



MEMORANDUM

TO: Mr. Milorad Zivkovic

FROM: Jane Wilson

CC: Randy Chester
Ankica Gavrilovic
Ognjen Markovic

DATE: January 15, 2008

RE: Transco engagement in a business outside of transmission

In our meeting on January 11, 2008, we discussed the Transco operating the telecommunication system attached to the transmission lines as a separate business to lease unused telecomm capacity on behalf of the owners of the telecommunication lines. I committed to write you a legal memorandum with regard to the provisions in the Transmission Company Law that pertain to this contemplated endeavor.

Executive Summary

As provided in Article 2 of the Transmission Company Law, neither Transco nor a Transco subsidiary may engage in activities other than transmission and transmission related activities only upon the prior approval of SERC. Certain specific criteria are enumerated that control any consideration of such activity by SERC.

Discussion

As I mentioned, Article 2 of the Transmission Company Law addresses this issue. It is correct that the Law provides that Transco shall perform activities related to transmission of electric power and transmission related activities. The definitions in Article 3.T and 3.U provide that “Transmission shall mean the transport of electricity on the high-voltage interconnected system for delivery to end-users, distributors and neighboring power systems,” where as “Transmission related activities shall include those activities related to the operation, maintenance, construction or expansion of the transmission system.

Note that paragraph 3 of Article 2 states, “*Except upon prior approval of SERC, the Company shall not engage in any activity that involves the following activities in any way: generation, supply, trading, or distribution of electric power, or any other business activity outside of the field of transmission or transmission related activities. This prohibition applies to both the Company and any subsidiaries.*” [Emphasis added.]

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However, Article 2 explicitly sets forth the criteria that must be applied by SERC when considering a request to authorize non-transmission or transmission related business activity. Those criteria are as follows:

“1. The Company shall not conduct a business activity involving the generation, trading or distribution of electric power unless there is compelling evidence that the business activity is in the interests of the Company’s users and shareholders and the benefits to the Company’s users and shareholders outweigh the risk of non-competitive impact on the market;

2. The Company may conduct any business activity involving any other non-transmission or transmission related business activity if there is evidence that the business activity is in the interests of the Company’s users and shareholders.

3. The following criteria shall control these decisions:

(i) The ability of the Company to maintain its creditworthiness and secure capital investment on reasonable terms shall not be adversely affected;

(ii) The ability of the Company to provide safe and adequate service shall not be adversely affected; and

(iii) The total level of investment in non-transmission or transmission related business lines is cost effective in light of the Company core business of transmission.

In exercising its authority under this provision, SERC shall have all reasonable powers to access and investigate all information and all transactions relating to the Company and the proposed business activity and to impose conditions upon or require remedial measures concerning non-transmission or transmission related businesses.

The Company shall keep separate accounts for any such SERC-approved business lines.”

Note that the prohibition in conducting business activity in generation, trading or distribution requires compelling evidence, the highest degree of evidence that the activity is in the interest of the Transco shareholders and users and the benefits outweigh any non-competitive impact. However, to apply for approval to conduct any *other* business activity involving transmission or transmission related activities requires a lower degree of evidence – that the business is in the interests of the Company’s users and shareholders.

The provisions then list criteria that control the Serc’s decision: creditworthiness and secure capital investment on reasonable terms will not be adversely affect; ability of the company to provide safe and adequate service will not be adversely affected, and the total level of investment in the non-transmission or transmission related business is cost effective. In any event, the accounts for the telecomm business must be kept separate from its core business of transmission.

Conclusion

It is REAP's opinion that the Transmission Law would allow the Transco to be engaged in the telecomm business, so long as it can obtain approval of SERC by meeting the criteria by which SERC must make its decisions.