114 FERC ¶61,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entergy Services, Inc., acting as agent for Entergy Operating Companies — Docket No. ER06-365-000

ORDER ACCEPTING UNEXECUTED NETWORK OPERATING AGREEMENTS AND NETWORK INTEGRATION TRANSMISSION SYSTEM SERVICE AGREEMENTS SUBJECT TO CONDITION

(Issued February 16, 2006)

1. On December 22, 2005, Entergy Services, Inc. (Entergy), acting as agent for the Entergy Operating Companies, filed unexecuted Network Operating Agreements (Operating Agreements) and Network Integration Transmission Service Agreements (Transmission Agreements) between Entergy and (1) the City of Conway, Arkansas, and between Entergy and (2) the City of West Memphis, Arkansas (collectively, the Cities).[1] The agreements deviate from the applicable *pro forma* agreements in Entergy's Open Access Transmission Tariff (OATT) on a single issue regarding an obligation to purchase ancillary services 3 through 6[2] under certain conditions. Section 5.4.3 of the Transmission Agreements contains the disputed language. The Operating Agreements and Transmission Agreements are filed unexecuted because Entergy and the Cities were unable to resolve the ancillary services issue. In this order, the Commission accepts Entergy's Operating Agreements and Transmission Agreements with an effective date of January 1, 2006, subject to Entergy removing section 5.4.3 from the Transmission Agreements. Entergy requests waiver of the Commission's 60-day prior notice requirement to allow the Operating Agreements and the Transmission Agreements, as amended, 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 (2005) to allow an effective date of January 1, 2006.[3]

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[1] Entergy Services, Inc., FERC Electric Tariff First Revised Volume No. 3, Entergy Operating Companies Service Agreement Nos. 402 and 403.

[2] The pertinent ancillary services are: (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; and (6) Operating Reserve—Supplemental Reserve Service.

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

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Background

2. Entergy states that the Cities are obligated to pay for ancillary services 3 through 6 under the Entergy OATT when the Cities either fail to make adequate arrangements to obtain such services or those arrangements fail to provide these services.

3. Entergy explains that the Cities had Power Coordination Interchange and Transmission Agreements (Coordination Agreements) with Entergy Arkansas, Inc. that terminated on December 31, 2005. Under the Coordination Agreements, the Cities received transmission, capacity, and energy services from Entergy Arkansas. Entergy states that the Cities conducted a request for proposals to replace the expiring Coordination Agreements. Constellation Energy Commodities Group, Inc. (Constellation) was selected as the new partial requirements supplier for the Cities.

4. Entergy states that the Cities will begin taking Network Integration Transmission Service under Entergy's OATT in order to deliver all of the Cities' energy and capacity requirements from the Cities' various designated network resources to the Cities' network load. Constellation will act as the Cities' agent for implementation of the Cities' Operating Agreements and Transmission Agreements. The agreements extend from January 1, 2006 through December 31, 2036.

5. Entergy argues that the agreements are identical to the *pro forma* Entergy OATT agreements in all material respects except for the language in sections 5.4.2 and 5.4.3. The language in section 5.4.2 is not in dispute here and is subject to settlement discussion in Docket No. EL05-149-000.[4] The language in section 5.4.3 states that the Cities must buy ancillary services 3 through 6 from Entergy if the Cities fail to make adequate arrangements or fail to provide such services.[5] Entergy maintains that this language is consistent with Order No. 888,[6] Entergy's OATT, and Commission precedent.[7]

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[4] Docket No. EL05-149-000 deals with Reactive Supply and Voltage Control from Generation Sources Services as provided for in Entergy's OATT, Schedule 2. The settlement discussions in Docket No. EL05-149-000 will also determine the outcome of ER05-1432-000, the docket in which Entergy made a filing to revise its Schedule 2 rate.

[5] Proposed section 5.4.3 states:

> [t]he Transmission Customer will be serving load in Transmission Customer's Balancing Authority Area and has elected to self-supply or arrange for these Ancillary Services through a third party. If the Transmission Customer's self-supply or third party arrangements fail to provide these Ancillary Services or otherwise do not prevent the Transmission Provider from supplying these Ancillary Services, the Transmission Customer will be subject to the standard charges under the Tariff for such Ancillary Services.

[6] *See Promoting Wholesale Competition Through Open Access Non-*

(continued…)

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6. Entergy states that it recognizes that the Cities have established their own Balancing Authority Area.[8] Entergy further understands that the Cities are arguing that, because the Cities are in their own Balancing Authority Areas, they have no responsibility for ancillary service 3 through 6 as a condition of service under Entergy's OATT. However, Entergy maintains that because the Cities are directly connected to Entergy's transmission system and are embedded in Entergy's Balancing Authority Area, the Cities may depend on Entergy should their ancillary service arrangements fail. Entergy asserts that it is entitled to be compensated for those services if they are necessary under Entergy's standard OATT rates. Entergy further argues that because the Transmission Agreements extend for a term of over 30 years it is likely that Cities' alternative ancillary service arrangements will change, thus increasing the probability of the chance of failure of those services to deliver.

7. Finally, Entergy states that section 5.4.3 is consistent with Order No. 888-A.[9] Entergy quotes Order No. 888-A: "[I]f a transmission customer can self-supply a portion of its requirement for ancillary services (other than Scheduling, System Control, and Dispatch Service), it should pay a reduced charge for these services."[10]

Notice of Filing and Responsive Pleadings

8. Notice of the filing was published in the *Federal Register*, 71 Fed. Reg. 1422 (2006), with comments, protests and interventions due on or before January 12, 2006.

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discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1977), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

[7] Entergy cites Letter Order, *Southwest Power Pool*, Docket No. ER05-1208-000 (issued Aug. 25, 2005) (accepting NITSA between Southwestern Public Service Company and West Texas Municipal Power Agency); and Letter Order, *American Transmission Sys., Inc.*, Docket No. ER03-1411-000 (issued Oct. 24, 2003) (accepting NITSA between American Transmission System, Inc. and Buckeye Power, Inc.).

[8] The term "Balancing Authority Area" has replaced the term "control area" to describe the relevant geographic area for control area functions.

[9] Order No. 888-A, *supra.*

[10] Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,235 (1997).

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A timely motion to intervene and protest was jointly filed by Constellation Energy Commodities Group, Inc. (Constellation) and the Conway Corporation and West Memphis Utilities Commission (collectively, Arkansas Cities).[11]

9. Constellation and Arkansas Cities argue that: (1) Entergy's proposal to require a transmission customer that is not serving load in Entergy's Balancing Authority Area to obtain ancillary services 3 through 6 from Entergy is inconsistent with Order No. 888 and Entergy's OATT; and (2) Entergy has not demonstrated that its proposed deviation from Order No. 888 is consistent with or superior to the *pro forma* OATT. They state that under Order No. 888 and Entergy's OATT, Entergy is only required to offer to provide ancillary services 3 through 6 to transmission customers serving load within or into Entergy's Balancing Authority Area. Constellation and Arkansas Cities further state that transmission customers serving loads that are out of or through the transmission provider's Balancing Authority Area are not responsible for ancillary services 3 through 6 as a condition of transmission service under Entergy's OATT. Thus, they assert that the responsibility for Balancing Authority Area functions is wholly upon the Cities as a registered Balancing Authority Area. Finally, Constellation and Arkansas Cities state that the Cities' loads will always remain in the Cities' Balancing Authority Areas and that the Cities will remain responsible for compliance with North America Electric Reliability Council (NERC) and Southeast Electric Reliability Council (SERC) Balancing Authority Area requirements with respect to these loads.

10. Additionally, Constellation and Arkansas Cities argue that the Commission precedent cited by Entergy[12] is not relevant to the Cities' circumstances. In the cited cases, the transmission customers are serving load within or into the transmission provider's Balancing Authority Area, and, consequently, were responsible for ancillary services 3 through 6 under the transmission provider's OATT under Order No. 888.[13] Here, the transmission customers are not serving load within the transmission provider's Balancing Authority Area.

11. Constellation and Arkansas Cities further argue that under Order No. 888, Entergy must demonstrate that its proposal to adopt a provision that is different from the *pro* forma OATT is "consistent with or superior to" the *pro forma* OATT.[14] Constellation and Arkansas Cities maintain that Entergy's assertions do not meet this standard and, therefore, section 5.4.3 of the proposed Transmission Agreements should be rejected.

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[11] The City of Conway leases its electric generation and distribution utility system to Conway Corporation to operate. The West Memphis Utilities Commission operates the electric utility system owned by the City of West Memphis.

[12] *See* note 7.

[13] Order No. 888 at ¶ 31,715-716.

[14] *Id.* at ¶ 31,770.

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Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[15] the timely, unopposed motion to intervene and protest serves to make the entities that filed it parties to this proceeding. However, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[16] prohibits answers to protests unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by (1) Entergy and (2) Constellation and Arkansas Cities and will, therefore, reject them.

B. Analysis

13. We find that section 5.4.3 of the Transmission Agreements is not consistent with Order No. 888 and Commission precedent and, therefore, is not just and reasonable under section 205 of the Federal Power Act.[17] This deviation is not consistent with or superior to the *pro forma* OATT, as it does not reflect the Commission's policy with regard to ancillary services 3 through 6.

14. The six ancillary services described by the Commission in Order No. 888 are: (1) Scheduling, System Control and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; and (6) Operating Reserve—Supplemental Reserve Service. In Order No. 888, the Commission categorized these ancillary services as either services required to be provided by the transmission provider or required to be acquired by transmission customers serving load in the transmission provider's Balancing Authority Area. Ancillary services 3 through 6 are in the latter category.[18]

15. We agree that the Cities are not required, as a condition of transmission service under Entergy's OATT, to acquire ancillary services 3 through 6 from Entergy (as transmission provider), from a third party, or to self-supply these ancillary services. Order No. 888 supports this contention. Order No. 888 clearly implies that ancillary services 3 through 6 are not required as a condition of transmission service under Entergy's OATT:

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[15] 18 C.F.R. § 385.214 (2005).

[16] 18 C.F.R. § 385.213(a)(2) (2005).

[17] Federal Power Act, 16 U.S.C. 824 (2000).

[18] Order No. 888 at 31,703-704.

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> Transmission *through* or *out of* a control area requires fewer ancillary services from the operator of the control area than transmission *within* or *into* a control area to serve loads in the control area . . . certain ancillary services will be needed only in the control area where the transmission customer's load is located. . . . With respect to the second group of ancillary services [Ancillary Services 3 through 6], we conclude that the transmission provider is not always uniquely positioned to provide these services, although in many cases it may be the only practical source. Thus, we will require the transmission provider to *offer* to provide the ancillary services in the second group to transmission customers **serving load in the transmission provider's control area.** (Emphasis in bold added.)[19]

This does not mean that the Cities need not arrange for these ancillary services at all; it simply means that their status as a transmission customer does not place on them the responsibility of a Balancing Authority Area to operate its system in a safe and reliable manner. As a Balancing Authority Area, however, the Cities are obligated to meet the same standards and compliance measures that Entergy or any other Balancing Authority Area is required to meet. Entergy has not demonstrated that the situation here justifies deviating from the requirements of Order No. 888.

16. Entergy states that, because the Cities' Balancing Authority Areas are embedded within Entergy's Balancing Authority Area, Entergy may be responsible for any failure of the Cities' ancillary services 3 through 6. Thus, Entergy argues it is just and reasonable to have a provision that addresses such a failure and provides for appropriate compensation. The Commission is aware that effects of one Balancing Authority Area on another are inevitable in interconnected systems. However, we considered those effects when we adopted the language quoted above.[20] We note that the Cities are responsible for Balancing Authority Area requirements with respect to these loads, and failure to meet such requirements would jeopardize the Balancing Authority Area's certification.

17. Finally, the Commission does not agree with Entergy's argument that the length of the contract is relevant. The contract is for a term of over 30 years, and it is entirely likely that the Cities' arrangements will change during that time frame. We find, however, that the duration of the contract has no direct bearing on Entergy's proposed deviations in the Transmission Agreements.

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[19] *Id.* at 31,715-716.

[20] *See* Order No. 888, *supra*.

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The Commission orders:

(A) The unexecuted Network Operating Agreements and Network Integrated Transmission Service Agreements are hereby conditionally accepted for filing, effective January 1, 2006, as discussed in the body of this order.

(B) Entergy is hereby granted waiver of the Commission's 60-day advance notice requirements found at 18 C.F.R. § 35.3 (2005) to allow an effective date of January 1, 2006, as requested.

(C) Entergy is hereby required to file a compliance filing within 15 days of this order, as discussed herein.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.