

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

October 20, 2006

In Reply Refer To:
Entergy-Koch Trading, LP,
Docket Nos. ER06-1384-000
ER01-2781-004

Entergy Services, Inc.
Attn: Andrea J. Weinstein, Esq.
Senior Counsel
101 Constitution Ave., N.W.
Suite 200 East
Washington, D.C. 20001

Dear Ms. Weinstein:

1. On August 21, 2006, in Docket No. ER06-1384-000, Entergy-Koch submitted a notice of cancellation requesting that the Commission cancel its market-based rate tariff, effective August 22, 2006.¹ As discussed below, we accept for filing Entergy-Koch's notice of cancellation. In light of our acceptance of the notice of cancellation, we also dismiss as no longer relevant an updated market power analysis filed by Entergy-Koch on January 26, 2004 in Docket No. ER01-2781-004.

2. Entergy-Koch states that it was formed under an agreement entered into by Entergy Corporation (Entergy)² and Koch Industries Inc. (Koch)³ pursuant to which selected assets of the two companies were combined with ownership split equally between Entergy and Koch.

¹ Entergy-Koch Trading, LP, FERC Electric Tariff, Original Volume No. 1, First Revised Sheet No. 1 (cancels FERC Electric Tariff, Original Volume No. 1).

² Entergy is the parent company of Entergy Louisiana, Inc., Entergy New Orleans, Inc., Entergy Mississippi, Inc., Entergy Gulf States, Inc., and Entergy Arkansas, Inc. (Entergy Operating Companies).

³ Koch is a diversified energy and petrochemical company with a wide range of commodity, trading, processing, and transportation interests throughout the United States.

3. In *Entergy Koch, LP*, 109 FERC ¶ 62,043 (2004), Entergy-Koch received authorization under section 203 of the Federal Power Act to transfer to Merrill Lynch Commodities, Inc. substantially all of Entergy-Koch's power trading business, including power contracts and related books and records. Entergy-Koch states that, in certain cases, the transfer of contracts was subject to obtaining the consent of counterparties to assign some of its trading contracts to Merrill Lynch. Entergy-Koch further states that for non-assigned contracts, Entergy Koch needed to retain its market-based rate authority after the disposition of jurisdictional facilities to Merrill Lynch.

4. In the instant notice of cancellation, Entergy-Koch explains that all of the non-assigned contracts have now either expired or been assigned. Entergy-Koch states that it does not currently engage in any wholesale power sales and has no wholesale customers and as a result, cancellation of Entergy-Koch's market-based rate authority will not affect any third parties.

Notice of Filings and Responsive Pleadings

Docket No. ER06-1384-000

5. Notice of Entergy-Koch's notice of cancellation was published in the *Federal Register*, 71 Fed. Reg. 51,601(2006), with protests and motions to intervene due on or before September 11, 2006. None was filed.

Docket No. ER01-2781-004

6. Notice of Entergy-Koch's January 26, 2004 updated market power analysis filing was published in the *Federal Register*, 69 Fed. Reg. 5,968 (2004), with protests and motions to intervene due on or before February 17, 2004. The Council of the City of New Orleans (New Orleans) and Tractebel Energy Marketing Inc. (Tractebel) filed interventions and comments. Occidental Chemical Corporation (Occidental) and Calpine Corporation filed protests. On February 18, 2004, Cottonwood Energy Company, LP (Cottonwood) filed a motion to intervene out-of-time and protest. On March 3, 2004, Entergy-Koch filed an answer.

7. Occidental states that Entergy-Koch and its Entergy affiliates, having failed the supply margin assessment (SMA) screen, may not lawfully sell power at market-based rates unless and until adequate mitigation measures have fully been implemented. Occidental also argues that Entergy-Koch's claim of Entergy having a Commission approved open access transmission tariff on file does not mitigate transmission market power concerns. Calpine submits that unless and until the Commission expands upon or otherwise enhances the SMA screen, it is unreasonable and inappropriate to continue to allow Entergy-Koch, who has admitted failure of the SMA screens, to continue to engage in market-based rate sales within the operating area of the their parent company. Tractebel comments that Entergy-Koch should not be allowed to make sales of energy at market-based rates within the Entergy control area. Cottonwood expresses concern that

Entergy-Koch had not provided a proper SMA analysis and it should be rejected because it is based on inaccurate and misleading data. New Orleans comments that the SMA screen, as set forth by the Commission, is flawed.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely unopposed motions to intervene serve to make the entities that filed them parties to Docket No. ER01-2781-004. We will grant the motion for late intervention of Cottonwood, given the absence of any undue delay, prejudice, or burden to the parties.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Entergy-Koch's answer and will, therefore, reject it.

Commission Determination

10. Entergy-Koch's notice of cancellation is hereby accepted for filing, effective August 22, 2006, as requested. The Commission notes that because the request by Entergy-Koch to cancel its market-based rate authority is granted herein, any waivers and authorizations previously granted in connection with its market-based rate authority are no longer applicable effective 60 days from the date of issuance of this order.

11. In light of our acceptance of Entergy-Koch's notice of cancellation of its market-based rate tariff, we will dismiss the updated market power analysis filed in Docket No. ER01-2781-004 as no longer relevant.⁴ In addition, based on review of Entergy-Koch's fourth quarter 2004 Electronic Quarterly Report, we have found no indication of any market-based rate sales by Entergy-Koch after November 1, 2004. We note that the

⁴ Given Entergy-Koch's notice of cancellation of its market-based rate authority, we find it unnecessary to address the arguments raised in the protests concerning the SMA (we note that the Commission subsequently replaced the SMA with two indicative screens for assessing generation market power) (*see AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order) and whether a Commission-approved OATT mitigates transmission market power concerns.

trading businesses of Entergy-Koch became part of Merrill Lynch Commodities, Inc. effective November 1, 2004.⁵ Accordingly, we will dismiss the pending updated analysis as moot and terminate the proceeding in Docket No. ER01-2781-004.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁵ Entergy-Koch filed a notice under Docket No. EC04-155-000 to inform the Commission that the transaction approved in *Entergy-Koch, LP*, 109 FERC ¶ 62,043 (2004), was consummated on November 1, 2004.