMALL CUSTOMERS**

To promote fairness and efficiency, it is necessary for large and small customers to have access to the benefits of the market. However, small customers do not have the bargaining power of large, highly concentrated industrial customers. A number of problems exist in bringing retail competition to small customers. It is expensive for ESPs to enroll customers, information is costly to transmit, and the whole process is bothersome to customers. Aggregation of small customers into large customers can substantially improve their bargaining power. A substantial majority of customers will likely not select a provider for a variety of reasons if experience in telephony is a guide. But proposals that switch customers to a new provider because such customers fail to make a choice could be perceived as intrusive. Thus, the ESP affiliate shall be the default provider for customers who do not chose another ESP. To ensure default customers

have price protection through the transition period, the ESP affiliate shall provide a transitional standard offer (TSO) to such customers. The TSO shall be capped at the cost of service, including an appropriate rate of return, and shall have a fuel adjustment clause.

The ESP affiliate provides generation services and commits load to a level equivalent to needs existing under regulation. ESPs must commit reliable capacity to a minimum share of the small customer market before being allowed access to the large customer market. As bilateral contracts are executed by ESPs, supported by reliable capacity, the ESP affiliate will have an associated load released which may then be sold into markets inside or outside Mississippi. At the end of the transition period, the Commission shall determine whether the ESP affiliate shall remain the default provider.

If the Commission determines that the ESP affiliate possesses market power or exhibits anti-competitive behavior that leads to markets that are not in the public interest, the Commission may institute a bidding process for default customers. IOUs have about 450,000 residential and commercial customers in Mississippi after eliminating very large commercial customers. A large share of this load may fall into the default segment. The bidding process shall be designed and monitored by the Commission. Final winning bids to serve the default customer market shall be subject to the approval of the Commission. No bids shall be accepted that are not below the TSO. If no qualified bids are offered, the TSO shall be provided by the ESP affiliate.

### **XIII. WIRES SERVICES**

#### **A. Transmission Services**

The regulatory authority for bundled retail transmission service will remain under the jurisdiction of this Commission. The FERC, in Order 888, claims authority to regulate the rates, terms and conditions of unbundled retail transmission service with the general expectation that retail transmission customers will take service under the same FERC tariffs that apply to wholesale. The FERC, expressing an appreciation for the concerns of the states, has indicated support for state efforts to pursue pro-competitive policies, and has indicated a desire for heightened federal and state cooperation.

In Order 888, the FERC identified six ancillary services that should be separately provided and priced as part of open access transmission. These are (1) scheduling, system control and dispatch; (2) reactive supply and voltage control; (3) regulation and frequency response; (4) energy imbalance; (5) spinning reserve; and (6) supplemental reserve.

It is anticipated that the basis for developing the bundled transmission service tariffs will parallel those for unbundled transmission services in that the facilities, definitions, types of cost, and equipment are similar. For purposes of separating transmission and distribution, FERC Order 888 identified a seven-element technical test for determining the difference between transmission and distribution. The Commission adopts these seven factors.

As a part of and in support of the compliance filing, the incumbent utilities will be directed to file illustrative retail transmission service tariffs for Commission review.

#### **B. Distribution Services**

The Commission will continue to regulate the rates for distribution services. Currently the rates of IOUs are performance based (PBR). This form of regulation has demonstrated benefits in the form of providing incentives for the utility to perform its functions efficiently and to maintain reliable service. It is anticipated that PBR will continue to be utilized in regulating the rates for bundled service and for unbundled distribution services in a restructured environment.

#### **C. Other Services**

The Commission acknowledges that there may be certain other services necessary for compliance that are not specifically identified here. For example, energy supply reconciliation services, administrative services, pre-

schedule forecasting, and enrollment tracking are some additional necessary services. These, and others as required, will be discussed and priced in hearings in accordance with the Implementation Schedule.

#### **D. Losses**

The ESP shall schedule, consistent with the preschedule forecast, sufficient energy to provide for losses on the Company's system. The specific losses will be determined by the Commission.

### **XIV. END-USE CONSUMER BILLING**

#### **A. General**

The Company will bill End-Use Consumers for services and is responsible for collection of amounts owed. Failure of the End-Use Consumer to pay for services does not relieve the ESP of the responsibility to pay the Company for services rendered. Billings shall separately state the Company's charges.

#### **B. Billing Policies**

The Company shall inform End-Use Consumers of billing policies with respect to returned check charges, interest on late payments, End-Use Consumer deposits, payment terms, remittance, and termination policies.

#### **C. Charges, Information and Notices**

Bills shall include the following information:

1. Unbundled generation, transmission and distribution charges;
2. Meter readings, if any, showing the beginning and end of the period for which the bill is rendered;
3. The date of the meter readings;
4. The number of units of service supplied;
5. The price per unit of service under which the bill was computed;
6. The delinquent date of the bill;
7. Any other information necessary to the computation of the bill;
8. The End-Use Consumer account number;
9. Mandated legal and safety notices;
10. The telephone number to call for outage reporting; and
11. The Company's toll-free telephone number to call for billing disputes and the ESP's toll-free telephone number for other End-Use Consumer comments or complaints.

### **XV. METERING AND METER READING**

The Company shall provide meter services for PDS and shall specify the data exchange requirements to facilitate the

delivery of End-Use Consumer usage information to the ESP for billing. Metering requirements, provision of competition for metering services and competition in billing services will be considered for implementation in future hearings.

## **XVI. FORECASTING, SCHEDULING AND RECONCILIATION**

### **A. General**

This Section describes the general procedures the Company and Scheduling ESPs will follow to establish a preschedule forecast, a schedule for the delivery of energy, and an energy reconciliation process.

A preschedule forecast will be provided by the Company subject to the following terms and conditions:

1. One day prior to the Day of Flow, the Company shall provide ESPs a preschedule forecast of their aggregate hourly delivery requirement for the 24 hours of the Day of Flow.
2. Where the ESP's aggregate load consists of hourly and cycle metered End-Use Consumers, the two types of End-Use Consumers will be forecast separately. Hourly-metered End-Use Consumers will be forecast based on their unique hourly load profile. Other End-Use Consumers will be forecast based on estimated representative hourly load profiles.
3. The ESP will notify the Company as soon as practical of otherwise unplanned load deviations greater than 5,000 kW that are expected to last one hour or longer. If the End-Use Consumer is served under an interruptible arrangement by an ESP, the ESP shall notify the Company of any interruption coincident with its notification to the End-Use Consumer. The Company will modify its forecast accordingly.

### **C. Scheduling**

The ESP will schedule the delivery of energy on behalf of End-Use Consumers subject to the following terms and conditions:

1. Each 24 hour schedule period shall begin at one o'clock a.m. (1:00 a.m.) Central Prevailing Time.
2. ESPs shall schedule the quantity of power reflected in the preschedule forecast provided by the System Operator. Schedules for the delivery of energy shall be received by the System Operator no later than ten o'clock a.m. (10:00 a.m.) Central Prevailing Time on the day prior to the Day of Flow.
3. An ESP that consistently fails to deliver the quantity of energy reflected in the preschedule forecast may be subject to any applicable penalties and decertification.
4. The Company reserves the right to confirm each energy schedule provided by ESPs and to void any energy schedule that cannot be confirmed.
5. The ESP must conform to the NERC and either the SPP or the SERC scheduling requirements.

### **D. Reconciliation**

The System Operator shall reconcile for each ESP the quantity of energy scheduled each hour with the ESP's actual load for that hour. Charges for this service will be in accordance with Commission determination as set out in Paragraph C of Section XIII. The System Operator will determine the actual load for each hour as follows:

1. Where the End-Use Consumer has hourly-metered load, actual load shall be equal to the metered quantity of energy consumed, adjusted for losses.

2. Where the End-Use Consumer's load is not hourly-metered, actual load shall be estimated using load profiles.

## **XVII. SPECIAL CONTRACTS**

The Commission has the authority to approve special contracts where the rates do not exceed that which is just and reasonable and where such approval is in the public interest.

The potentially adverse effects of long-term special contracts on retail competition should be a factor in the determination of whether new special contracts are in the public interest. The Commission shall evaluate special contracts on a case-by-case basis. This evaluation will include the impact on retail competition, ESPs and End-Use Consumers.

Regardless of the potential anti-competitive consequences of special contracts, it is necessary to unbundle contract rates in order to allocate cost and revenue responsibility of functionally separate affiliate companies under this Plan. All special contracts shall itemize the generation costs, fuel costs, transmission costs, distribution costs, environmental costs, taxes and franchise fees, and any other itemization of costs deemed necessary by the Commission. Given the amount of the load served under special contracts, and given the regulated nature of the transmission and distribution companies, it is essential that the prices paid for each component be known and approved in advance. Price discounts shall not be applied to the transmission costs or distribution costs. Discounts in any special contract shall be reflected in the generation cost component. Differences between revenues received through special contracts and the revenues received without the special contracts may not be recovered in any manner, directly or indirectly, from other End-Use Consumers unless otherwise approved by the Commission.

It is also important that the contribution to stranded costs paid by special contract customers be identified. Absent this amount, the exact amount of stranded costs to be recovered from all other End-Use Consumers could not be verified. Special contracts shall provide that the End-Use Consumer has the right to terminate the contract, and each contract shall specify the amount of any liquidated damages owed by an End-Use Consumer electing to terminate the contract.

If unbundled special contracts contain lower stranded cost charges than are contained in the unbundled rates charged to customers in the same class, and if the utility does not have prior approval to allocate the uncollected cost to other End-Use Consumers, the Commission may determine recovery appropriateness and method in accordance with Section XVIII.

A bilateral contract negotiated between an End-Use Consumer and the ESP with which a special contract is in effect shall not alter the special contract without Commission approval.

## **XVIII. REVALUED ASSETS**

### **A. Authority**

The recovery of losses (stranded costs) revealed by a change in the regulatory regime is subject to Commission discretion. Utilities may petition the Commission, in accordance with the Implementation Schedule, for an evaluation of losses resulting from the revaluation of assets due to retail competition. While some assets may be worth less under retail competition, other assets may be worth more. Therefore, it is necessary to review the value of all assets. Recovery of any net, verifiable, prudent, non-mitigable losses is contingent on the sale, spin-off or revaluation of utility assets broadly defined. Losses associated with generation investments and power purchase contracts made after August 22, 1996, are not eligible for recovery.

The Commission has the authority to determine the market value of assets of EMI and MPCo. To the extent that a utility has entered into a purchase power contract that generates losses under retail competition, the Commission has authority to determine any net losses and to determine how they should be assigned.

The events that produced any net loss differentials shall be investigated in order to allocate responsibility fairly. Any final determination on recovery shall consider the potential anti-competitive consequences of varying recovery levels and the potential financial impact on utilities. Two potential anti-competitive consequences of recovery charges are that (1) effective competition would be postponed or completely prevented, and (2) utilities would use the resultant funds to undercut competitors and increase market share rather than retire debt.

### **B. Market Valuation**

The value of generation assets may be determined through sale, spin-off, or administrative revaluation procedures. If a sale is conducted, potential investors in a competitive market will assess the future cost and price of energy, future site value, market conditions, demand, and potential improvements in unit performance, and make their decisions based on those and other considerations. Included in a sale or spin-off would be the land on which the facilities are located, existing permits (if allowed to be transferred), existing transportation facilities, and potential emissions credits. All assets are subject to the valuation process if the incumbent utility requests recovery of stranded or above market costs.

Any bidding process or other method proposed for the sale or spin-off of assets and the administrative revaluation procedures are subject to Commission overview and hearings.

### **C. Mitigation**

Utilities shall undertake all practicable steps to mitigate losses. These measures may include among other things: (1) divestiture of generation assets; (2) the sale of all excess generating capacity; (3) exercising termination or release clauses in existing power contracts; (4) renegotiating or buying out of power contracts that do not have termination or release clauses; (5) auctioning power contract rights; and (6) voluntary write-downs.

To ensure maximum mitigation efforts, the Commission shall conduct periodic hearings to evaluate each utility's performance in this area, including but not limited to, the six measures listed above. During these hearings, the Commission shall establish performance thresholds for mitigation for each electric utility. If the Commission determines that a utility has failed to undertake reasonable mitigation measures, the associated losses shall be excluded from any recovery charge. The Commission may consider allowing utilities to retain some or all of the benefits of mitigation efforts that exceed performance thresholds.

It is appropriate that mitigation opportunities arising from non-generation assets that have market value exceeding book value be considered. Where utilities have distribution or retail business opportunities that place certain assets or rights at a market premium, this value shall be considered as an offset in the calculation of generation losses. The value of these business opportunities shall accrue to the benefit of End-Use Consumers during the time when any losses are being recovered from End-Use Consumers.

### **D. Recovery Mechanisms**

It is proposed that a recovery mechanism shall allocate any losses fairly and consistently among the principal rate classes. Recovery may be allocated to all consumer classes (including new businesses) who receive wires services. Allocation of any recovery may be collected through a competitively neutral, non-bypassable wires charge, or other alternatives deemed appropriate by the Commission, during the transition period.

## **XIX. TAX EFFECTS**

The tax effects of electric restructuring need further study to determine whether or to what extent state and local revenues will be reduced or displaced through revaluation.

Franchise (state and municipal), privilege, ad valorem, sales, use, regulatory and income taxes are imposed upon IOUs. Non-profit public power entities enjoy certain tax advantages; however, TVA makes payments in lieu of taxes to the state and local governing authorities pursuant to a statutory formula. In 1996, ratepayers of Mississippi electric utilities

(IOUs and TVA) paid approximately \$150 million to the state and local governing authorities.

The State legislature will be asked to address relevant tax issues during the 1999 legislative session.

## **XX. CONSUMER PROTECTION**

As implied by the Objectives of Retail Competition listed in Section II, there are potential risks to customers of retail competition in a restructured electrical industry. It is critical that public policies and consumer protection measures be developed. Protection measures previously identified include:

- Applying performance based regulation,
- Establishing standards for ESPs and enforcing codes of conduct,
- Providing default providers with a capped TSO, and
- Allowing customer aggregation.

The consumer protections and safeguards in effect under the regulatory regime will be maintained and enhanced where necessary. The following additional consumer protection measures are required:

### **A. Rules and Regulations Governing Public Utility Service**

The Commission promulgated Rules and Regulations Governing Public Utility Service will be modified and revised as appropriate to be in accord with the restructured electric industry. New rules and revised existing rules will be established through a hearing process.

### **B. Low-Income Customer Protection**

The current electric utility structure does not provide a low-income consumer protection program established and monitored by the Commission. To varying degrees, this necessary function of providing assistance is offered by other State agencies and the electric utilities themselves. It is critical that some protection and assistance be continued for needy customers. The Commission will hear discussion on this issue during the hearing process and will promote the continuation of existing low-income customer protection programs.

### **C. Universal Service**

The distribution utilities (wires affiliates) will continue to be public service corporations and will be subject to all regulations regarding the obligation to serve. The wires affiliates will be compensated for these obligations. Certain limitations on a wires affiliate's ability to terminate service will continue to be imposed. Note that Universal Service as used in this Section does not include low-income assistance as discussed above.

The wires affiliate will be responsible for the just and reasonable costs of uncollectibles and will be compensated for these costs. However, because ESPs will be responsible for their Energy Service uncollectibles, such costs will be recovered through the PDS tariff.

### **D. Customer Education**

A fundamental tenet of competition is that customers have adequate knowledge concerning all aspects of the product of interest. It can be anticipated that certain product and services advertising will be offered by wires affiliates, ESPs, brokers, agents, marketers, and others who are participating in the restructured electric market. In addition, and primarily in preparation for the transition to the competitive environment, it is important for consumers to understand the nature of the restructured industry and to understand the options that will be offered to them. The Commission should take a role in assuring that general information is provided. The nature of this information and how the costs will be assessed will be determined by the Commission.

## XXI. HOLDING COMPANY ISSUES

The Southern Company and Entergy distribute to their operating companies the cost associated with reserve generation, fuel, system dispatch, and other major items under the FERC approved tariffs. These tariffs are designed to allocate the responsibility and benefits of operational functions to each jurisdiction based on formulas. One of the major elements of these formulas has been the assumption that each operating company would serve the energy and capacity requirements of all its retail customers. The introduction of competition for generation services questions this assumption.

In order for these holding companies to avoid an economic disruption and to continue to distribute costs in a reasonable manner, certain amendments to the FERC tariffs are required. It will be in the common interest of the various state regulators and holding companies to reach a consensus regarding the modifications and propose the changes to the FERC and Securities Exchange Commission for approval. The changes include, but are not limited to, the following:

1. A revenue neutral adjustment to the capacity reserve calculation. This change would freeze the level of compensation to each jurisdiction based on peak loads and capacity;
2. Modification of the fuel and purchase power allocation to allow each ESP affiliate to keep the benefits of their units after the beginning of the transition period. Each ESP affiliate would be allocated its lowest cost generation, lowest cost pool energy, and an amount of off-system economy transactions which may be required. Compensation for energy sold into the system pool would remain at cost;
3. The costs of system operator affiliates would be allocated among all ESPs; and
4. Transmission costs would continue to be shared within the holding company systems, as applicable.

