

145 FERC ¶ 61,104
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 6, 2013

In Reply Refer To:
Entergy Arkansas, Inc.
Docket No. ER13-288-001

Entergy Services, Inc.
101 Constitution Avenue, N.W.
Suite 200 East
Washington, DC 20001

Attention: Ms. Erin Murphy
Attorney for Entergy Services, Inc.

Reference: Compliance Filing of Entergy Services, Inc.

Dear Ms. Murphy:

1. On March 1, 2013, you filed, on behalf of Entergy Services, Inc. and the Entergy Operating Companies¹ (collectively, Entergy), the compliance filing directed in the Commission's initial order in this proceeding.² In the Initial Order, the Commission accepted Entergy's proposed new Attachment Y to Entergy's Open Access Transmission Tariff (OATT), subject to certain modifications.

2. Attachment Y consists of a Retention Agreement for Transmission Service Monitoring (Retention Agreement) between Entergy and Potomac Economics, Ltd. (Potomac Economics) and a Transmission Service Monitoring Plan (Monitoring Plan). The Retention Agreement provides the terms and conditions pursuant to which Entergy Services, Inc. retains Potomac Economics to act as an independent Transmission Service

¹ The Entergy Operating Companies include Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

² *Entergy Arkansas, Inc.*, 141 FERC ¶ 61,269 (2012) (Initial Order).

Monitor (TSM) for the areas served by the Entergy Operating Companies' transmission facilities. The Monitoring Plan provides the terms and conditions pursuant to which Potomac Economics will monitor activities that relate to or affect transmission access and transmission service in the Entergy region.

3. Through the compliance filing, you propose several revisions to Attachment Y:³
 - Change each reference to the “Entergy transmission unit” to instead refer to the “Entergy transmission function.”
 - Amend section 1.3 of the Monitoring Plan to allow the TSM to share reports relating to investigations of the Entergy generation and marketing units with those units.
 - Amend section 4.2 and article 3 of the Monitoring Plan to require the TSM to share information with transmission customers that are the subject of investigations or anticompetitive concerns.
 - Make conforming changes to the ones described above to the Retention Agreement's section 5(B).
 - Modify the Monitoring Plan to provide that redacted versions of the TSM's quarterly reports will be filed with the Commission, in addition to confidential versions of such reports.
 - Amend section 2.3(e) of the Monitoring Plan and add new section 12A to the OATT⁴ to provide notice that transmission customers must designate information as confidential for Entergy and the TSM to treat that information as Confidential Information pursuant to the Monitoring Plan.
4. Notice of the filing was published in the *Federal Register*, 78 Fed. Reg. 15,713 (2013), with interventions and protests due on or before March 22, 2013. Arkansas Electric Cooperative Corporation (AECC) filed comments.

³ Entergy Arkansas, Inc., Open Access Transmission Tariff, [Attachment Y, Transmission Service Monitoring Agreement, 2.0.0](#).

⁴ Entergy Arkansas, Inc., Open Access Transmission Tariff, section [12A., Designation of Confidential Information, 1.0.0](#).

5. In its comments, AECC states that certain language in section 1.3 of the Monitoring Plan appears to give the TSM general authority to disclose findings to the Entergy generation and marketing units even if they are not the subject of an investigation.⁵ AECC notes that the Commission's Standards of Conduct prohibit a transmission provider "from using anyone as a conduit for the disclosure of non-public transmission function information to its marketing function employees."⁶ Similarly, AECC notes that the Standards of Conduct expressly prohibit a contractor for a transmission provider from disclosing such information to the transmission provider's marketing function employees.⁷

6. AECC asks the Commission to clarify that any disclosure by the TSM to an Entergy marketing function employee that is inconsistent with the Standards of Conduct would be a violation of the Standards of Conduct by Entergy, and that the Monitoring Plan and Retention Agreement do not expand the range of disclosures that may be made to the Entergy generation or marketing units to include disclosures that would be forbidden by the Standards of Conduct.

7. We conditionally accept Entergy's compliance filing, subject to an additional compliance filing. With respect to AECC's concerns regarding section 1.3's consistency with the Standards of Conduct, we note that in the Initial Order, the Commission ordered certain changes to the Monitoring Plan to ensure that it was consistent with the Standards of Conduct.⁸ The Commission noted that the Monitoring Plan, as revised by Entergy, "would place Entergy's generation and marketing units in the same position as other Entergy transmission customers by giving these units access to the reports only if they are the subject of an investigation."⁹

⁵ AECC Comments at 2 (citing Monitoring Plan at § 1.3). The revised section 1.3 states: "The Monitor may review its findings with the Entergy transmission function and any other party, including the Entergy generation or marketing units, prior to submission to FERC and the [Entergy Regional State Committee], provided that the Monitor's report to FERC and the [Entergy Regional State Committee] shall summarize any discussions between the Monitor and Entergy or any other party concerning the Monitor's findings."

⁶ *Id.* (citing 18 C.F.R. § 358.6(a)).

⁷ *Id.* (citing 18 C.F.R. § 358.6(b)).

⁸ Initial Order, 141 FERC ¶ 61,269 at P 26.

⁹ *Id.*

8. We find that section 1.3 does not conflict with the Standards of Conduct. The TSM must act consistently with the Standards of Conduct and must not make disclosures to parties that would violate Part 358 of the Commission's Regulations.¹⁰ As discussed in the Initial Order, however, the TSM may review its reports with an affected party prior to submitting those reports to the Commission and relevant retail regulators.¹¹

9. We also note that the ordinal numbering and lettering of certain paragraphs in the revised version of the Retention Agreement are incorrect.¹² We direct Entergy to make a further compliance filing within 30 days of this order to correct all incorrect numberings and letterings of elements in the Retention Agreement and the Monitoring Plan.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁰ 18 C.F.R. Pt. 358.

¹¹ Initial Order, 141 FERC ¶ 61,269 at P 30.

¹² *See, e.g.*, the first lettered paragraph of section 2 of the Retention Agreement, Term and Termination, which is incorrectly lettered as 2(C), rather than 2(A).