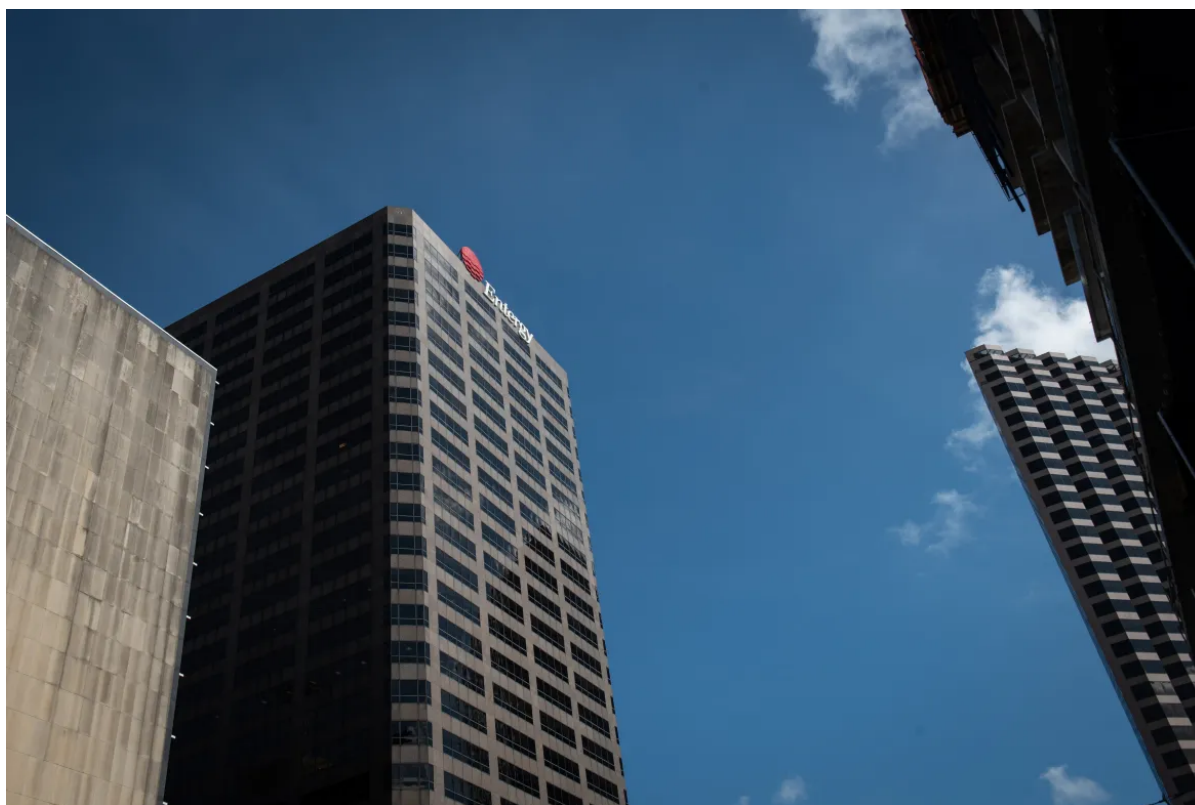




HURRICANE IDA

'No place to go but up': Entergy critics urge a new look at abandoned plan to sell transmission grid, break up vertical monopoly

by **MICHAEL ISAAC STEIN**
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Entergy Tower on Loyola Avenue in New Orleans Credit: Michael Isaac Stein / The Lens

Hurricane Ida brought unprecedented destruction to Louisiana's electric grid. It knocked out power to nearly a million Entergy customers in the state, thousands of whom are still without power more than a month after the storm passed.

Ida came on the heels of a similarly devastating and record breaking 2020 hurricane season, as well as a February winter storm that led the company to shut off power to thousands to avoid a catastrophic system failure. (It later **emerged that the company turned off far more customers** than it needed to.)

All in all, Entergy estimates it will cost roughly **\$4.5 billion** to rebuild Louisiana's grid after the last 13 months of storms.

Since Ida, allegations have swirled over whether Entergy **failed to adequately invest** in a resilient, reliable grid. But the storm has also unearthed another accusation — that the company isn't even supposed to own the transmission grid in the first place.

Some **of the company's critics** point to a **2010 investigation** by the U.S. Department of Justice Antitrust Division into whether Entergy was abusing its control of transmission lines in Louisiana, Mississippi, Arkansas and Texas to smother competition. In 2012, the **DOJ announced** that the antitrust concerns would be resolved if the company followed through on certain commitments.

One of those commitments was giving up its control of the transmission grid and breaking up the vertically integrated monopoly power that Entergy has enjoyed for decades. But that **didn't happen**. And Entergy still controls both electric generation and the electric grid in its territory.

The electric grid is broadly split into two parts — the regional transmission grid, which transports bulk energy long distances, and the distribution grid, which takes that bulk power and delivers it to individual homes and businesses.

Ida brought devastation to both sides of the grid. But during Hurricane Ida and Hurricane Laura in 2020, it was catastrophic damage to the transmission infrastructure that has caused so much anxiety over how the region will fare as climate change brings more frequent and powerful storms.

The utility experts and consumer advocates that spoke to The Lens for this story said that even after the DOJ investigation, Entergy has continued with anti-competitive business practices that are harming consumers today. And some argued that Louisiana and the rest of the region would be in a much better place — both in terms of cost and reliability — if that commitment had been fulfilled.

“Unequivocally yes there’s a reliability detriment,” Daniel Tait, Research and Communication Manager for the Energy and Policy Institute, told The Lens. “Can we prove that if they had divested the transmission system, what happened during Ida would be substantially different? I don’t think we can prove that, but I definitely would argue and am happy to say on the record that the reliability and resiliency of Louisiana writ large would be better off.”

But those experts and advocates all agreed that while Entergy’s monopoly power poses a problem, splitting off the transmission system isn’t a silver bullet. All spoke at length about the need for the region’s utility regulators — state-level public service commissions and various local regulators like the New Orleans City Council — to be more proactive in preparing the state for the coming effects of climate change.

“With all of this, it requires strong regulators who are committed to working in the public interest and meeting the needs of their communities,” said Monique Harden with the Deep South Center for Environmental Justice. “So regardless of who is operating a certain aspect of electricity transmission or power generation, the rubber hits the road with the regulators.”

It was one of Entergy’s regulators that ultimately killed the company’s 2012 attempt to sell its transmission grid and defended the company’s monopoly power.

“The Commission does not find a public policy favoring the end of the vertically integrated monopoly,” the Mississippi Public Service Commission **said** in its **2013 application denial**.

The 2012 DOJ announcement said that in the event Entergy failed to follow through on its commitments, the department “can and will take appropriate enforcement action.” But at least publicly, there’s been no indication of additional action. And

since 2013, the issue has largely fallen out of the public conversation. The DOJ didn't respond to a request for comment on this story.

But some experts say that Ida is necessitating another look at whether it's time to break up Entergy's monopoly power and force the company to go through with its 2012 DOJ commitments.

"People are putting that back on the table," John Norris, a former commissioner with the Federal Energy Regulatory Commission, or FERC, told The Lens. "They're elevating that discussion."

Entergy did not grant The Lens an interview for this story and didn't respond to emailed questions.

2010 antitrust probe

Entergy is a vertically integrated utility monopoly, meaning that it controls both the generation of electricity and the grid that delivers that electricity to customers. It's the same business model that has traditionally dominated the American utility industry for over a century.

Monopolies are broadly seen as bad for consumers. They don't have to compete or innovate to retain their customers because there isn't anywhere else for customers to go.

But in the early 20th century, as lightbulbs began to replace candles, the monopoly model offered benefits.

The country was building an electric grid from scratch. And a major obstacle was coming up with the upfront cash to construct all that infrastructure. So the government made deals with upstart power companies: If they built the generation, transmission and distribution to serve a region, they would be granted a monopoly for all of its electric customers.

That approach helped build out the country's electric system. But as time wore on, issues emerged.

One was that utility monopolies were in control of which power plants could connect to the grid and sell its electricity to customers. For monopolies, the clear incentive was to prioritize its own generation assets to fill demand and choke off access to competitors.

Tait said the situation is similar to if air traffic control at airports were controlled by an airline.

“When the air traffic controller is Delta, then you can see where that starts to introduce conflict,” he said.

That conflict is why FERC began working in the 1990s to make the transmission grid more independent from the utility monopolies in the hopes that it would encourage a more extensive grid that could provide cheaper electricity to customers, easier access to renewables and more redundancy to support reliability.

Norris said that many utilities around the country have embraced these changes, naming Midwestern electric utilities Ameren and MidAmerican Energy as examples, but that Entergy remains more interested in protecting its traditional business model than adjusting to a new one.

“The system is changing all throughout the country in an effort to get competitive pricing from more generation sources,” Norris said. “Entergy is one of the dinosaurs and wants to protect its old business model. ... They're choosing so far not to change. And that's hurting consumers.”

The DOJ investigation into Entergy centered on allegations that the company was using its control of the transmission grid to block independent generators from selling its electricity to Entergy customers. Without the ability to sell electricity, the plants would go broke, and Entergy could buy them for pennies on the dollar.

In 2012, the DOJ announced that its antitrust concerns would be alleviated if the company did two things. One was divesting from the transmission business, which Entergy never did.

The second condition was joining what's called a "regional transmission organization," or RTO. RTOs are one of the things that FERC began encouraging in the late 1990s to create a more robust grid. They allow disparate transmission operators to voluntarily come together to plan and operate the transmission grid on a larger, more regional scale.

Entergy applied to join an RTO in 2012, shortly before the DOJ announcement, and officially joined in 2013. But critics say that Entergy's choice of an RTO, and the way it's engaged with it since, has precluded many of the advantages that RTOs are supposed to offer.

Entergy chose to join the Midcontinent Independent System Operator, or MISO. Before Entergy joined, the MISO territory spanned 11 states in the Midwest as well as the Canadian province of Manitoba. That area is now broadly known as MISO North, while the Entergy region is known as MISO South.

Entergy also had another RTO option, which some argued was a much better match for Entergy at the time — The Southwest Power Pool, or SPP, which comprises an area that runs from northern Texas to North Dakota.

A big drawback to joining MISO was the severe lack of transmission connectivity between what is now MISO North and MISO South. There was only enough line capacity to transport 1,000 megawatts of power between the northern and southern regions, less electricity than it takes to power New Orleans alone. That "bottleneck," as Norris describes it, effectively stops MISO North and South from being able to share a significant amount of electricity.

SPP, meanwhile, had roughly 14 times that transmission connectivity between itself and the Entergy region in 2013. And a cost benefit analysis done by Entergy itself said the benefits of joining SPP would be \$130 million higher than if it joined MISO.

“There is the Southwest Power Pool to your West, which has a lot more geographical connection and transmission interconnection,” Norris said. “But Entergy didn’t want to join SPP, they wanted to join MISO.”

As a FERC commissioner, Norris oversaw Entergy’s integration into MISO.

Critics of the move, which now include Norris, say the company chose MISO because of that bottleneck, which would ensure that its customers would still have to rely on generation from the MISO South region, which is mostly comprised of Entergy assets.

“My opinion now, having reflected on this and seeing how they’ve acted since joining MISO in 2013, I think largely it was because there’s a bottleneck of where Entergy joined into MISO,” Norris said. “As long as they can maintain that bottleneck, they can really restrict power flows in both directions. Joining MISO was more of a strategy by Entergy I think that’s consistent with what they’ve done, which is try and protect themselves from competition.”

Since joining MISO, the company has been accused of intentionally stalling MISO’s transmission planning processes and stymying transmission projects in the hopes of maintaining that bottleneck. If that was their intention, it appears they’ve been successful so far. The north-south transmission connection is more or less the same eight years after Entergy joined MISO.

“Entergy’s efforts have been consistently to stop the planning process from moving forward,” Norris said. “And they’ve been extremely skillful at slowing down the planning process. It’s more than obvious that that is their agenda.”

Why didn’t Entergy sell its transmission grid?

Industry experts and advocates told The Lens that Entergy’s conduct as part of MISO is exactly why both of the DOJ’s 2012 conditions — joining an RTO and ceding its control of the transmission grid — are necessary to truly break the company’s monopoly power.

The importance of transmission independence was explained by Entergy itself.

In 2012, weeks before the DOJ announcement, Entergy began filing for approval with its various regulators to transfer ownership of its transmission assets to ITC Holdings, a Michigan company wholly focused on owning and operating transmission.

In its application, the company laid out many of the arguments that its critics endorse today. To start, the application argued that ownership by an independent transmission operator would “facilitate and enhance the efficiency and benefits of an RTO.”

The application also argued that ITC’s “singular focus on transmission has a proven ability to improve transmission performance and reliability.” This argument in particular is supported by Entergy’s critics today, who say that there is an inherent conflict between the company’s responsibility to maintain and expand a transmission grid while also protecting the profit potential of its generation business.

“Because Entergy is conflicted between the two sides, it has a natural tendency to want to build power plants,” Tait said. “It makes more money that way.”

Tait said that even though Entergy has a profit incentive to build transmission projects, the company only has so much cash to spend on capital projects, and that it would rather put that limited pool of money into power plants.

A recent report by WWL-TV revealed how Entergy, unlike some other utilities, invests far more in generation capacity than the transmission grid. And the company came under fire in the aftermath of Ida when it’s new, \$210 million gas plant in eastern New Orleans failed to deliver the storm resilience benefits the company promised.

The company didn’t admit to any antitrust violations in 2013. But in its application, it did say that the overall grid would benefit from eliminating the perception of those antitrust violations, which could be disauding independent generators from even trying to connect to Entergy’s grid.

Despite those arguments, the application ran into trouble with several state and local regulators who had to approve the deal. And the deal ultimately fell apart after the Mississippi Public Service Commission, or MPSC, denied the application outright.

“It is clear we don’t have the necessary regulatory support to close the transaction,” Entergy CEO Leo Denault said in a press release days after the MPSC issued its formal denial.

The MPSC rejected the application in part on the grounds that the deal would lead to rate increases for customers. Some critics say the application was set up to fail, that Entergy filed the application to appease DOJ investigators, but never really wanted the deal to go through.

“I think that Entergy may have put a poison pill in the agreement so that it would be easy for regulators to reject it because of the cost to consumers,” Harden said.

Chip Estes, a Mississippi utility consultant who has worked for both Entergy and MISO, told The Lens he agreed.

“I agreed with them killing it because Entergy picked rebuttably the worst option for ratepayers possible.”

Harden questioned why regulators were only presented with a single option. And she said that lack of follow up proposals from Entergy shows the company’s true desire to retain control of the transmission grid.

There are, however, good reasons to believe that the company genuinely wanted the deal to go through. For starters, the deal appeared to be a financially smart one for the company’s shareholders. In fact, one of the MPSC’s arguments against the deal was that it was extremely lucrative to shareholders without bringing similar benefits to customers.

Then there’s the question of why Entergy hasn’t tried to put together a different deal since. One reason could be that Entergy wanted to retain its monopoly power. Another

reason is that the MSPC's denial more or less shut down the possibility of future deals.

In its application denial, MPSC didn't just bring up issues with the particular deal with ITC. They broadly rejected the premise that an independent transmission operator would be better for customers than a vertically integrated monopoly.

"The independent transmission model may yet prove its advantages and become the norm rather than the exception, but for now, it is an experiment barely ten-years-old," the denial said.

The MPSC also denied the application because the deal would take away some of its regulatory authority over the transmission grid. Although the MPSC "ostensibly would retain jurisdiction to regulate the quality and reliability of transmission service," it would lose the ability to set the company's allowed profits on transmission investments.

Those rates would instead be set by federal regulators, who would allow the company to collect increased profits, the MPSC argued. That's the single reason MPSC cited to claim the deal would raise rates for customers. The calculation that customers would pay more did not include any potential financial benefits from the deal, nor did it consider the proposed cost mitigation measures being offered by Entergy and ITC.

It appears that MPSC would lose its rate setting authority in any deal that broke up Entergy's monopoly, something that the MPSC clearly did not want to do.

"There's the continuous desire of the South not to be told by anybody else how to do things," Estes said.

But the regulatory authority in question was only related to setting rates. It appears that the same regulators would still be responsible for regulating the quality of the grid, whether Entergy owned it or not. That's why some utility experts say that new transmission ownership alone may not be sufficient to create a reliable regional grid.

“The people who are supposed to be keeping Entergy on their toes have pretty much gone out to coffee, and that’s a pretty serious problem,” utility consultant Robert McCullough told The Lens. “We do not see the motivation from each of the actors that’s necessarily sufficient to solve this.”

MISO, for its part, is a voluntary organization that requires stakeholder consensus. Norris said that because Entergy is free to leave the organization at any time, it’s difficult for MISO to put its foot down.

“It’s more like the United Nations than our typical democratic form of decision making,” Norris said. “So MISO kind of has to keep everybody happy because Entergy’s membership in MISO is voluntary.”

Then there are the state and local utility regulators. At the state level, the Louisiana Public Service Commission has been routinely criticized for being too cozy with Entergy and for taking a lax approach to ensuring system reliability.

“You just don’t see the Louisiana Public Service Commission leaping into this fray in any way,” McCullough told The Lens.

The New Orleans City Council, meanwhile, has regulatory authority over Orleans Parish, which only contains a tiny portion of the state’s transmission assets. Although the council has made some changes in recent years, it has been criticized for failing to build up in-house capacity and relying almost entirely on a group of outside consultants. And some doubt that the council has the bandwidth to force the company’s hand on transmission investments.

“This is really a David and Goliath situation,” Norris said. “It’s an almost impossible job for this current institution.”

Norris and McCullough disagreed on the effectiveness of federal regulation from FERC and the North American Electric Reliability Corporation. McCullough described those entities as having a lax, hands-off approach.

But Norris, the former FERC commissioner, said “reliability issues are taken very seriously by FERC.”

But McCullough argued that recent reliability issues in the region, including Hurricane Ida, show that the system as a whole is not working right, from Entergy to MISO to regulators at every level of government.

“We are totally unprepared for climate change. But moreover, we are not even preparing to be prepared for climate change.”

Still, while better regulatory presence may be a prerequisite for a more reliable system, some critics still argue that an independent operator would nonetheless be an improvement compared to Entergy’s current performance.

“We have no place to go but up,” Tait said.

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Michael Isaac Stein covers New Orleans' cultural economy and local government for The Lens. Before joining the staff, he freelanced for The Lens as well as The Intercept, CityLab, The New Republic, and... [More by Michael Isaac Stein](#)

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