

20080728 3101 PERC TEL (UNOFFICIAL) 7/28/2008 1:02:17 PM

**ARKANSAS ELECTRIC ENERGY CONSUMERS, INC.**

323 Center Street Suite 1230  
Little Rock, Arkansas 72201  
Phone (501) 372-6900  
Fax (501) 372-6922

July 28, 2008

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First St., N.E.  
Washington, D.C. 20426

**RE: Complaint of Arkansas Electric Energy Consumers, Inc., v Entergy Corporation, et al.**

Dear Ms Bose:

Enclosed please find the Complaint of Arkansas Electric Energy Consumers, Inc., v Entergy Corporation, et al. under Section 206 of the Federal Power Act and a Notice of Filing for publication in the Federal Register consistent with the Commission's rules.

Copies of the Complaint are being served on the persons listed on the Certificate of Service attached to the Complaint consistent with the Commission's rules. Please include the following individual on the service list in this matter for Arkansas Electric Energy Consumers, Inc.

Holly D. Whitcombe, Executive Director  
Arkansas Electric Energy Consumers, Inc.,  
323 Center St., Suite No. 1230  
Little Rock, AR 72201  
hwhitcombe@aeec-agc.org  
Phone (501) 372-6900  
Fax (501) 372-6922

Brian C. Donahue, Counsel  
Arkansas Electric Energy Consumers, Inc.,  
323 Center St., Suite No. 1230  
Little Rock, AR 72201  
bdonahue@aeec-agc.org  
Phone (501) 372-6900  
Fax (501) 372-6922

Thank you for your assistance in this matter. If you have any questions about this filing, please do not hesitate to contact me.

Sincerely,



Brian C. Donahue

20080726 3101 FERC FLP (UNOFFICIAL) 7/26/2008 1:02:17 PM

**BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

ARKANSAS ELECTRIC ENERGY	)	
CONSUMERS, INC.	)	
	)	
v.	)	DOCKET NO. EL08-_____
	)	
ENTERGY CORPORATION,	)	
ENTERGY SERVICES, INC.,	)	
ENTERGY ARKANSAS, INC.	)	
ENTERGY GULF STATES,	)	
LOUISIANA, INC.,	)	
ENTERGY LOUISIANA, L.L.C.	)	
ENTERGY MISSISSIPPI, INC.	)	
ENTERGY NEW ORLEANS, INC.	)	
ENTERGY TEXAS, INC.	)	

**COMPLAINT OF ARKANSAS ELECTRIC ENERGY CONSUMERS,  
INC., FOR DECLARATORY RELIEF**

Comes now the Arkansas Electric Energy Consumers, Inc., ("AEEC") and for its Complaint asking the Federal Energy Regulatory Commission ("FERC" or "Commission") clarify a number of issues associated with (i) the Entergy System Agreement, (ii) Entergy Arkansas, Inc.'s ("EAI") pending withdrawal from the System Agreement, (iii) EAI and its affiliates efforts to negotiate a new system agreement to replace that which is currently in place, and (iv) EAI's efforts to acquire a combined cycle gas turbine generating plant near Sterlington, Louisiana, in accordance with Rule No 206 of the Commission's Rules of Practice and Procedure and § 206 of the Federal Power Act, § 18 USC 824(e):

**I. IMPORTANT PARTIES**

1. Arkansas Electric Energy Consumers, Inc., ("AEEC") is a not-for-profit incorporated association organized and existing under the laws of the State of

20000720 3101 PERC PDF (UNOFFICIAL) 7/20/2000 1:02:17 PM

Arkansas. AEEC's members are industrial and agricultural concerns operating in and around the state of Arkansas which purchase large quantities of electricity from Entergy Arkansas, Inc. ("EAI"), and which are vitally interested in the long term cost of electricity to EAI's retail customers. The interests of AEEC and its members are not adequately represented by any party.

2. EAI is a "public utility" as defined in Arkansas Code Annotated § 23-1-101(9)(A)(i) providing retail electric utility service inside Arkansas to the public for compensation. EAI is also a wholly owned subsidiary electric utility operating company of the Entergy Corporation.
3. Entergy Corporation is a public utility holding company headquartered in New Orleans, Louisiana. In addition to EAI, Entergy Corporation's wholly-owned electric utility operating company subsidiaries include Entergy Gulf States Louisiana, Inc. ("EGLI"), Entergy Louisiana, LLC ("ELL"), Entergy Mississippi, Inc. ("EMI"), Entergy New Orleans, Inc. ("ENO"), and Entergy Texas, Inc. ("ETI"). Entergy Corporation's operating company subsidiaries will be referenced hereinafter collectively as the "EOCs". Entergy Corporation also owns a number of other special purpose subsidiaries, including, Entergy Services, Inc. ("ESI"), and System Energy Resources, Inc.
4. The Arkansas Public Service Commission ("APSC") regulates public utilities operating in the State of Arkansas pursuant to Arkansas Code Annotated Section 23-1-101, et seq. Under Arkansas law, the APSC has general regulatory authority over EAI's retail rates and services. That authority includes, under Arkansas Code Annotated § 23-18-103, the right and obligation to approve or disapprove,

20080728 3101 FERC (SR) (Official) 7/28/2008 1:02:17 PM

in advance, of any public utility's entry into any contract whereby that public utility would purchase electricity from any of its affiliates for resale to retail customers in Arkansas.

## II. THE ENTERGY SYSTEM AGREEMENT

5. The Entergy System Agreement is a formal agreement among the EOCs which was submitted to and accepted for filing by the Commission. *Middle South Energy, Inc.*, 31 FERC ¶ 61,305 (1985). Since its original filing, the System Agreement has been modified by the EOCs on a number of occasions and has been reinterpreted by the Commission at least once<sup>1</sup>. The Entergy System Agreement, as currently interpreted by the Commission provides for coordinated operation, on a single system basis, of the generation and bulk transmission facilities of the EOCs, the purchase and sale of electricity supplies between EOCs, and the allocation of benefits and costs among them. The System Agreement consists of seven Service Schedules: MMS-1 (Reserve Equalization); MMS-2 (Transmission Equalization); MSS-3 (Exchange of Electric Energy Among the Companies); MSS-4 (Unit Power Purchase); MSS-5 (Distribution of Revenue from Sales Made for the Joint Account of all Companies); MSS-6 (Distribution of Operating Expenses of System Operations Center); and MSS-7 (Merger Fuel Protection Procedure).
6. The System Agreement's MSS-3 was originally intended only to take advantage of system-wide economies of scale to roughly equalize the costs of excess electric energy (energy not needed by a particular Operating Company to meet its base

---

<sup>1</sup> *Louisiana Public Service Commission v Entergy Corporation and Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005); and *Louisiana Public Service Commission v Entergy Corporation and Entergy Services, Inc.*, Opinion No. 480-A, Order Denying Rehearing, 113 FERC ¶ 61,282 (2005).

20060726 3101 FERC PDF (UNOFFICIAL) 7/26/2006 1:02:17 PM

load) by allowing another Operating Company to purchase that energy. Now, subsequent to Opinion No. 480, MSS-3 has been modified to become the mechanism for the System's annual production cost equalization. See *Louisiana Public Service Commission v Entergy Services, Inc., et al.*, 117 FERC ¶ 61,203 (2006).

7. The System Agreement contains at § 1.01 a provision allowing any of the Entergy Corporation's operating companies the unilateral right to withdraw from the System Agreement on ninety-six month's written notice to the other Entergy operating companies.
8. The System Agreement contains in Article 3 a number of important provisions. These include the following:
  - a. § 3.03 -- "Minimizing the current and future costs of electricity and reducing energy dependence on oil and gas require the [EOCs] to move toward a new fuel base of coal and nuclear."
  - b. § 3.04 -- "It is recognized that these new coal and nuclear units will be the [system's] base generating units ... and will be units of the larger ratings in generating stations of large size, strategically located with regard to fuel, water supply, and electric load."
  - c. § 3.05 -- "It is the long term goal of the [EOCs] that each company have its proportionate share of the Base Generating Units available to serve its customers either by ownership or purchase. Any Company which has generating capacity above its requirements, which desires to sell all or any portion of such excess generating capacity and associated energy, shall offer the right of first refusal for

20060726 3101 FERC PDF (UNOFFICIAL) 7/26/2006 1:02:17 PM

this capacity and associated energy to the other Companies under Service Schedule MSS-4 Unit Power Purchase.”

9. The System Agreement contains at § 4.01 a requirement that each of the EOCs “own, or have available to it under contract, such generating capability and other facilities as are necessary to supply all of the requirements of its own customers.”
10. The System Agreement has been the subject of a significant amount of litigation before the Federal Energy Regulatory Commission (“FERC”) and federal appellate courts among state regulators, the Entergy Operating Companies, federal regulators and interested ratepayers since the execution of the current version of the agreement in 1982.
11. Reported decisions in litigation associated with the System Agreement can be found in a number of places including but not limited to: *Middle South Energy, Inc.*, 26 FERC ¶ 63,044 (1984); *Middle South Services, Inc.*, 30 FERC ¶ 63,030 (1985); *Middle South Energy, Inc.*, 31 FERC ¶ 61,305 (1985); *System Energy Resources, Inc.*, 41 FERC 61,238 (1987); *Mississippi Industries v FERC*, 808 F.2d 1525 (D.C. Cir. 1987); *Mississippi Industries v FERC*, 822 F.2d 1104 (D.C. Cir. 1987); *Louisiana Public Service Commission v Entergy Corporation*, 95 FERC ¶ 63,011 (2001); *Louisiana Public Service Commission v Entergy Corporation*, 95 FERC ¶ 61,266 (2001); *Louisiana Public Service Commission v Entergy Corporation*, 96 FERC ¶ 63,001 (2001); *Louisiana Public Service Commission v Entergy Services, Inc.*, Opinion No. 480, 111 FERC ¶ 61,311 (2005); *Louisiana Public Service Commission v Entergy Services, Inc.*, Opinion

No. 480-A, 113 FERC ¶ 61,282 (2005); and *Louisiana Public Service Commission v Entergy Services, Inc., et al.*, 117 FERC ¶ 61,203 (2006).

12. On December 19, 2005, EAI submitted its Notice of Withdrawal from the Entergy System Agreement consistent with the terms of System Agreement Section No. 1.01. A copy of the EAI Notice of Withdrawal has been attached to this Complaint as Exhibit No. 1.

### III. EAI'S OUACHITA PLANT PURCHASE

13. On November 14, 2008, the APSC established a docket at EAI's request for consideration of whether EAI has a need for additional load following and peaking capacity. That docket was styled *In the Matter of Entergy Arkansas, Inc.'s Request for Approval of the Acquisition of New Capacity to Serve its Retail Customers*, APSC Docket 06-152-U. In that docket, EAI's witnesses testified that:

for 2007, EAI is short 1,462 MW comparing the capacity it controls with the peak retail load plus reserves. Secondly, ... EAI needs 1,141 MW of high load-factor load-following capacity so that it can match on an ongoing operational basis the generation output with its customers' load.<sup>2</sup>

See Exhibit 2 which is a copy of a portion of the Direct Testimony of Kurtis Castleberry in APSC Docket 06-152-U, at pages 8 line 8 through page 9 line 4 (footnote added).

14. On August 24, 2007, the APSC issued an order addressing EAI's application in Docket 06-152-U. After discussing EAI's testimony suggesting that it had a capacity deficit of 1,462 MW of generation in 2007, at page 2 of Order No. 6, the

---

<sup>2</sup> At the time, EAI had some 471 MW of load following capacity dedicated to retail load. See, the Direct Testimony of Robert R. Cooper filed in APSC Docket 06-152-U on November 17, 2006 at page 13, lines 7-10.

APSC found and declared, at pages 5-6 of Order No. 6, that EAI had demonstrated a shortage of capacity under its long term control and demonstrated that the shortage involved load following and peaking capacity and further authorized EAI to seek additional resources. *In the Matter of Entergy Arkansas, Inc.'s Request For Approval of the Acquisition of New Capacity to Serve its Retail Customers*, Order No. 10, APSC Docket 06-152-U (2007).

15. On September 4, 2008, EAI filed a request *In the Matter of Entergy Arkansas, Inc.'s Request For Approval of the Acquisition of New Capacity to Serve its Retail Customers*, APSC Docket 06-152-U, for permission to acquire the 789 MW Ouachita Power Facility ("Ouachita Plant"), a three train CCGT generating facility located near Sterlington, Louisiana, from Ouachita Power, LLC.<sup>3</sup>
16. On June 27, 2008, the APSC issued its Order No. 14 *In the Matter of Entergy Arkansas, Inc.'s Request For Approval of the Acquisition of New Capacity to Serve its Retail Customers*, Docket 06-152-U, granting EAI permission to acquire the Ouachita Plant. Implicit in this acquisition was Entergy's intention that EAI transfer 1/3 of the Ouachita plant to Entergy Gulf States Louisiana ("EGSL"). See Exhibit 3, which is page 1 of the APSC's Order No. 14 in Docket 06-152-U.

#### **IV. THE COST OF THE ENTERGY SYSTEM TO EAI'S ARKANSAS RETAIL CUSTOMERS**

17. The System Agreement has cost Arkansans a great deal of money in litigation expenses since 1982. AEEC alone expended in excess of a quarter of a million

---

<sup>3</sup> EAI also filed an application with FERC addressing the proposed Ouachita Plant purchase under recent amendments to the Federal Power Act in FERC Docket EC08-19-000. On January 29, 2008, FERC issued an order in Docket EC08-19-000 granting its approval of EAI's acquisition and Ouachita Power's sale of the Ouachita Plant

dollars attempting to defend Arkansas's retail ratepayers against the claims of the Louisiana Public Service Commission in FERC Docket EL01-88. AEEC has no information to estimate the APSC's expenses (from tax revenues) in docket EL01-88, but believe the sum to be large.

18. In addition to litigation expenses, under the current System Agreement, EAI's captive customers are currently being required to subsidize electricity production by EAI's affiliates, primarily in the state of Louisiana for the benefit of those companies' retail customers. These subsidy payments have included payment since 1987 of billions of dollars in costs associated with the Grand Gulf Nuclear Power Plant since 1987,<sup>4</sup> and payment of hundreds of millions of dollars per year under the Commission's current production cost equalization scheme<sup>5</sup>.
19. Litigation currently ongoing before the Commission FERC Dockets ER07-956-000 and ER08-1056-000, have the potential in the next few years to transfer additional hundreds of millions of dollars from Arkansans to the Entergy System.

## **V. EAI'S CONTINUED PARTICIPATION IN THE ENTERGY SYSTEM AGREEMENT**

20. On February 10, 2004, the APSC issued an Order of Investigation ("Order No. 1") in Docket No. 04-023-U, *In the Matter of an Investigation Regarding Entergy Arkansas, Inc.'s Continued Participation in the Entergy System Agreement, and the Future Protection of its Ratepayers*. That order described the Entergy System

---

<sup>4</sup> See, *In the Matter of an Investigation Regarding Entergy Arkansas, Inc.'s Continued Participation in the Entergy System Agreement, and the Future Protection of its Ratepayers*, APSC Docket 04-023-U, Order No. 1 at page 4. (Order issued February 10, 2004).

<sup>5</sup> Entergy's MSS-3 calculations have resulted in EAI's retail customers being saddled with approximately 230 million in subsidy payment obligations associated with service during 2006 and approximately 250 million in subsidy payment obligations during 2007. See Entergy's Applications in FERC Dockets ER07-956-000 and ER08-1056-000.

20080728 0101 PERC PDF (UNOFFICIAL) 7/28/2008 1:02:17 PM

Agreement, the historic System Agreement-related litigation, and ongoing efforts by other utility regulators in other states to extract subsidy payments from EAI's ratepayers. In its order, the APSC asked the parties to do two things: (i) advise it as to whether EAI's continued participation in the Entergy System Agreement is in the best interests of EAI's ratepayers; and (ii) advise it what steps could be taken by EAI and the Commission to protect EAI's ratepayers from future attempts by Louisiana or any other Entergy retail regulator to shift their high costs onto Arkansas.

21. In response to Order No. 1 in Docket 04-023-U, EAI submitted the testimony of its President and CEO, Mr. Hugh McDonald, on March 29, 2004. Mr. McDonald argued generally that it was his opinion that the Entergy System Agreement had benefitted EAI's ratepayers but provided no proof or quantification of any such benefits. Since that initial round of testimony, EAI's President Hugh McDonald has been called back to present additional testimony to the Commission on several occasions. A copy of Mr. McDonald's most recent supplemental testimony in APSC Docket 04-023-U is attached to this Complaint as Exhibit 4.
22. The APSC General Staff responded to Order No. 1 in Docket 04-023-U with the Direct Testimony of Ms. Diana K. Brenske. Ms. Brenske's testimony discussed the System Agreement's impact on EAI and its customers. She concluded that EAI's claim of ratepayer benefits from the Entergy System Agreement is erroneous and that there is no way to protect ratepayers from litigation risk as long as EAI is a party to the System Agreement. See APSC Docket No. 04-023-U, Direct Testimony of Diana K. Brenske, pp. 5-6.

- 20080728 3101 FERC PDF (UNOFFICIAL) 7/28/2008 1:02:17 PM
23. The APSC's Docket 04-023-U continues. However, as can be seen in Exhibit 4, EAI's focus has changed from withdrawing from the current System Agreement to negotiating with its affiliates a replacement system Agreement consistent with the terms of its Notice of Withdrawal which is found at Exhibit 1.
  24. EAI has indicated that it expects to circulate a draft of that replacement system agreement in mid 2008. However, the company's comments suggest that Entergy might submit whatever replacement system agreement its subsidiaries develop to FERC without getting the APSC's prior approval consistent with Ark. Code Ann. § 23-18-103.

## **VI AEEC'S DILEMMA**

25. Prior to issuance of FERC's Opinion No. 480 and 480-A, AEEC had always understood the System Agreement language, referenced in paragraphs 8 and 9 above, to set system policy and to guarantee each of the EOCs' retail customers the benefits of the generation which their EOC sited and for which they have paid through their retail rates. However, the Commission turned that understanding on its head in Opinion No. 480, 480-A, and subsequent decisions. In those cases, the Commission concluded that retail customers were not guaranteed the benefits of the generation for which they bore cost responsibility in perpetuity and that the costs and benefits of the system's operations could be reallocated at the Commission's will. Since the D.C. Circuit has declined to overturn the Commission's rulings, AEEC is left with the need to determine with reasonable certainty what the rules are for the future.
26. This leaves AEEC with the following questions.

- 20080728 3101 FERC PDF (UNOFFICIAL) 7/28/2008 1:02:17 PM
- a. Whether, as a matter of law, the Ouachita Plant is a “system plant” under the Entergy System Agreement between now and December 19, 2013, such that its acquisition and operational costs will be considered to increase EAI’s production costs under the production cost bandwidth mechanism adopted by FERC in Opinion No. 480?
  - b. Whether EAI’s Notice of Withdrawal, as a matter of law, eliminates any possibility that the other EOCs have any reasonable expectation of an ability to retain benefits specifically associated with EAI’s portion of the Ouachita Plant from and after December 19, 2013?
  - c. Whether, in light of EAI’s December 19, 2005, Notice of Withdrawal, it would be imprudent, as a matter of law, for Entergy Louisiana and Entergy Gulf States Louisiana to fail to reasonably diversify their own generation resources between now and December 19, 2013?
  - d. Whether, as a matter of law, FERC would be required to apply / enforce state law providing that an interstate power supply contract (the anticipated replacement system agreement) entered into without express prior approval of state authorities is void?
  - e. Whether, as a matter of law, any provision included in any replacement system agreement could ensure that Arkansas residents are not required to subsidize electric utility operations in other states (i.e. make production cost equalization payments benefitting other Entergy operating companies)?

27. A Commission order providing guidance on these issues would almost certainly forestall years of litigation and associated with any replacement system agreement that might be submitted by the parties in the future. Absent Commission guidance on these issues, litigation seeking to wring further subsidies from the Entergy System Agreement is almost certain to continue. Further industry located in EAI's service area will face the risk of not being able to know with any reasonable certainty what costs they might be forced to pay in either the short or long term. Such uncertainty could force such industries to flee Arkansas. Such result would have serious adverse impact on both the state and its people.
28. Consistent with the Commission's Rules, AEEC states that it has not utilized the Commission's Enforcement Hotline, other alternative dispute resolution mechanisms, or other informal dispute resolution procedures. Because of the long history of litigation associated with the Entergy System and the Entergy System Agreement, AEEC deemed such efforts useless. Further, AEEC does not believe that alternative dispute resolution efforts under the Commission's supervision would be likely to be effective. However, AEEC would of course be willing to discuss resolution of its concerns with any party, should the Commission determine that such effort might be useful.

**WHEREFORE**, AEEC respectfully requests that the Commission issue an order addressing the above identified issues as soon as is reasonably practicable. At this point, AEEC believes each of the questions which it commended to the Commission's attention can be answered without an evidentiary hearing.

Respectfully submitted,  
Arkansas Electric Energy Consumers, Inc.,

By: Brian C Donahue

Brian C. Donahue  
Arkansas Bar No. 91174  
323 Center St., Suite No. 1230  
Little Rock, AR 72201  
(501) 372-6900 (phone)  
(501) 372-6922 (fax)  
bdonahue@aeec-agc.org

CERTIFICATE

I hereby certify that a copy of the above and foregoing Complaint of Arkansas Electric Energy Consumers, Inc., has been served upon Entergy and upon the Entergy Operating Company subsidiaries' state regulators as shown on the attached list on this 28<sup>th</sup> day of July, 2008.

  
Brian C. Donahue  
Brian C. Donahue

20000720 3101 PERC PDF (UNOFFICIAL) 7/20/2000 1:02:17 PM

**Entergy Services, Inc., On Behalf of Entergy Corporation and the Entergy System  
Operating Companies**

Walter C. Ferguson  
Vice President, System Regulatory Affairs  
Entergy Services, Inc.  
639 Loyola Avenue  
New Orleans, LA 70113  
Phone: 504-576-4867  
Fax: 504-576-7300  
E-Mail: [wferguson@entergy.com](mailto:wferguson@entergy.com)

Kimberly H. Despeaux  
Associate General Counsel  
Entergy Legal Services  
639 Loyola Avenue  
New Orleans, LA 70113  
Phone: 504-576-4867  
Fax: 504-576-3989  
E-Mail: [kdespea@entergy.com](mailto:kdespea@entergy.com)

**State Regulators**

Arkansas Public Service Commission  
1000 Center Street  
Little Rock, AR 72201  
E-Mail: [mcochran@psc.state.ar.us](mailto:mcochran@psc.state.ar.us)  
[rhightower@psc.state.ar.us](mailto:rhightower@psc.state.ar.us)

New Orleans City Council  
Utilities Regulatory Office  
Room 6E07  
1300 Perdido Street  
New Orleans, LA 70112  
E-Mail: [kpmeehan@cityofno.com](mailto:kpmeehan@cityofno.com)  
[cvince@sonnenschein.com](mailto:cvince@sonnenschein.com)  
[ehand@sonnenschein.com](mailto:ehand@sonnenschein.com)

Louisiana Public Service Commission  
Galvez Building – 12<sup>th</sup> Floor  
602 N. Fifth Street  
Baton Rouge, Louisiana 70802  
E-Mail: [eve.gonzales@la.gov](mailto:eve.gonzales@la.gov)  
[mfontham@stonepigman.com](mailto:mfontham@stonepigman.com)  
[NDarce@stonepigman.com](mailto:NDarce@stonepigman.com)

Texas Public Utilities Commission  
1701 N. Congress Avenue  
Austin, TX 78711-3326  
E-Mail: [brennan.foley@puc.state.tx.us](mailto:brennan.foley@puc.state.tx.us)

Mississippi Public Service Commission  
P.O. Box 1174  
Jackson, MS 39215-1174  
E-Mail: [george.fleming@psc.state.ms.us](mailto:george.fleming@psc.state.ms.us)

**EXHIBIT 1**

**EAI's December 19, 2005 Notice of Withdrawal from the  
Entergy System Agreement**



Entergy Arkansas, Inc.  
425 W. Capitol Ave. 72201  
P.O. Box 551  
Little Rock, AR 72203-0551  
Tel 501 377 3521  
Fax 501 377 3599

**Hugh McDonald**  
President and CEO

December 19, 2005

Ms. E. Renae Conley  
President and CEO, Entergy Louisiana, Inc.  
President and CEO, Entergy Gulf States, Inc. – Louisiana Operations  
446 North Boulevard  
Baton Rouge, LA 70808

Ms. Carolyn C. Shanks  
President and CEO, Entergy Mississippi, Inc.  
308 East Pearl Street  
Jackson, MS 39201

Mr. Joseph F. Domino  
President and CEO, Entergy Gulf States, Inc. – Texas Operations  
350 Pine Street  
Beaumont, TX 77701

Mr. Daniel F. Packer  
President and CEO, Entergy New Orleans, Inc.  
1600 Perdido Street, Building 505  
New Orleans, LA 70112

Re: Withdrawal of Entergy Arkansas, Inc. from current System Agreement

Dear Ladies and Gentlemen:

As you will recall, the January 31, 2002 testimony of Frank F. Gallaher before the Federal Energy Regulatory Commission ("FERC") in Docket No. EL01-88 discussed the Entergy Operating Committee's recognition of the need for modifications to the current System Agreement. While the System Agreement has produced benefits for EAI and the other Operating Companies historically, the recent run up in natural gas prices, combined with the decision by the FERC in Docket No. EL01-88 seriously erodes the benefits of EAI's continued participation in the System Agreement.

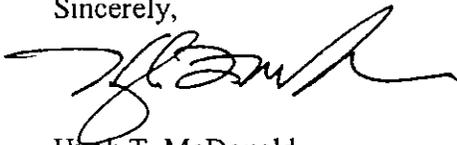
Accordingly, to the extent constructive notice of termination has not been provided previously, please be advised that pursuant to the provisions of the System Agreement, including section 1.01, EAI hereby provides written notice that it will terminate its participation in the current System Agreement effective 96 months from the date of this letter or such earlier date as authorized by the FERC.

20060726 5101 PERC PDF (UNOFFICIAL) 7/26/2006 1:02:17 PM

Ms. Conley and Shanks  
Messrs. Domino and Packer  
December 19, 2005  
Page 2

If properly structured, I believe that a replacement agreement could allow the Operating Companies, including EAI, to continue to achieve economies and efficiencies that result from joint operation of an integrated electric system but without the continual litigation that has plagued the current System Agreement. Therefore, I would urge the Operating Committee to work expeditiously to develop a replacement agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "H. McDonald", written over a horizontal line.

Hugh T. McDonald

cc: Michael D. Bakewell  
Kenneth M. Turner

**EXHIBIT 2**

**Excerpt of Direct Testimony of Kurtis W. Castleberry in APSC  
Docket 06-152-U**

20060726 3101 PERC PDF (UNOFFICIAL) 7/26/2006 1:02:17 PM

BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF ENTERGY )  
ARKANSAS, INC.'S REQUEST FOR )  
APPROVAL OF THE ACQUISITION OF )  
NEW CAPACITY TO SERVE ITS RETAIL )  
CUSTOMERS )

DOCKET NO. 06-152-U

DIRECT TESTIMONY

OF

KURTIS W. CASTLEBERRY

DIRECTOR, OPERATING COMMITTEE SUPPORT

ENTERGY ARKANSAS, INC.

ON BEHALF OF

ENTERGY ARKANSAS, INC.

NOVEMBER 17, 2006

1 is over 30 years old, 766 MW or 55 percent is over 40 years old, 466 MW  
2 or 34 percent is over 50 years old and 23 MW or 2 percent is over 60  
3 years old.

4  
5 Q. IS ALL OF EAI'S CAPACITY AVAILABLE TO SERVE THE COMPANY'S  
6 RETAIL LOAD?

7 A. No. The largest bulk of the capacity is assigned to retail customers under  
8 the mechanism for energy cost allocation approved by the APSC in  
9 Docket No. 03-028-U. However, a portion of the Company's capacity is  
10 not in retail rates and is being sold by the Company in the wholesale  
11 market, as market opportunities exist, on terms varying from hour-to-hour  
12 transactions to life-of-unit sales. Attached to my testimony as EAI Exhibit  
13 KWC-1 is a table that shows the breakdown of EAI's total capacity  
14 between the retail and wholesale sectors.

15  
16 Q. IS THE AMOUNT OF CAPACITY EAI CONTROLS AND HAS AVAILABLE  
17 TO MEET EAI'S RETAIL LOAD SUFFICIENT FOR THAT LOAD?

18 A. No. EAI must have sufficient total capacity to meet its peak load  
19 obligation plus reserves so that it can provide reliable service to its retail  
20 customers. In addition, EAI must provide the right type of capacity within  
21 that total so that it can economically meet the operational requirements of  
22 an electric system. The Company is lacking in both areas. As described  
23 in EAI witness Robert R. Cooper's Direct Testimony, for 2007, EAI is short

1 1,462 MW comparing the capacity it controls with the peak retail load plus  
2 reserves. Secondly, Mr. Cooper testifies that EAI needs 1,141 MW of high  
3 load-factor load-following capacity so that it can match on an ongoing  
4 operational basis the generation output with its customers' load.

5  
6 **III. EAI SUPPLY OPTIONS**

7 Q. GIVEN THE DEFICIT IN EAI'S CAPACITY COMPARED TO ITS LOAD  
8 PLUS REQUIRED RESERVES, HOW IS EAI MEETING ITS CAPACITY  
9 RESERVE OBLIGATIONS?

10 A. By purchases in the wholesale market and relying on reserves of the other  
11 Operating Companies pursuant to the pooling arrangement in the Entergy  
12 System Agreement.

13  
14 Q. HOW DOES EAI MEET ITS LOAD-FOLLOWING REQUIREMENT?

15 A. By purchases in the wholesale market and relying on other Operating  
16 Companies through the common dispatch of the Entergy Electric System  
17 with energy received pursuant to the provisions in the System Agreement.  
18 Because of the age and relative inefficiency of EAI's older gas and oil  
19 units, they are not called upon by the dispatcher to serve effectively in the  
20 load-following role. However, they do provide a useful and economical  
21 source for peaking and reserve capacity.

22

**EXHIBIT 3**

**Excerpt from Order No. 14 in APSC Docket 06-152-U**

JUN 27 2 16 PM '08

ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF ENTERGY )
ARKANSAS, INC.'S REQUEST FOR )
APPROVAL OF THE ACQUISITION OF )
NEW CAPACITY TO SERVE ITS RETAIL )
CUSTOMERS )

DOCKET NO. 06-152-U
ORDER NO. 14

ORDER

This Order addresses all issues in Phase II (B) of this Docket, regarding the reasonableness of Entergy Arkansas, Inc.'s ("EAI" or "the Company") acquisition by purchase of the 789 megawatt ("MW") Ouachita Power Facility, a three-train combined cycle generating turbine ("CCGT") electric power plant located near Sterlington, Louisiana ("Ouachita Plant"). As hereafter discussed, the Arkansas Public Service Commission ("the Commission") approves as in the public interest EAI's request to purchase the Ouachita Plant, its proposed sale of one-third of the Ouachita Plant output to Entergy Gulf States Louisiana, LLC ("EGSL"), its request for approval of Rider CA, as amended, and to recover the Ouachita Plant costs through that rider and to establish a depreciation rate for the plant.

PROCEDURAL HISTORY

This Docket was established with EAI's filing on November 14, 2006, of a Motion for Protective Order of Non-Disclosure, followed by EAI's filing on November 17, 2006, of its Application, direct testimony and exhibits in support of its request for a declaration of need to acquire new capacity to serve EAI's retail customers.

EAI's Application was filed pursuant to Rule 4.01 of the Commission's Rules of Practice and Procedure and Ark. Code Ann. §23-3-102, which requires the approval of



**EXHIBIT 4**

**Supplemental Testimony of Hugh T. McDonald in APSC  
Docket 04-023-U**

ARK. PUBLIC SERVICE COMMISSION  
OFFICE OF THE CLERK  
FOR THE PUBLIC SERVICE COMMISSION

JUL 1 3 43 PM '08

BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF AN INVESTIGATION )  
REGARDING ENTERGY ARKANSAS, INC.'S )  
CONTINUED PARTICIPATION IN THE )  
ENERGY SYSTEM AGREEMENT, AND THE )  
FUTURE PROTECTION OF ITS RATEPAYERS )

DOCKET NO. 04-023-U

SUPPLEMENTAL TESTIMONY

OF

HUGH T. MCDONALD

PRESIDENT AND CHIEF EXECUTIVE OFFICER

ENTERGY ARKANSAS, INC.

ON BEHALF OF

ENTERGY ARKANSAS, INC.

JULY 1, 2008



1 I. INTRODUCTION

2 Q. PLEASE STATE YOUR NAME.

3 A. My name is Hugh T. McDonald.

4

5 Q. ARE YOU THE SAME HUGH T. MCDONALD WHO FILED DIRECT  
6 TESTIMONY ON MARCH 29, 2004, SUPPLEMENTAL TESTIMONY ON  
7 JULY 6, 2006, SECOND SUPPLEMENTAL TESTIMONY ON  
8 AUGUST 17, 2006, THIRD SUPPLEMENTAL TESTIMONY PART 1 ON  
9 APRIL 16, 2007, THIRD SUPPLEMENTAL TESTIMONY PART 2 ON  
10 APRIL 23, 2007, FOURTH SUPPLEMENTAL TESTIMONY ON  
11 DECEMBER 5, 2007, FIFTH SUPPLEMENTAL TESTIMONY FILED ON  
12 MARCH 3, 2008, FOLLOWED BY SUPPLEMENTAL TESTIMONY FILED  
13 ON THE FIRST BUSINESS DAY OF EACH FOLLOWING MONTH IN  
14 THIS DOCKET?

15 A. Yes.

16

17 Q. WHAT IS THE PURPOSE OF YOUR JULY 1, 2008 SUPPLEMENTAL  
18 TESTIMONY?

19 A. In its Order No. 13 in this Docket, the Arkansas Public Service  
20 Commission ("APSC" or the "Commission") directed me to file  
21 supplemental testimony on the first business day of each month beginning  
22 in March, 2008, reporting on the progress that has been made toward  
23 developing an agreement to succeed the current System Agreement (the

1 "Successor Agreement"). In this testimony, I provide the monthly update  
2 pursuant to that order.

3

4 II. PROGRESS TOWARD DEVELOPMENT OF A SUCCESSOR  
5 AGREEMENT

6 Q. WHAT IS THE STATUS OF DEVELOPMENT OF A SUCCESSOR  
7 AGREEMENT AMONG THE ENTERGY OPERATING COMPANIES?<sup>1</sup>

8 A. The Working Group that I have described in my previous testimony has  
9 been working on the development of successor arrangements and  
10 continues to make progress in those efforts, and its attorneys report to the  
11 Executive Team on which I participate.

12

13 Q. HAVE THE PRINCIPLES YOU DESCRIBED IN THE DECEMBER 5, 2007  
14 SUPPLEMENTAL TESTIMONY CHANGED?

15 A. No. The principles described in December 5, 2007 testimony remain  
16 consistent with our current working group efforts. Those principles guiding  
17 the development of the successor arrangements are based on the  
18 following:

- 19 • A structure that allows the Operating Companies to obtain the benefits  
20 of joint commitment and dispatch and the benefits of lower capacity

---

<sup>1</sup> The Operating Companies include EAI, Entergy Texas, Inc. ("ETI"), Entergy Gulf States Louisiana, L.L.C. ("EGSL"); Entergy Louisiana, LLC. ("ELL"); Entergy Mississippi, Inc. ("EMI"); and Entergy New Orleans, Inc. ("ENOI").

1           reserve requirements than would be possible through stand-alone  
2           operation.

3           • A structure that allows each Operating Company to be responsible for  
4           its own long-term generation resource planning decisions and to retain  
5           the associated benefits and costs. This would include establishing  
6           incentives to encourage appropriate resource planning decisions.

7           • Clarity that there is to be no requirement or standard for rough  
8           production cost equalization.

9           • A structure that will not allow the transfer of benefits and costs from  
10          one Operating Company to another without proper compensation.

11          • Enhancing the ability of each Operating Company to respond more  
12          effectively to changes in the operating environment, such as changes  
13          in market structure, in regulatory models, or in demand patterns  
14          through shorter contract termination provisions.

15

16    Q.    WHEN DO YOU EXPECT TO BE IN A POSITION TO PROVIDE A MORE  
17           SUBSTANTIVE UPDATE TO THIS COMMISSION REGARDING THE  
18           GENERAL FRAMEWORK AND KEY PROVISIONS OF THE  
19           SUCCESSOR ARRANGEMENTS?

20    A.    Consistent with my prior testimony and assuming the current progress  
21           continues, I believe that we will be in a position to share more detailed  
22           information on the proposed framework with parties in the late July/August  
23           time frame.

1

2 Q. HAS THERE BEEN ANY CHANGE IN THE STATUS OF EAI'S OR EMI'S  
3 COMMITMENT TO LEAVE THE EXISTING AGREEMENT?

4 A. No. The commitments that I described in my December 5, 2007  
5 testimony remain unchanged.

6

7 Q. DOES THIS CONCLUDE YOUR JULY 1, 2008 SUPPLEMENTAL  
8 TESTIMONY?

9 A. Yes.

**FEDERAL REGISTER NOTICE OF COMPLAINT**

2008/20 3101 FERC FDF (UNOFFICIAL) 7/20/2008 1:02:17 PM

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL ENERGY  
REGULATORY COMMISSION

ARKANSAS ELECTRIC ENERGY )  
CONSUMERS, INC. ) Docket No. EL08-\_\_\_\_\_  
)  
V )  
)  
ENERGY CORPORATION, )  
ENERGY SERVICES, INC., )  
ENERGY ARKANSAS, INC. )  
ENERGY GULF STATES, )  
LOUISIANA, INC., )  
ENERGY LOUISIANA, L.L.C. )  
ENERGY MISSISSIPPI, INC. )  
ENERGY NEW ORLEANS, INC. )  
ENERGY TEXAS, INC. )

NOTICE OF COMPLAINT

June \_\_, 2006

Take notice that on July \_\_, 2008, Arkansas Electric Energy Consumers, Inc., pursuant to Sections 206 of the Federal Power Act and Rule 206 of the Commission Rules of Practice and Procedure, filed with the Federal Energy Regulatory Commission a Complaint against Entergy Corporation; Entergy Services, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, Inc.; Entergy Louisiana, L.L.C.; Entergy Mississippi, Inc; Entergy New Orleans, Inc.; and Entergy Texas, Inc. (collectively "Entergy"). That Complaint asks the Federal Energy Regulatory Commission ("FERC" or "Commission") clarify a number of issues associated with (i) the Entergy System Agreement, (ii) Entergy Arkansas, Inc.'s ("EAI") pending withdrawal from the System Agreement, (iii) EAI and its affiliates efforts to negotiate a new system agreement to replace that which is currently in place, and (iv) EAI's efforts to acquire a combined cycle gas turbine generating plant near Sterlington Louisiana.

Arkansas Electric Energy Consumers, Inc., certifies that copies of the complaint were served on the contacts for Entergy listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions or protests must be filed on or before

the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, ME., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC online service, please e-mail [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: \_\_\_\_\_

Kimberly D. Bose,  
Secretary

File NoticeofAECCComplaint072808.RTF cannot be converted to PDF.

Document Content(s)

AEECComplaint072808.PDF.....	1-34
NoticeofAEECComplaint072808.RTF.....	35-35