

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 2, 2006

In Reply Refer To:
Entergy Services, Inc.
Docket No. ER06-437-000
and ER06-437-001

Morgan, Lewis & Bockius LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004

Attention: Floyd L. Norton, IV
Attorney for Entergy Services, Inc.

Reference: Non-Conforming Service Agreement

Dear Mr. Norton:

1. On December 30, 2005, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc. (Entergy Arkansas), filed a Service Agreement¹ and associated Confirmation Agreement, which sets forth the price, terms, and conditions for cost-based, short-term power sales by Entergy Arkansas to the City of Prescott, Arkansas (Prescott), to be effective January 1, 2006, through March 31, 2006. On January 4, 2006, Entergy filed copies of signature pages after execution of the two agreements. Entergy Services requests waiver of the Commission's 60-day prior notice requirement to allow the Service Agreement and Confirmation Agreement to become effective January 1, 2006. We will grant waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3

¹ Entergy Services, Inc. FERC Electric Tariff No. 5, Original Service Agreement No. 1.

(2005), to allow an effective date of the Service Agreement of January 1, 2006.² As discussed below, the Commission accepts the Service Agreement, subject to refund and the condition set forth below, effective January 1, 2006, as requested.

2. Entergy Services explains that an agreement between Entergy Arkansas and Prescott for full requirements service expires December 31, 2005. It states that, now, Prescott has entered into an agreement with Arkansas Electric Cooperative Corporation (Arkansas Cooperative) for its energy and capacity, with an originally-anticipated effective date of January 1, 2006. However, it states, Entergy Arkansas has raised certain issues concerning Arkansas Cooperative's ability to serve Prescott consistent with their obligations under their Power Coordination Interchange and Transmission Agreement. Accordingly, it states that the instant Service Agreement and associated Confirmation Agreement are interim agreements that will last from January 1, 2006 through March 31, 2006, and will enable Entergy Arkansas to provide Prescott with energy and capacity³ while giving the parties additional time to resolve their issues.

3. Entergy Services states that the Service Agreement is submitted for filing as a nonconforming service agreement to comply with section 35.1(g) of the Commission's regulations, 18 C.F.R. §35.1(g) (2005). Entergy Service states that the instant Service Agreement with Prescott is identical in all respects to the *pro forma* short-term, cost-based rate service agreement in its Cost Based Rates (CBR) tariff filing pending in Docket No. ER91-569-031, *et al.*, with the exception of a limited modification to reflect the pricing for transmission, distribution, and ancillary services pursuant to Entergy Service's Open Access Transmission Tariff. While Entergy Service states that it believes that the Service Agreement does not "deviate in any material respect" from the *pro forma* service agreement submitted in Docket No. ER91-569-031, *et al.*, and therefore the Commission could reasonably find that it does not need to be filed, it states that it is acting out of an abundance of caution because the Commission has not yet acted on Entergy's filing in that docket. Further, it states that while it does not anticipate filing confirmations in the future under its CBR tariff, it is filing the instant Confirmation Agreement because it sets forth the pricing for the transmission, distribution, and

² *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

³ Entergy Services states that service will be provided by Entergy Arkansas pursuant to its cost-based rate tariff that is currently pending in Docket No. ER91-569-031. *See Entergy Services, Inc.*, 109 FERC ¶ 61,282 (2004), *reh'g* 111 FERC ¶ 61,145 (2005).

ancillary services and because the Commission has not yet acted on the CBR tariff and made it effective. It states that the price for the short-term power sales will be no higher than the ceiling rate proposed by Entergy Services in the CBR filing.

4. Entergy Services requests that the Commission grant waiver of the 60-day notice requirement and grant the requested January 1, 2006 effective date. It states that waiver is appropriate because both parties request the effective date and it is consistent with the Commission's policy of granting waiver of notice when service agreements under umbrella tariffs are filed within 30 days after the date upon which service commences, citing *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,984 (1993).

5. Public notice of the instant filing was issued on January 10, 2006, with interventions and protests due on January 20, 2006. Timely motions to intervene were filed by the City of Prescott, Arkansas (Prescott) and Arkansas Electric Cooperative Corporation (Arkansas Cooperative).

6. In its intervention, Arkansas Cooperative states that, as explained in the instant filing, the agreement with Prescott was supposed to commence on January 1, 2006, but Entergy Services disputed Arkansas Cooperative's right to supply and deliver energy to Prescott under their Power Coordination Interchange and Transmission Agreement. It states Entergy Arkansas, Arkansas Cooperative, and Prescott have commenced discussions in an effort to resolve these issues but have agreed in the interim for Entergy Arkansas to serve Prescott from January 1, 2006, through March 31, 2006.

7. Prescott comments in its intervention that an additional agreement between Prescott, Entergy Arkansas, Arkansas Cooperative, and the Entergy Transmission Business Unit (Entergy Transmission), that provides that these four parties are to work together to resolve the issues that are not enabling the energy and capacity agreement between Prescott and the Arkansas Cooperative to take effect, was omitted from the filing and should be included.⁴ Prescott included a copy of the additional four-party agreement in its intervention. Among other things, the four-party agreement provides that the parties agree that, for "an interim period from January 1, 2006, through March 31, 2006, [Entergy Arkansas] shall serve Prescott as provided in the [Service Agreement] and [Confirmation Agreement], which agreements are attached hereto."

⁴ Prescott also claims that the January 4, 2006 filing of the signature pages incorrectly characterized that filing as a Settlement Agreement, and seeks clarification that it will not be so classified. We agree.

8. The Commission finds that the Service Agreement reflects a material deviation from the *pro forma* service agreement currently pending in Docket No. ER91-569-031, *et al.* However, the fact that Entergy Services is arranging for transmission, distribution, and ancillary services for Prescott appears to be reasonable and not unduly discriminatory. We will, therefore, accept the Service Agreement, subject to refund and to the outcome of Docket No. ER91-569-031, *et al.*⁵ Further, we agree with Prescott that Entergy Services should have included the additional four-party agreement in its filing as it is related to, and underlies, the instant two-party Service Agreement. However, as the four-party agreement is in the record, we will not require Entergy Services to submit it to the Commission. Finally, we find good cause to grant the requested waiver. Accordingly, the Commission accepts the Service Agreement, effective January 1, 2006, subject to refund and to the outcome of Docket No. ER91-569-031, *et al.*

By direction of the Commission.

Magalie R. Salas
Secretary

⁵ See note 2.