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ARKANSAS ELECTRIC ENERGY CONSUMERS, INC.

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August 22, 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
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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

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**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

ARKANSAS ELECTRIC ENERGY)	
CONSUMERS, INC.)	
)	
v.)	DOCKET NO. EL08-_____
)	
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.)	

**COMPLAINT OF ARKANSAS ELECTRIC
ENERGY CONSUMERS, INC.,**

Comes now the Arkansas Electric Energy Consumers, Inc., ("AEEC") and for its Complaint states as follows:

I. INTRODUCTION

1. This Complaint is submitted on behalf of Arkansas Electric Energy Consumers, Inc., pursuant to Section No. 206 of the Federal Power Act, 16 U.S.C. § 824e, and Section No. 206 of the Federal Energy Regulatory Commission ("FERC" or "Commission") rules of practice and procedure, 18 CFR 385.206.
2. AEEC specifically seeks a Commission review of Entergy Corporation's efforts to acquire a combined cycle gas turbine generating plant near Sterlington, Louisiana, (the "Ouachita Plant"). AEEC believes that the Ouachita Plant acquisition may violate the Entergy System Agreement (a FERC jurisdictional agreement), improperly

will require retail electric utility customers in Arkansas to subsidize electricity service provided elsewhere on the Entergy System, will be imprudent, and otherwise be unjust and unreasonable. As a result of these defects in EAI's Ouachita Plant acquisition process, the Commission should determine that the EAI's share of the Ouachita Plant is not an Entergy System resource and that EAI's share of the Ouachita Plant is an Entergy Arkansas only resource.

II. IMPORTANT PARTIES

3. Arkansas Electric Energy Consumers, Inc., ("AEEC") is a not-for-profit incorporated association organized and existing under the laws of the State of 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.
4. 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.
5. 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

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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.

6. 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, 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.

III. THE ENTERGY SYSTEM AGREEMENT

7. 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 once¹. 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

¹ *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).

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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).

8. The System Agreement's MSS-3 was originally intended only to take advantage of system-wide economies of scale to share excess electric energy (energy not needed by a particular Operating Company to meet its base 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).
9. 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.
10. 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 this capacity and associated energy to the other Companies under Service Schedule MSS-4 Unit Power Purchase.”

11. 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.”
12. 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.
13. 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*

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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); *Louisiana Public Service Commission v Entergy Services, Inc., et al.*, 117 FERC ¶ 61,203 (2006); and *Louisiana Public Service Commission v Entergy Services*, 119 FERC ¶ 61,095 at paragraph 12 (2007).

14. The end result of the decisions referenced above is the principle that the production costs of EOC facilities that were planned and constructed to serve system load would be roughly equalized among the various EOCs.

15 The Commission's decision to implement a rough equalization of production costs among the EOCs in Opinion No. 480 was driven in significant part by its conclusion that

the System Agreement allocates generation costs on a long-term basis through the assignment of individual resources to particular Operating Companies and that the intent of the System Agreement is to balance costs *over time* through the assignment of new resources. Entergy sought to accomplish this by using a rotational scheme of adding new resource acquisitions to narrow production costs whenever possible. The large and increasing disparities among the Operating Companies are now arising because the rotational scheme has been inactive for a lengthy period and rising gas prices have adversely impacted ELI, which relies heavily on gas-fired production facilities.

Louisiana Public Service Commission v Entergy Services, Inc., Opinion No. 480, 111 FERC ¶ 61,311 at paragraph 29 (2005) reh'g denied *Louisiana Public Service*

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Commission v Entergy Services, Inc., Opinion No. 480-A, 113 FERC ¶ 61,282 (2005).

16. 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. AEEC notes that the Notice of Withdrawal was submitted on the very day that the Commission denied rehearing of Opinion No. 480.

IV. EAI'S OUACHITA PLANT PURCHASE

17. On November 14, 2008, EAI filed an application with the APSC for consideration of whether EAI has a need for additional load following and peaking capacity. That docket established for consideration of this matter 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.²

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).

18. 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

² 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.

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deficit of 1,462 MW of generation in 2007, at page 2 of Order No. 6, the 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 load following and peaking 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. 6, APSC Docket 06-152-U (2007). A copy of the APSC's Order No. 60 from Docket 06-152-U is attached to this Complaint as Exhibit 3.

19. 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.³ A Copy of the EAI Application in Phase II of that proceeding is attached to this Complaint as Exhibit 4. Entergy proposed at the time of the Application to "recover fully the cost of investment and operation of the Ouachita Plant on a timely basis concurrent with the expenditures" through a separate surcharge called Rider CA. See, Exhibit 4 at ¶ 18.

20 Also at the time of the Application, EAI proposed to sell one third of the capacity of the Ouachita Plant to EGSL. See Exhibit 4 at ¶ 15.

21. Testimony by EAI's President, Mr. Hugh McDonald, in APSC Docket 06-152-U discussed the process leading up to the decision to acquire the Ouachita Plant. A

³ 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

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copy of a portion of Mr. McDonald's Testimony addressing these issues is attached as Exhibit 5. Exhibit 5 also demonstrates that the Entergy Operating Committee decided that EAI should acquire the Ouachita Plant for the benefit of the System as a whole, without real consideration of EAI's expected withdrawal from the Entergy System Agreement; EAI's actual need for need for additional capacity now and in future years, after EAI exits the Entergy System Agreement; whether the Ouachita Plant purchase was the lowest cost option available to EAI; or whether the acquisition will force EAI's captive retail customers to provide additional subsidies to the other EOCs and their customers.

22. Additionally, as testimony by Mr. Kurtis Castleberry on cross examination during the APSC's hearing on EAI's application in Docket 06-152-U demonstrated, until such time as EAI withdraws from the Entergy system Agreement, EAI expects the Ouachita Plant to be dispatched to satisfy the Entergy System's need for economic capacity rather than EAI's specific, demonstrated need for load following capacity. See Exhibit 6, which is a copy of a portion of the transcript of APSC Docket No. 06-152-U, Vol. 1, p.229, lines 6-25 to p.230, lines 1-5. That fact means that, assuming that Mr. Castleberry was correct, the Ouachita Plant will be dispatched as a base load power plant if the plant is the Entergy system's most economic available resource and not as a load following plant as long as EAI is part of the Entergy System. Such dispatch will serve to rob EAI's retail customers of the benefits of the plant for which they are being asked to pay.
23. EAI President Hugh McDonald testified on cross examination that a number of the other Entergy Operating Companies (other than EAI) have been allowed to acquire

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modern gas fired, load following type generation in the last few years. Since 2005 ELL was allowed to acquire the Perryville Plant, EMI was allowed to acquire the Attala Plant, and EGSL was allowed to acquire the Calcaseau Plant. In none of those cases did Entergy allow EAI to share ownership of the other EOCs' new capacity. Mr. McDonald's cross examination testimony is found in AEEC's Exhibit 6 at page 161, line 13 through page 164 line 23 .

24. Thus, if the Ouachita Plant is operated to serve the needs of the Entergy System, it is likely that the plant will not be available to satisfy EAI's specific need for load capacity to satisfy moment to moment changes in EAI retail customer demand. *Id.* That is so, despite the fact that EAI used a claim of its own dire need for additional load following capacity as the justification for acquiring the Ouachita Plant and assignment of all of the costs of operation of the retail portion of the plant to EAI's captive customers through a separate rate rider.

25. On June 27, 2008, over AEEC's objection, 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.⁴ A copy of relevant portions of the APSC's Order No. 14 in Docket 06-152-U is attached hereto as Exhibit 7.

26. Among other things, the APSC's Order No. 14 acknowledged that purchase of the Ouachita Plant was not the least cost option available to EAI. See Exhibit 7, Order No. 14 at pages 35- 37. The APSC however, accepted EAI's argument that other

⁴ Implicit in this approval is EAI's proposed transfer of 1/3 of the Ouachita plant to Entergy Gulf States Louisiana ("EGSL").

factors, some of which were not identified by ESI prior to the decision to purchase the plant, justified the acquisition.

V AEEC'S REQUEST FOR RELIEF

27. The applicable law provides in part that

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. . . .

FPA § 206, 16 USC § 824e (a).

28. As discussed in Paragraph 17 above, EAI's original application in APSC Docket 06-152-U demonstrated that EAI had a need for more than one thousand megawatts of additional, high load factor, load following capacity in 2007. Without regard to that fact, Entergy decided to assign acquisition of the Ouachita Plant to EAI but require EAI to transfer one third of the plant's capacity to EGSL. Entergy also decided to assign all of the costs associated with the acquisition of the retail portion of the plant to EAI's retail customers. Thus, EAI's Arkansas retail customers will be forced to subsidize the operation of EGSL which will receive, through the system, benefits associated with the Ouachita Plant without paying for them. Such forced subsidy violates Section 206 of the Federal Power Act which prohibits any rate, charge or classification that is unduly discriminatory or preferential.

29. The Entergy System's decision to allocate 1/3 of the capacity of the Ouachita Plant to EGSL rather than allocating all of the plant's capacity to EAI means that EAI still has

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far less high load factor, load following capacity than it needs. The Entergy Operating Committee's decision to force EAI to share Ouachita Plant Capacity with EGSL appears to violate System Agreement Section 4.01 which otherwise requires each operating company "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."

30 Exhibit 5 demonstrates that the Entergy Operating Committee decided that EAI should acquire the Ouachita Plant without real consideration of EAI's expected withdrawal from the Entergy System Agreement. Acquisition of the Ouachita Plant without first reasonably considering its possible effect on EAI's expected withdrawal from the Entergy System Agreement was not reasonable, contrary to Section 206 of the Federal Power Act, because that decision could be expected to support a request to condition EAI's withdrawal from the Entergy System Agreement in 2013 upon the sharing of the benefits of EAI's low cost solid fuel and other generation.⁵

31. Exhibit 6 at pages 228 - 230 demonstrate that Entergy expects to use the Ouachita Plant to serve system load despite the stated intention to acquire the plant to serve EAI's load following needs. Use of the Ouachita Plant to serve Entergy System load while assigning all of the costs of acquisition and operation of the plant to EAI's retail customers will result in a substantial subsidy to the other EOCs paid for by EAI's retail customers. Such forced subsidy violates Section 206 of the Federal

⁵ One of the LPSC's arguments in FERC Docket EL01-88 was the claim that production costs should be fully equalized among the EOCs because the Entergy System's planning and operations have become even more monolithic than they were in the mid 1980s at the time of the original Grand Gulf decision. See FERC Docket EL01-88-000, LPSC Brief on Exceptions at pages 17-18 and 39.

Power Act which prohibits any rate, charge or classification that is unduly discriminatory or preferential.

32. In the end, EAI's Notice of Withdrawal, Exhibit 1, must be interpreted as a statement that, when it comes to EAI, Entergy is no longer a highly integrated and coordinated power pool that may reasonably be expected to coordinate planning, construction, and operations of the various EOCs on a single system basis. EAI's long term planning needs have, since December 19, 2005, diverged from those of its sister EOCs. EAI's historic resource planning and acquisition strategies are not really designed to meet the current needs and objectives of separate EOCs, rather, they focus on the needs of the EOCs acting as a group.
33. EAI's Notice of Withdrawal clearly indicates that EAI's individual needs have diverged from those of its affiliates. The divergence of the interests of EAI from those of the other EOCs means that application of the Entergy System's historic resource acquisition principles to acquisition of the Ouachita Plant is not just and reasonable.
34. There is a general principle of law that one group of utility customers may not be forced to subsidize service provided to another group of customers in another state. Such would constitute an illegal, undue preference under Section 206 of the Federal Power Act. See, *Electricity Consumers Resource Council v FERC*, 747 F.2d 1511, 1515-18 (D.C. Cir., 1984). FERC must protect ratepayers from utility cost allocation or other practices that make the utility customers in one State subsidize the customers in another. *Mississippi Power & Light v. Mississippi ex rel. Moore*, 487 U.S. 352, 384 (1988) (Scalia, J., concurring).

35. Purchase of the Ouachita Plant was not EAI's least cost option. As Exhibit 7, page 36 shows, a long term PPA would have actually been less expensive than plant purchase. The Entergy System, however, decided to purchase the plant for other reasons. The reasons that in large part benefit the other EOCs. EAI's purchase of the Ouachita Plant will therefore force EAI's customers to subsidize the operations of the other EOCs. EAI's acquiescence to this result is not prudent and the result is not just and reasonable. The decision will force EAI's captive retail customers to subsidize the system. Such forced subsidy violates Section 206 of the Federal Power Act which prohibits any rate, charge or classification that is unduly discriminatory or preferential.
36. As is demonstrated above, the Entergy Operating Committee approved EAI's acquisition of the Ouachita Plant pursuant to the System's plant acquisition criteria, but EAI also sought and received permission to pass on to its retail customers the full costs of investment in and operation of the Ouachita plant. Those Entergy system resource acquisition principles and criteria have not been modified to account for the present divergence in interests between EAI and the rest of the Entergy System. And, nothing in those resource acquisition principles justifies charging Arkansans for an asset that will be used primarily for the benefit of other EOCs.
37. The only way to remedy the flaws identified in Entergy's decision to acquire the Ouachita Plant and, according to the Application filed with the APSC, assign all of the costs of that plant⁶ to EAI's retail customers is to declare that the Ouachita Plant is not an Entergy system resource but is rather an EAI resource. Such decision would

⁶ Entergy proposes to assign 2/3 of the plant's output to EAI's retail customers and 1/3 to EGSL.

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be reasonably consistent with the Commission's earlier Vidalia Plant Decision in Opinion No. 480 and 480-A.

38. The Commission has previously concluded that an EOC's acquired a generating asset did not automatically become an Entergy system resource. In its Opinion No. 480, *Louisiana Public Service Commission v Entergy Services, Inc.*, 111 FERC ¶ 61,311 beginning at paragraph 173 (2005), this Commission determined that the Vidalia plant was not an Entergy system resource because for a number of reasons. Those reasons included the facts that Vidalia was selected as an ELL resource in order to further "economic and political objectives of Louisiana" and the fact that the LPSC agreed to flow all of the costs of Vidalia Plant power through to ELL's retail customers. See Opinion No. 480 at Paragraphs 175 and 176.
39. 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.
40. AEEC expects that other parties will oppose its request for relief in this proceeding by alleging that AEEC is improperly attempting a collateral attack on the APSC's decision to allow EAI to acquire the Ouachita Plant and include the costs of that plant

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in EAI's retail rates. Nothing could be further from the truth. AEEC seeks in this case some certainty from this Commission as to the costs EAI is to be asked to bear in the future and whether the decisions of the Entergy Operating Committee as to allocation of generating assets is consistent with federal law and the Entergy System Agreement. We note, EAI itself argued in APSC Docket 06-152-U that neither it, nor effectively, the APSC had any authority to control the allocation of the Ouachita Plant's generating capacity. No, according to EAI, that authority was reserved to the Entergy Operating Committee under the FERC jurisdictional System Agreement. See Exhibit 8 which is a copy of a portion of Mr. Hugh McDonald's Rebuttal Testimony in Phase II of APSC Docket 06-152-U.

WHEREFORE, AEEC respectfully requests that the Commission:

1. Determine that acquisition of the Ouachita Plant as proposed by EAI (allocation of 2/3 of the plant to Arkansas retail service and 1/3 to EGSL) is a violation of Section 4.01 of the Entergy system Agreement;
2. Determine that acquisition of the Ouachita Plant as proposed by EAI will force EAI's captive retail customers to provide additional subsidies to the other EOCs and their customers in violation of § 206 of the Federal Power Act and is not otherwise just and reasonable under that statute;
3. Determine that EAI's Notice of Withdrawal means that ESI can no longer plan generation acquisitions on a single system basis;
4. Determine, consistent with its previous Vidalia decision, that the Ouachita Plant⁷ is an EAI only resource;⁸ and

⁷ That portion of the Ouachita Plant dedicated to retail service.

5. Grant AEEC all other relief to which it is entitled.

Respectfully submitted,
Arkansas Electric Energy Consumers, Inc.,

By: Brian C Donahue

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⁸ Under this approach, so long as EAI remains a party to the existing System Agreement, the Ouachita Plant would be treated much like ELL's interest in the Vidalia Plant -- energy from the Ouachita Plant would be sold into the exchange at some reasonable FERC set rate. However, as soon as EAI leaves the Energy System Agreement, the other EOCs would lose any right to share in energy from the Ouachita Plant unless the EOCs enter into some successor agreement (after prior approval by the Arkansas Public Service Commission of EAI's participation) that would allow the sharing of energy produced by the plant

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 22nd day of August, 2008.



Brian C. Donahue
Brian C. Donahue

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

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EXHIBIT 1

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



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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.

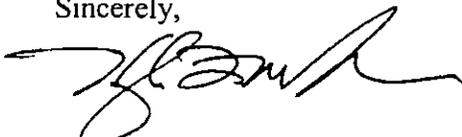
Accordingly, to the extent constructive notice of termination has not been provided previously, please be advised that pursuant to the provisions of the System Agreement, including section 1.01, EAI hereby provides written notice that it will terminate its participation in the current System Agreement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

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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

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

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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

Pages 2 – 7 Intentionally Omitted

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

Pages 10 - 22 Intentionally Omitted

EXHIBIT 3

Order No. 6 in APSC Docket 06-152-U

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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. 6

ORDER

On November 17, 2006, Entergy Arkansas, Inc. ("EAI" or the "Company") filed a *Request for a Declaration of Need to Acquire New Capacity to Serve Its Retail Customers* ("*Request*") requesting "that the Commission find that the acquisition by EAI of an additional load-following resource is in the public interest and approve the acquisition of the generation resource on behalf of EAI's retail customers and to maintain its capacity reserve margin." In its *Request* "EAI proposes that the proceeding be bifurcated into two phases. The first phase (Phase I) would focus on the issue of EAI's need for capacity and that this need will best be met through the acquisition of a combined cycle gas turbine ("CCGT") or entry into a long-term purchase agreement for the capacity and associated output from a CCGT. The second phase (Phase II) would focus upon a specific transaction for which EAI will request approval." In support of its *Request* EAI filed the Direct Testimonies and Exhibits of its witnesses, Robert R. Cooper and Kurtis W. Castleberry on November 17, 2006.

Mr. Castleberry, Director, Operating Committee Support, for EAI, states that "[t]he Company is seeking the Commission's approval in a proposed two-phase process. In this first phase, the Company is seeking a finding from the Commission that there is a need for new capacity, and that this need will best be met through the acquisition of

5
3

load-following capacity using a combined cycle gas turbine ("CCGT") technology. The Company will follow this phase with a phase in which the Commission's approval for a specific transaction will be sought. At this time, we expect that the resource procurement process, which I will discuss later in my testimony, will result by early 2007 in an agreement to acquire a specific resource either through a long-term power purchase agreement ("PPA") or as the purchase of a power plant. At that time, the Company will request approval of that transaction." Castleberry at 5-6.

Mr. Cooper, Manager, Generation Planning and Models for Entergy Services, Inc., testified that "[t]he Company currently does not own or control enough generation to meet a planning criterion that requires it to control an amount of generating resources (either through owned capacity or through power purchase agreements) that is at least equal to its projected peak load plus reserves. EAI's deficiency with respect to this criterion is expected to increase throughout the planning horizon. EAI specifically needs load-following generation in order to be able to match its generation to customers needs as those needs vary throughout the day. EAI's long-term retail resource deficit is expected to be approximately 1,462 MW in 2007 and is projected to increase to 1,818 MW by 2012. Of the total resource deficit, the level of load-following deficit is about 670 MW in 2007. Thus, EAI will need to acquire additional generating resources, either through limited-term power purchase agreements or, if there is adequate certainty regarding future demand, long-term power purchase agreements or the construction or acquisition of new capacity." Cooper Direct at 15-16.

On December 8, 2006, the Commission issued Order No. 2, establishing a procedural schedule for the purpose of filing direct, rebuttal and surrebuttal testimony by the parties on the first phase of the Company's *Request*, the determination of need.

Order No. 2 also set a public hearing on EAI's *Request* to begin on March 6, 2007. On January 24, 2007, the General Staff of the Commission ("Staff") filed the Direct Testimony and Exhibits of its witness, J. Richard Hornby, Senior Consultant at Synapse Energy Economics, Inc.¹

Staff witness Hornby testified that (1) EAI has demonstrated a need for acquiring load-following capacity resources; (2) EAI "bears the burden of demonstrating that the specific quantity and type of capacity that it acquires for load-following will enable it to provide reliable service at reasonable rates"; (3) the Company must request Commission approval before entering into new long-term Purchased Power Agreements ("PPAs") for wholesale base load ("WBL") capacity; and (4) EAI must evaluate the cost effectiveness of the WBL capacity as part of its next acquisition. Hornby at 5.

Mr. Hornby further testified that EAI has a shortage of capacity under its control for the long term. He states that EAI's forecast of peak demand and a planning reserve of 15.25% are reasonable. Mr. Hornby states that this shortage cannot be met in the short term by utilizing energy efficiency and demand response measures. Hornby at 5-6.

Mr. Hornby also states that, although EAI is currently meeting a substantive portion of its load following requirements through PPAs and purchases under the Entergy System agreement, he agrees with EAI's approach to rely more on capacity that is under the Company's control and reduce the amount that would be acquired through PPAs and testifies that "EAI wishes to reduce its dependence on the other Operating Companies, which makes sense given its (EAI's) plan to exit the System Agreement as of

¹ The Commission granted intervenor status to the Arkansas Electric Energy Consumers, Inc. on December 21, 2006. On January 3, 2007 the Commission was notified that the Attorney General's Office intended to be a party to this docket.

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2013." Hornby at 11. Mr. Hornby concludes that:

The Company's proposal to increase the quantity of load-following capacity under its long-term control by acquiring a CCGT resource is consistent with good resource planning principles. However, EAI will need to demonstrate that the specific quantity and type of capacity it actually acquires will enable it to provide reliable service at reasonable rates.

Hornby at 12.

While Mr. Hornby performed an initial analysis of replacing load following from PPAs with load following from long term capacity under EAI's control, he recommends that the Company submit an analysis of the rate impact of this type of displacement when EAI files for approval of an actual acquisition. Hornby at 12.

Mr. Hornby also reviewed and evaluated the alternatives EAI presented for meeting the Company's capacity needs. He notes that EAI witness Cooper evaluated three alternatives for load following capacity – a new coal unit, a new gas-fired CCGT unit, and major investments in the existing Lake Catherine Unit 4. Mr. Hornby concludes that his analysis is consistent with EAI's and that the proposed CCGT capacity is preferable to the other options evaluated. Hornby at 15. In addition, Mr. Hornby states:

I have two main conclusions. First, CCGT capacity is preferable to the other candidate resources, i.e., a new coal plant, future investment in the Lake Catherine unit, and use of WBL (wholesale baseload) capacity. However, EAI will need to demonstrate that the specific quantity and type of capacity it actually acquires will enable it to provide reliable service at reasonable rates over the long-term, considering the operational characteristics and economics of its entire portfolio of existing resources. Second, it is possible that a portion of that WBL capacity may be the most economic resource for the Company's next long-term acquisition of capacity to meet firm retail requirements.

Hornby at 17.

On February 7, 2007, EAI filed the Rebuttal Testimony of Kurtis W. Castleberry. Mr. Castleberry states that he agrees with Mr. Hornby that using WBL capacity to serve retail load does not provide the net savings a CCGT would provide. However, Mr. Castleberry states that the WBL capacity has been allocated to serving wholesale load and would not be available in the future to serve EAI's retail load. Castleberry Rebuttal at 5. Mr. Castleberry testifies that "[t]he Company's current plan is to sell, until December 18, 2013 (when EAI's participation in the current Entergy System Agreement terminates), the remaining WBL capacity to other [Entergy] Operating Companies as contracts with existing wholesale customers expire." Castleberry Rebuttal at 5. Mr. Castleberry agrees with the recommendations of Mr. Hornby. Castleberry Rebuttal at 6-8.

On February 21, 2007, Staff filed its *Motion to Cancel Hearing and Request for Expedited Responses* filed on February 21, 2007. On February 22, 2007, EAI filed its response and supported Staff's request that the Commission cancel the public hearing scheduled for March 6, 2007 and enter an order based on the evidence in the record. On February 27, 2007, in Order No. 5, the Commission granted the Staff's unopposed motion and cancelled the remainder of the procedural schedule and the hearing scheduled for March 6, 2007.

Findings

Based on the testimonies of EAI witnesses Cooper and Castleberry and Staff witness Hornby, the Commission finds and declares that EAI (1) has demonstrated a shortage of capacity under its long term control; (2) has demonstrated that this shortage of capacity occurs as load following and peaking capacity; and (3) has demonstrated that CCGT capacity appears to have the most appropriate operational characteristics for

load-following resources. Accordingly, based on the evidence of record, EAI's *Request* is granted.

Furthermore, as noted by both Staff and EAI, at the time the *Request* was filed the Commission was in the process of developing rules and guidelines for both resource planning and energy efficiency and conservation (Docket Nos. 06-028-R and 06-004-R, respectively). EAI witness Cooper states that the demand-side programs currently under discussion "cannot displace EAI's current need for a load-following resource because operation of the electric system requires that actual generation match load at all times to ensure stability of the electric system." Cooper at 10. Staff witness Hornby goes further and testifies that

EAI should certainly be working with retail customers to identify programs that would lead to cost-effective reductions in peak load, and hence reductions in the shortfall. The Commission recognized the need to implement conservation, energy efficiency and demand response programs in its recent ruling adopting *Rules for Conservation and Energy Efficiency Programs*. However, it takes time for such programs to be designed and implemented. Thus it is not realistic to expect them to produce a material reduction in EAI's load in the short-term.

Hornby at 5.

The Commission has now finalized its rulemaking on energy efficiency and conservation², and EAI has filed proposed "quick start" programs for Commission consideration.³ The Commission has also issued Guidelines on Resource Planning for Electric Utilities in Docket No. 06-028-R, wherein the utilities were directed to give "comparable consideration" to demand and supply resources and to assess "all reasonably useful and economic supply and demand resources that may be available to a

² The final Rules were adopted on May 25, 2007, in Order No. 18 of Docket No. 06-004-R

³ EAI's company-specific "quick start" energy efficiency and conservation programs were filed on July 2, 2007, in Docket No. 07-085-TF.

utility or its customers”, and to identify and investigate resources including “energy efficiency, conservation, demand-side management, interruptible load, and price responsive demand.”

While the Commission recognizes that it will take “time for programs to be designed and implemented”, the Commission also recognizes that until recently, there has been little emphasis placed on greater utilization of either energy efficiency programs or demand response programs due to the adequate supply of generating capacity to meet ratepayer needs. This situation has changed and the investor-owned electric utilities in Arkansas are now beginning to build or acquire additional supply resources to meet existing and anticipated demand. In the instant Docket, EAI has clearly indicated that its generation needs in 2007 are largely for load following and peaking capacity.

It is well established that well designed and well functioning company-specific demand response programs can assist in meeting system peak demand. The Commission noted this in Order No. 10 of Entergy’s recent retail rate case (Docket No. 06-101-U), wherein we observed that the electric cooperatives in Arkansas have long operated highly successful demand response programs to the benefit of customers. We also note that EAI (then Arkansas Power & Light Company) was once a national leader in the development and implementation of residential and agricultural (irrigation pump) load-management programs during the last period of capacity shortages on the Entergy System during the late 1970s and early 80s. In the rate case order the Commission directed EAI to investigate reinstatement of its now defunct irrigation control program in the context of its ongoing Broadband Over Powerlines program. Docket No. 06-101-U, Order No. 10 at 124. The Commission is aware of no legal or

regulatory constraints that would stand in the way of an electric utility's aggressive pursuit of demand response resources, either through direct contract negotiation or competitive bidding procedures analogous to those it might use to purchase power or acquire an existing power plant. In light of this situation, the Commission directs the Company to take steps necessary to aggressively pursue cost-effective demand response and energy efficiency resources to meet anticipated loads.

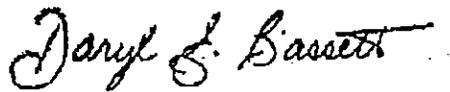
Further, nothing in this order represents a Commission finding (1) regarding any specific proposal(s) EAI may proffer to address its need for additional power supply resources; or (2) any value for ratemaking purposes or cost recovery purposes.

BY ORDER OF THE COMMISSION.

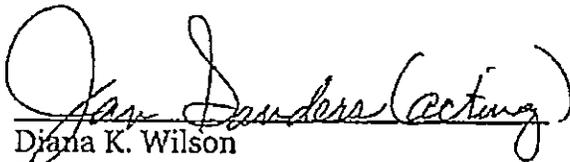
This 24th day of August, 2007.



Paul Suskie, Chairman



Daryl E. Bassett, Commissioner



Diana K. Wilson
Secretary of the Commission

I hereby certify that the following order issued by the Arkansas Public Service Commission has been served on all parties of record this date by U.S. mail with postage prepaid, using the address of each party as indicated in the official docket file.



Secretary of the Commission

Date 8-24-07 JS

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EXHIBIT 4

EAI Application in APSC Docket 06-152-U Phase II

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

PHASE II APPLICATION

COMES NOW Entergy Arkansas, Inc. ("EAI" or the "Company") and, for its Phase II Application in the above entitled docket, ("Phase II Application"), states as follows:

1. The Company is a corporation organized and existing under the laws of the State of Arkansas, and is a public utility, as defined by Ark. Code Ann. § 23-1-101 et seq., subject to the jurisdiction of the Arkansas Public Service Commission ("APSC" or the "Commission"). The Company's principal place of business is located at the Metropolitan National Bank Building, 425 West Capitol Avenue, Little Rock, Arkansas 72201. A copy of the Company's Agreement of Consolidation of Merger (Articles of Incorporation) is on file with the Arkansas Public Service Commission (the "APSC" or the "Commission") and is hereby incorporated by reference.

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BACKGROUND

2. As set forth in the Commission's Order No. 2 in Docket 06-152-U, on November 17, 2006, EAI filed in this docket its application and supporting direct testimony seeking approval of the acquisition of new capacity to serve its retail customers. That application was filed pursuant to Rule 4.01 of the APSC's *Rules of Practice and Procedure* and Ark. Code Ann. §23-3-102, which requires approval of the Commission for the acquisition of public utility plant or property constituting an operating unit or system. In its application, EAI sought Commission approval for the acquisition of a generating resource to be used in a load-following role to meet the resource needs of its retail customers and to maintain its capacity reserve margin.

3. In that application, EAI proposed that this proceeding be bifurcated into two phases. The first phase (Phase I) would focus on the issue of EAI's need for capacity and whether this need will best be met through the acquisition of a combined cycle gas turbine ("CCGT") or entry into a long-term purchase agreement for the capacity and associated output from a CCGT. The second phase (Phase II) was to focus upon a specific transaction for which EAI would seek approval. Order No. 2 established a procedural schedule for the first phase of this inquiry.

4. In Phase I, EAI witness Robert R. Cooper established the need for

1,462 MW of additional capacity in 2007. Mr. Cooper also testified that EAI needs an additional 670 MW of high capacity factor load-following CCGT generation capacity so that it can match on an ongoing operational basis the generation output with its customers' load.

5. On August 24, 2007, the Commission issued Order No. 6 in Phase I of this docket approving the Company's request. In Order No. 6, the Commission found that EAI demonstrated:

- there is a shortage of capacity under its long-term control,
- this shortage of capacity occurs as load-following and peaking capacity, and
- CCGT capacity appears to have the most appropriate operational characteristics for load-following resources.

The Commission also directed the Company to take steps necessary to aggressively pursue cost-effective demand response and energy efficiency resources to meet anticipated loads.

6. In this Phase II Application, EAI seeks a finding from the Commission that the purchase by EAI of the 789 MW Ouachita Power Facility (the "Ouachita Plant"), which consists of three trains of CCGT generating units located approximately 20 miles south of the Arkansas state line near Sterlington,

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Louisiana, and which is currently owned by Quachita¹ Power, LLC ("Quachita Power") is consistent with the public interest. The transaction will occur in two parts: EAI will begin purchasing power from Quachita Power January 1, 2008 under an Interim Tolling Agreement ("ITA") that would continue until EAI acquires the plant upon closing, which is expected to occur in 2008, assuming the necessary regulatory approvals are received, pursuant to the terms of the Purchase and Sale Agreement ("PSA") between EAI and Quachita Power. As discussed in more detail below, the Company requests that two-thirds of the output be designated for serving EAI's retail customers, while the remaining one-third of the output would be for non-retail use. In order to recover the additional retail revenue requirements associated with the transaction, the Company also requests that the Commission approve a new rate recovery mechanism, the proposed Capacity Acquisition Rider ("Rider CA"). Initially, Rider CA would recover the capacity costs associated with the ITA, and, ultimately, the non-fuel costs associated with the ownership of the plant when the transaction closes. In addition, EAI proposes to sell on a long-term, life-of-unit basis the output of the non-retail portion of the plant to Entergy Gulf States, Inc. ("EGSI"),² which transaction the Company requests the APSC find consistent with the public interest. However, in the event that the purchase by EGSI of that non-retail portion is rejected by its retail regulator, the Louisiana Public Service

¹ Due to an error in its organizational documentation, Quachita Power, LLC is spelled with a "Q" instead of an "O."

² The sale will be to EGSI's Louisiana operations, assuming that the jurisdictional separation of EGSI takes place prior to the consummation of these transactions.

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Commission ("LPSC"), then EAI proposes that this non-retail portion be dedicated to serving EAI's retail customers.

THE OUACHITA PLANT

7. As discussed in EAI witness William M. Mohl's Phase II Direct Testimony, the Ouachita Plant was identified through a competitive solicitation – the 2006 Request for Proposals for Long-Term Supply Side Resources (the "2006 Long-Term RFP") – for long-term capacity to satisfy multiple supply planning objectives, including EAI's need for load-following capacity, conducted by Entergy Services, Inc. ("ESI"),³ acting as agent for EAI and other Operating Companies.

8. The Ouachita Plant was selected as the most attractive CCGT resource submitted in response to the 2006 Long-Term RFP. ESI and Quachita Power subsequently proceeded to negotiate the terms and conditions for EAI's acquisition of the Ouachita Plant. As discussed in Mr. Mohl's Phase II Direct Testimony, ESI undertook a comprehensive due diligence investigation of the Ouachita Plant from February through July 2007, which included reviews of engineering, operations, environmental, transmission, fuel supply, plant safety, human resources, employment and benefits, accounting, legal, tax, risk management, credit, real property, personal property, and intellectual property

³ ESI is a subsidiary of Entergy Corporation that provides technical and administrative services to all the Entergy Operating Companies.

and information technology issues. Outside consultants were engaged to carry out detailed performance testing on the Ouachita Plant, a comprehensive condition assessment of the transmission switchyard, and a thorough environmental assessment of the plant site. Although no major technical problems were identified during the due diligence process, ESI identified some key improvements that it believes are needed to improve the overall performance and reliability of the Ouachita Plant, so as to make it consistent with utility standards. The total estimated cost for the identified plant improvements is \$40 million, which improvements are described in greater detail in Mr. Mohl's Phase II Direct Testimony.

9. The acquisition of the Ouachita Plant is consistent with the intent of the Commission's Order No. 6 in Docket 06-028-R, which established Resource Planning Guidelines and that were found to be in the public interest. The need for the acquisition, which was discussed in detail in Phase I of this docket, was based on a rigorously-developed comprehensive resource plan. The Company then relied on an objective and impartial competitive solicitation process that afforded market participants ample opportunities to offer resources for sale, and an evaluation process that impartially identified the most attractive alternatives from the offers available from the market.

THE PROPOSED TRANSACTION

10. The Company has executed a PSA by which EAI will purchase the project assets of the Ouachita Plant from Quachita Power. Pursuant to the PSA, after regulatory approvals have been obtained and all other closing conditions have been satisfied, EAI will be the sole owner of the Ouachita Plant. An executed copy of the PSA between EAI and Quachita Power accompanies Mr. Mohl's Phase II Direct Testimony as EAI Exhibit WMM-2, which is Highly Sensitive Protected Information ("HSPI"). Pursuant to the PSA, the final purchase price will be dependent upon both the date of the closing and any inventory level adjustments required. Based upon an expected closing date no later than December 31, 2008, the purchase price of the Ouachita Plant is \$210 million. Pursuant to the terms of the PSA, in the event that the closing does not occur by December 31, 2008, but does occur by December 31, 2009, the purchase price increases by \$5 million, to \$215 million. If closing occurs after December 31, 2009, the purchase price increases by an additional \$5 million, to \$220 million. Closing of the transaction must occur by December 31, 2010, or either party may terminate the PSA. In addition to the purchase price, EAI has also identified \$40 million in plant upgrades, \$3 million in contingencies, and \$3 million in transaction costs, which would result in a total acquisition cost of between \$256 million and \$266 million, depending on the closing date.

11. As part of the transmission evaluation associated with the 2006 Long-Term RFP, the SPO (which is functionally separate and independent from the TBU) submitted a System Impact Study ("SIS") request to the TBU for long-term network transmission service from the Ouachita Plant for the period of June 1, 2007 to June 1, 2057. Based on the results of this preliminary study provided by the TBU in August 2006, the availability of network transmission service was conditional upon upgrading three 115 kV lines in the Sterlington substation area (Sterlington-Downsville, Drew-Sterlington and Swartz-Walnut Grove). This preliminary August 2006 TBU study indicated that the estimated cost of those upgrades is \$19.3 million in 2006 dollars, which has been adjusted up to \$29 million to reflect estimated loaders and/or other costs that would be added for the final amount provided by the TBU. Because the agreements for purchase of the Ouachita Plant had not been finalized at the time the initial SIS was completed, SPO could not confirm that transmission service request. Accordingly, the SPO submitted a new SIS request to the Independent Coordinator of Transmission ("ICT") and has received a preliminary response from the ICT that likely will require SPO to submit a request for a more detailed power flow analysis and cost estimate, referred to as a Facility Study, in the near future. The necessary transmission upgrades and any definitive costs estimates associated with such upgrades will not be known until the SPO receives the results of the Facility Study from the TBU.

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If the Facility Study results identify the same upgrades as the August 2006 TBU study, then these upgrades would be located in the area that Entergy Louisiana, LLC ("ELL") serves and would be owned by ELL. However, if the Facility Study results indicate that upgrades to transmission facilities located within EAI's or another Operating Company's system are required, then EAI and/or the other Operating Companies will construct and own such transmission upgrades. Pursuant to the terms of the current System Agreement,⁴ generally the cost of facilities that operate at a voltage of 230 kV or above are equalized in accordance with the terms of Service Schedule MSS-2 and, subject to certain limited exceptions, the cost of transmission facilities operating below that level are not subject to equalization.

12. The parties also negotiated an ITA under which EAI will purchase the capacity and output of Ouachita Plant commencing January 1, 2008 and continuing until the closing of the acquisition or until December 31, 2010, whichever occurs earlier. An executed copy of the ITA between ESI (as agent for EAI) and Ouachita Power is filed with Mr. Mohl's Phase II Direct Testimony as EAI Exhibit WMM-3, which is HSPI. The ITA provides the seller with a revenue stream while EAI seeks regulatory approvals and was a condition of the seller in

⁴ The System Agreement is a rate schedule approved by the Federal Energy Regulatory Commission and contract entered into among ESI and the Operating Companies, which allows the Operating Companies to plan, construct and operate their generation and bulk transmission facilities as a single, integrated electric system. On December 19, 2005, EAI gave the notice required to terminate its participation in the current System Agreement, effective December 18, 2013. It is uncertain at this time what transmission arrangements will be in effect following EAI's termination of participation in the System Agreement.

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order to proceed with the transaction. The ITA also will provide EAI a source of efficient load-following capacity during the approval process for the Ouachita Plant acquisition, and Quachita Power will submit the Ouachita Plant to the Entergy System Dispatcher, providing experience in dispatching the plant under actual operating conditions. Under the terms of the proposed ITA, Quachita Power will receive a capacity payment, the terms of which are HSPI and described in Mr. Mohl's Direct Testimony. The ITA also requires EAI to pay a variable operation and maintenance ("O&M") payment priced per MWh and a start-up payment priced per start.

13. Other agreements will be executed in connection with the acquisition of the Ouachita Plant by EAI. EAI and General Electric International, Inc. ("GEI") have executed a long-term service agreement ("LTSA") under which GEI will provide major maintenance and service for the combustion and steam turbines at the Ouachita Plant. The LTSA is conditioned upon EAI's receiving all necessary regulatory approvals and the closing of the PSA transaction. An executed copy of the LTSA, which will become effective upon closing of the acquisition, is attached to Mr. Mohl's Direct Testimony as EAI Exhibit WMM-13, which is HSPI.

14. In addition, ELL will operate and maintain the Ouachita Plant under a cost-based Operation and Maintenance Services Agreement with EAI to be

effective at closing. As discussed by Mr. Mohl, it is expected that the Ouachita Plant will be operated by ELL staff, and due to the close proximity to ELL's Sterlington and Perryville power plants, will offer the potential for greater efficiencies in the operation of the Ouachita Plant through the use of shared employees with ELL's Sterlington and Perryville Plants. This arrangement is expected to result in lower costs than if the Ouachita Plant was operated by EAI on a stand-alone basis. ELL also will provide maintenance services for the Ouachita Plant's transmission facilities under a cost-based Interconnection Facilities Maintenance Agreement. These agreements between EAI and ELL will be effective at closing.

15. The acquisition of the Ouachita Plant is part of the Strategic Supply Resource Plan ("SSRP"). This resource plan is based upon planning principles adopted by the Entergy Operating Committee, which is the group designated to administer the provisions of the System Agreement. The allocation of the capacity and associated energy of the Ouachita Plant between EAI and EGSI was approved by the Operating Committee based upon the current and planned generating resources owned by each Operating Company and the application of the Operating Committee's planning principles. Based on the application of these principles, and the transactional requirements identified by the counterparty, EAI will own the Ouachita Plant and receive two-thirds of the capacity and energy output and will sell the remaining one-third output of the plant to EGSI,

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which will be sold to EGSi pursuant to Service Schedule MSS-4 of the System Agreement, or at some point, a cost based formula rate similar to MSS-4. The transaction approved by the Operating Committee includes an option for EGSi to purchase one designated train of the three-train Ouachita Plant at a future time. Accordingly, EAI requests that one-third of the plant be designated for use as non-retail and the Commission find that the life-of-unit sale of one-third of the capacity and energy output from the plant to EGSi is in the public interest.

16. EGSi's MSS-4 purchase is subject to the approval of the LPSC. The Operating Committee has voted to give EAI the opportunity to acquire the remaining one-third for EAI's retail customers. EAI therefore requests in connection with this Phase II Application that the APSC find that the retention of the remaining one-third portion of the Ouachita Plant by EAI under such circumstances would be in the public interest in the event that the LPSC does not approve EGSi's participation in the Ouachita Plant, designate the remaining one-third portion for EAI's use to serve its retail customers, and approve recovery of the non-fuel costs under Rider CA and the energy costs under Rider ECR, just as EAI is currently requesting for the two-thirds of the plant, for the reasons set forth in EAI witness Hugh T. McDonald's Phase II Direct Testimony.

17. The transactions discussed above are exempt from the Affiliate Transaction Rules recently adopted by the Commission, as those rules exclude

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from the definition of Affiliate transaction “any purchase, sale, trade, lease, transfer, sharing or joint use, between a public utility and any affiliate thereof, of (i) capacity and energy, (ii) gas, coal, uranium or other fuel and (iii) related gathering, storage, transportation or assets, services and consumables, in each case the costs of which are recovered by the public utility through Commission-approved base rates or a purchased gas adjustment, purchased power adjustment, fuel adjustment or similar mechanism....”⁵ Alternatively, the transactions would comply with the pricing provisions of the Affiliate Transaction Rules given the transactions are designed to be priced at cost.

RATE RECOVERY

18. As discussed in Mr. McDonald’s Phase II Direct Testimony, the purchase of the Ouachita Plant represents a significant investment on the part of EAI. The Company’s retail customers will benefit from this transaction because the highly efficient plant is being purchased at a cost significantly lower than the cost of constructing a similar, new facility, as discussed by EAI witness Kurtis W. Castleberry, and the plant will partially address the Company’s need for load-following capacity. The Company has been diligent in attempting to acquire additional capacity resources through a competitive market solicitation at a competitive price compared to the traditional approach of utility construction of new facilities. However, in order to meet its fiduciary responsibilities for the

⁵ Affiliate Transaction Rules, Rule III(G).

financial integrity of the Company, EAI must be able to recover fully the cost of investment and operation of the Ouachita Plant on a timely basis concurrent with the expenditures if EAI's retail customers are to enjoy its benefits.

19. The Commission has recently completed a comprehensive review of the Company's costs in Docket No. 06-101-U and set EAI's base rates in accordance with that review. A general rate proceeding solely to recover the costs for the Ouachita Plant would result in a significant delay in securing cost recovery and would be an unnecessary use of the Commission's, the Company's and other parties' resources. Such a proceeding and delay of cost recovery would cause the transaction to terminate.

20. As stated earlier, the Company proposes that, during the period that the ITA is in effect, the non-energy revenue requirement associated with the proposed capacity acquisition be recovered through a Capacity Acquisition Rider ("Rider CA"), EAI Exhibit DRR-1, and the energy or fuel costs would be recovered via the Energy Cost Recovery Rider ("Rider ECR"). Upon closing of the acquisition, costs such as return on rate base, depreciation, taxes, and O&M will be recovered via Rider CA except that the fuel costs and the LTSA costs would be recovered via Rider ECR, as the LTSA costs are directly related to the amount of energy produced, as discussed by Mr. Mohl. As noted in the Phase II Direct Testimony of Dennis R. Roach, Rider ECR needs to be modified in order

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to recognize the recovery of the LTSA cost. EAI Exhibit DRR-4 is a revised Rider ECR that includes a new variable to recover the costs associated with the LTSA.

21. Rider CA will be a separate rider with an annually redetermined rate to recover certain costs associated with the acquisition and operation of the Ouachita Plant due to the potential variability associated with the costs that will be recovered through Rider CA. In particular, there will be a period when an ITA is in place, followed by a post-acquisition period when EAI owns the plant but will still have only estimates of certain operating costs, followed by a period when the actual operating costs are known. Rider CA would establish a mechanism that will allow EAI to recover the retail non-fuel/non-LTSA cost of the Ouachita Plant as offset by the effects of changes to reserve equalization during both the ITA period and the post-acquisition period.

22. Rider CA provides for the development of Capacity Rates by application of the formula ("Capacity Rate Formula") set out in Attachment B of EAI Exhibit DRR-1. The Capacity Rates would be based on the retail Capacity Revenue Requirement associated with the following costs and revenues:

- (A) Purchased Power Capacity Costs (EAI's retail share of the ITA capacity costs that EAI will bear under the ITA and would be incurred beginning January 1, 2008 and continuing until the closing of the acquisition of the Ouachita Plant),

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- (B) Acquired Capacity Costs (the costs directly related to the acquisition and ongoing operation and ownership of the Ouachita Plant post-acquisition), and
 - (C) Reserve Equalization Effects (EAI's retail portion⁶ of the Reserve Equalization effects incurred pursuant to the Entergy System Agreement Service Schedule MSS-1⁷ which are associated with the addition of the Ouachita Plant to the capacity of EAI).

23. Rider CA will recognize only EAI's retail portion of the Ouachita Plant's non-fuel costs during both the ITA period and the post-acquisition period. As described in the testimony of Mr. McDonald, the allocation of the Ouachita Plant is two-thirds to retail and one-third to non-retail, assuming the sale by EAI of one-third of the capacity and related energy of the Ouachita Plant to EGSI is approved by the LPSC.

24. As described in Mr. Roach's Phase II Direct Testimony, EAI's Retail Capacity Revenue Requirement would be allocated to each rate class using the most recently approved Rate Class Production Demand Allocation Factor ("PDAF"). In this case, that would be the PDAF from Docket No. 06-101-U. The Capacity Revenue Requirement calculated for each rate class would then be

⁶ Consistent with the ratemaking treatment in Order No. 12 in Docket No. 03-028-U.

⁷ MSS-1 provides the basis for equalizing the capability and ownership cost incidental to such capability among the Operating Companies in such a manner that the capability and reserves of each Operating Company after equalization shall be equal to its Capability Responsibility.

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divided by the Class Base Rate Revenue to determine the rate as a monthly percentage for each rate class.

25. Also as discussed in Mr. Roach's Phase II Direct Testimony, all changes in rates would be prospective and would not include an automatic true-up adjustment. However, a true-up mechanism could be incorporated in Rider CA to address the uncertainty associated with utilizing estimates for certain recovery periods of Rider CA. If a true-up mechanism is incorporated in Rider CA, then the true-up provision should include the ITA Period because of the inherent timing difference of when the ITA cost increases in January versus a rider that has an August rate change; the Initial Post Acquisition Period because it is based on cost estimates; and the first filing of the Post Acquisition Period because it is likely that the first filing during the Post Acquisition Period will include only a partial year of actual cost data.⁸

26. The Capacity Rates for Rider CA would be redetermined annually. Except for the initial period, EAI would file the redetermined Capacity Rates on or about May 1 of each year beginning in 2009 based on a test year ending December 31 of the prior year, assuming the closing occurs in 2008. These Capacity Rates would be effective for bills rendered on and after the first billing cycle in August of the year in which the filing is made. This filing in Docket No.

⁸ ITA Period, Initial Post Acquisition Period and Post Acquisition Period are defined in Rider CA.

06-152-U would be considered the initial filing under Rider CA for both the ITA period and the initial post-acquisition period. The timing of these filings and approvals is more fully described in Mr. Roach's Direct Testimony. Rider CA would continue to be in effect until the Ouachita Plant costs are reflected in base rates or another recovery mechanism reflecting the Capacity Revenue Requirement is approved and implemented.

27. The Company proposes to use Rider CA and Rider ECR to recover the Ouachita Plant's costs during the term of the ITA. For the energy portion of the ITA, the Company proposes to treat the recovery of energy costs under the agreement in the same fashion as any other short-term power purchase agreement and include those costs in Account 555 of the FERC Uniform System of Accounts to be recovered through Rider ECR. For the capacity component of the ITA, the Company proposes to recover those costs through Rider CA. Specifically, the ITA capacity costs will be included in the Purchased Power Capacity Cost line item of Rider CA. EAI Exhibit DRR-2 is a calculation of the expected capacity costs recovered under Rider CA during the ITA period. EAI Exhibit DRR-2 reflects the EAI retail portion of the capacity costs associated with the ITA as adjusted for the retail portion of the reserve equalization effects associated with this added capacity. The figures were calculated assuming two-thirds of the Ouachita Plant is designated for EAI's retail customers.

28. As shown on EAI Exhibit DRR-2 the estimated increase in base rates for residential customers due to the ITA is 0.6674 percent. This translates to an overall increase in bills to residential customers of 0.4371 percent assuming base rates comprise 65.5 percent of total bills. Assuming 1,000 kWh/month, this would be a \$0.42 per month estimated increase to the current typical residential bill of \$96.25 per month associated with the non-energy portion of the ITA.

29. Once the transaction closes and EAI has acquired the Ouachita Plant, the revenue requirement for the proposed acquisition of the Ouachita Plant must include capital costs, costs, depreciation expenses, taxes, and fuel-related costs, as would be the case with any production plant. The Company proposes to use Rider CA to recover the capacity costs associated with the Ouachita Plant.

30. As shown on EAI Exhibit DRR-3, the estimated increase in base rates for residential customers is 1.4754 percent. This translates to an overall increase in bills to residential customers of 0.9664 percent assuming base rates comprise 65.5 percent of total bills. Assuming 1,000 kWh/month, this would be a \$0.93 per month estimated increase to the current typical residential bill of \$96.25 per month associated with the non-energy portion of the acquisition.

31. EAI Exhibit DRR-3 is an estimated calculation of Rider CA after

31. EAI Exhibit DRR-3 is an estimated calculation of Rider CA after closing of the acquisition. EAI Exhibit DRR-3 reflects the EAI retail portion of the cost components mentioned above as adjusted for the retail portion of the reserve equalization effects associated with this added capacity. Fuel-related costs after acquisition of the Ouachita Plant will be included in Account 501 and recovered through Rider ECR.

32. The Entergy System Agreement MSS-1 reserve equalization effects of the EAI's retail portion of the capacity and associated energy for the Ouachita Plant will be included in Rider CA so long as EAI is a participant in the System Agreement and the current Service Schedule MSS-1 remains applicable. Because EAI's participation in the System Agreement will end in December 2013, there will be no reserve equalization effects on Rider CA thereafter, unless a successor pooling arrangement is in place that has a similar payment/receipt for sharing reserves.

33. The Company also requests that the Commission approve this transaction in a manner consistent with EAI's request and without placing any additional conditions on the transaction, because any such conditions could affect EAI's ability to obtain full and timely cost recovery for this transaction and thus would hinder EAI's ability to close on this transaction.

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34. EAI requests that the following individuals be placed on the service list as its representatives in this Docket:

Steven K. Strickland, Vice President
Regulatory Affairs – Arkansas
Entergy Arkansas, Inc.
P. O. Box 551
Little Rock, Arkansas 72203
Telephone: (501) 377-4457

Matthew R. Suffern
Entergy Services, Inc.
425 W. Capitol Avenue
P. O. Box 551
Little Rock, Arkansas 72201
Telephone: (501) 377-4372

35. As discussed above in this Application and in the supporting testimony, EAI seeks approval of the ITA and associated cost recovery prior to the time in which EAI begins taking deliveries under this transaction. As a result, time is of the essence in this proceeding. EAI respectfully requests that the Commission expedite its review of the Company's Application and issue a final order approving full cost recovery of that ITA through Rider CA no later than December 31, 2007.

WHEREFORE, Entergy Arkansas, Inc. prays that the Commission approve the Ouachita Plant transaction without conditions and find:

- 1) That the acquisition of the Ouachita Plant by EAI on the terms and conditions described in the ITA and the PSA is consistent with the public interest and therefore prudent and satisfies the standards

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and requirements of the statutes, orders and rules governing the approvals required for the acquisition of a generating unit by an APSC-jurisdictional utility, and is exempt from the provisions of any rules and orders that may impose requirements or conditions not consistent with the Commission's approval of the transaction;

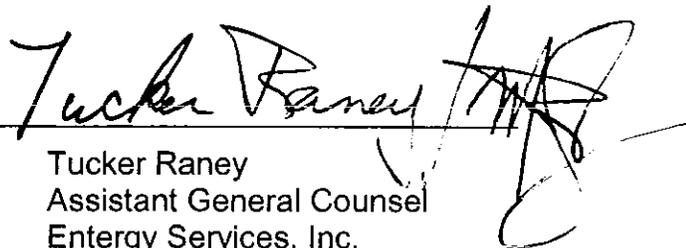
- 2) That the potential life of unit sale of one-third of the capacity from that plant to EGSI, along with the option for EGSI to convert such share to ownership, are consistent with the public interest and therefore prudent and satisfy the standards and requirements of the statutes, orders and rules governing the approvals required for the sale or transfer of a generating unit by an APSC-jurisdictional utility;
- 3) That the Commission designate two-thirds of the plant for use as retail and the remaining portion as non-retail for allocation of this capacity for purposes of Rider ECR, and should the LPSC reject EGSI's request to purchase one-third of the capacity from that plant, that the APSC determine in this proceeding that the remaining one-third of the capacity of the Ouachita Plant should be used as retail, and that the retention by EAI of the additional one-third of the capacity of the Ouachita Plant for retail in such event would also be prudent;
- 4) That the Commission declare that all costs identified in this Application and in the accompanying testimony as arising from the ITA and the acquisition of the Ouachita Plant under the PSA, and the related transactions, including the costs associated with the potential retention for retail customers of the remaining one-third of the plant as provided in paragraph 3 above, are reasonable and in the public interest and, therefore, prudently incurred and appropriately recoverable in retail rates;
- 5) That the Commission authorize full and concurrent cost recovery, approve the Company's proposed depreciation rate for the Ouachita Plant, approve the modification to Rider ECR set forth in EAI Exhibit DRR-4, and approve Rider CA to be used as the recovery mechanism for the capacity costs incurred under the Interim Tolling Agreement and, upon closing, the non-fuel costs of the plant, in the manner described in this Application and in the accompanying testimony;
- 6) That the Commission issue a final order regarding EAI's Application for approval of the Interim Tolling Agreement by December 21, 2007; and

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7) That the Commission grant EAI's Phase II Application.

Respectfully submitted,
ENTERGY ARKANSAS, INC.

By



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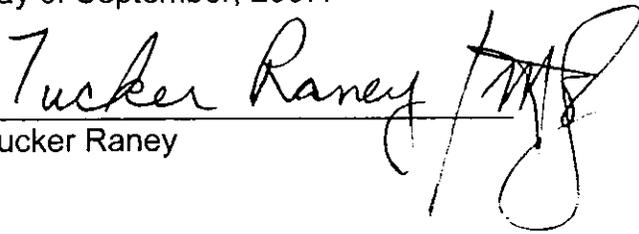
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ATTORNEYS FOR ENTERGY
ARKANSAS, INC.

CERTIFICATE OF SERVICE

I, Tucker Raney, do hereby certify that a copy of the foregoing has been served upon all parties of record this 4th day of September, 2007.



Tucker Raney

EXHIBIT 5

**Phase II Direct Testimony of Hugh T. McDonald in APSC
Docket 06-152-U**

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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

PHASE II DIRECT TESTIMONY

OF

HUGH T. MCDONALD

PRESIDENT AND CHIEF EXECUTIVE OFFICER

ENTERGY ARKANSAS, INC.

ON BEHALF OF

ENTERGY ARKANSAS, INC.

SEPTEMBER 4, 2007

Pages 1-6 Intentionally Omitted

- 1 • Describe the rate impact on retail customers associated with the
2 purchase of the Ouachita Plant.

3 4. Ms. Barbara A. Heavener, Senior Staff Accountant, will describe the
4 depreciation rate that EAI proposes to use for the Ouachita Plant.

5
6 **II. OWNERSHIP STRUCTURE**

7 Q. HOW DID THE PROPOSED PURCHASE COME ABOUT?

8 A. Quachita Power responded to a competitive solicitation issued by the
9 System Planning and Operations ("SPO") department of ESI on behalf of
10 the Operating Companies. Mr. Mohl explains in his testimony the details
11 of how the competitive solicitation was conducted.

12
13 Q. WHAT ENTITY WILL OWN THE OUACHITA PLANT?

14 A. EAI will be the purchaser of the plant and the owner.

15
16 Q. WILL THE ENTIRE OUACHITA PLANT BE AVAILABLE TO SERVE THE
17 COMPANY'S RETAIL CUSTOMERS' NEEDS?

18 A. EAI is requesting in its application that one-third of the plant be designated
19 for use as non-retail and the Commission find in the public interest a
20 transaction for a life-of-unit sale of one-third of the capacity and energy
21 output from the plant to EGSI. Prior to the close of the acquisition, EAI will
22 purchase power from Quachita Power via an ITA and then sell one-third of
23 the output to EGSI pursuant to Service Schedule MSS-4, a formula rate

1 under the Entergy System Agreement.⁵ After the close of the transaction,
2 EAI would sell power to EGSI under a life-of-unit purchase power
3 agreement pursuant to Service Schedule MSS-4, or when EAI's
4 participation in the System Agreement terminates, under a similar
5 mechanism as MSS-4. Alternatively, at that time EGSI may take
6 ownership of one of the three trains of the plant. However, as I describe
7 later in my testimony, if the LPSC does not approve this one-third
8 purchase of the plant within the schedule allowed in EAI's offer to EGSI,
9 this one-third portion of the plant will be available to EAI to serve its retail
10 customers, and the Company requests the Commission determine that
11 acquisition of this additional one-third portion of the plant and its
12 designation to serve retail customers is in the public interest.

13

14 Q. HOW WAS THIS SHARING OF THE CAPACITY AND ASSOCIATED
15 ENERGY BETWEEN EAI AND EGSI DETERMINED?

16 A. The acquisition of the Ouachita Plant and other recent acquisitions and
17 proposed generating resources for the Operating Companies is part of the
18 Strategic Supply Resource Plan ("SSRP"). This resource plan is based
19 upon planning principles adopted by the Entergy Operating Committee,
20 which is the group designated to administer the provisions of the System

⁵ The System Agreement is a rate schedule approved by the Federal Energy Regulatory Commission and contract entered into among ESI and the Operating Companies, which allows the Operating Companies to plan, construct and operate their generation and bulk transmission facilities as a single, integrated electric system. On December 19, 2005, EAI gave notice that it will terminate its participation in the System Agreement effective December 18, 2013.

1 Agreement. I am EAI's representative on the Operating Committee. The
2 allocation of the capacity and associated energy of the Ouachita Plant
3 between EAI and EGSI was approved by the Operating Committee based
4 upon the current and planned generating resources owned by each
5 Operating Company and the application of the applicable planning
6 principles.

7

8 Q. WHAT ARE THESE PLANNING PRINCIPLES THAT FORMED THE
9 BASIS FOR THIS ALLOCATION OF POWER?

10 A. The key planning principles that formed the rationale for the allocation of
11 power between EAI and EGSI are:

12 1. Over time, each Operating Company should support its
13 proportionate share of total long-term generation supply
14 requirements;

15 2. Over time, each Operating Company should support its
16 proportionate share of generation with functional capability to
17 support each supply role, for example, load-following.

18 3. Decisions regarding participation in newly acquired resources
19 should consider the impact of resource decisions with respect to
20 relative total production costs of the Operating Companies and the
21 objective to maintain over time rough total production cost
22 equalization.

23

1 Q. HOW WERE THESE PRINCIPLES APPLIED TO ARRIVE AT THE
2 ALLOCATION OF THE OUACHITA PLANT?

3 A. In the case of the principle related to the total amount of capacity, all
4 Operating Companies other than EAI and EGSI have generating capacity
5 that exceed their peak loads plus a planning reserve margin. EAI has the
6 largest shortfall, followed by EGSI. Therefore, it is appropriate that EAI
7 get the larger share of Ouachita Plant capacity based upon this criterion.
8 Mr. Castleberry addresses EAI's capacity needs in his testimony.

9 Second, as it relates to the relative support for load-following
10 generation, EAI does not own any modern gas-fired, load-following
11 generation. It has been a near-term planning objective of the SSRP for
12 each Operating Company to acquire highly efficient CCGT capacity. ELL
13 completed its purchase of the Perryville Plant in 2005, of which 75 percent
14 of the output is sold to EGSI. In addition, EMI acquired the Attala Plant in
15 early 2006. Both the Perryville and Attala Plants are modern, efficient,
16 load-following CCGT power plants. Based on these circumstances, it is
17 appropriate for EAI to take a significant portion of the Ouachita Plant.

18 Finally, as to the factor regarding relative total production costs,
19 decisions on Operating Company participation in new capacity resources
20 take into account the relative total production costs of the Operating
21 Companies and the objective of maintaining rough total production cost
22 equalization over time. In the case of the Ouachita Plant purchase, EAI
23 and EGS had a large need for additional long-term capacity. If one of

1 those two companies did not participate in the Ouachita Plant acquisition,
2 the other Operating Company probably would have sought to acquire all of
3 the capacity, increasing its fixed cost. In this case of sole participation by
4 EGSI, it would mean that the Operating Company with the highest relative
5 total production costs would increase its fixed costs relative to EAI, the
6 Operating Company with the lowest relative production costs. This factor
7 supported EAI's taking a significant share of the Ouachita Plant.

8 The evaluation of all of these factors led to the recommendation of
9 the relative participation by EAI and EGSI in the Ouachita Plant. A more
10 detailed explanation of this evaluation is contained in the minutes of the
11 May 18, 2007 meeting of the Operating Committee, the pertinent portion
12 of which is attached to my testimony as Highly Sensitive Protected
13 Information EAI Exhibit HTM-1.

14
15 Q. DID THE OPERATING COMMITTEE APPROVE EAI'S PURCHASE OF
16 THE OUACHITA PLANT AND THE SALE OF ONE-THIRD OF THE
17 OUTPUT TO EGSI?

18 A. Yes. I made a motion to the committee at its May 18, 2007 meeting to
19 accept this structure for the transaction, and EGSI-Louisiana president
20 and CEO Renae Conley seconded the motion, and it was adopted
21 unanimously by the Operating Committee.

22

Pages 12 – 19 Intentionally Omitted

EXHIBIT 6

Transcript Excerpts From APSC Docket 06-152-U Phase II

1 BEFORE THE ARKANSAS PUBLIC SERVICE COMMISSION

2 IN THE MATTER OF ENTERGY) DOCKET NO. 06-152-U
3 ARKANSAS, INC.'S REQUEST FOR)
4 APPROVAL OF THE ACQUISITION)
5 OF NEW CAPACITY TO SERVE ITS) HEARING PURSUANT TO
6 RETAIL CUSTOMERS) ORDER NO. 9

7
8 BEFORE THE COMMISSION:

9 COLETTE HONORABLE, Chairman
10 DARYL E. BASSETT, Commissioner
11 DAVID NEWBERN, Special Commissioner

12
13 VOLUME I
14
15
16
17
18
19
20
21

22 THE ABOVE-STYLED MATTER was reported by
23 Michael Nelson, Certified Court Reporter
24 No. 426, taken at the Arkansas Public Service
25 Commission, Hearing Room No. 1, 1000 Center
Street, Little Rock, Arkansas, commencing on
the 8th day of April, 2008, at 9:30 a.m.

Pages 1 – 113 Intentionally Omitted

1 their best to make their estimates at this point in time
2 given the fact that those upgrades will be made at a
3 future date.

4 COMMISSIONER BASSETT: Thank you very much.

5 THE WITNESS: Yes, sir.

6 CHAIRMAN HONORABLE: Commissioner Newbern.

7 COMMISSIONER NEWBERN: No questions.

8 CHAIRMAN HONORABLE: And I have no questions.

9 The witness may be excused.

10 THE WITNESS: Thank you.

11 (Witness withdrew.)

12 CHAIRMAN HONORABLE: Thank you. You may call
13 your next witness.

14 MR. TROTTER: The company would call Hugh
15 McDonald to the stand.

16 HUGH MCDONALD

17 called as a witness by instance of EAI, being previously
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. TROTTER

21 Q. Mr. McDonald, could you please state your name for
22 the record.

23 A. Hugh McDonald.

24 Q. Are you the same Hugh T. McDonald who filed both
25 rebuttal testimony as well as sur-surrebuttal testimony

Pages 115-160 Intentionally Omitted

1 A. That's correct.

2 Q. MSS-3 has been amended repeatedly, has it not?

3 A. It has been amended a number of occasions. That's
4 correct.

5 Q. Do you have any guaranty for us that MSS-3 will not
6 be amended again to include the CWIP type costs?

7 A. I can't make that guaranty. I don't think anybody
8 can, but today, those payments are not included in the
9 production cost calculation bandwidth payment.

10 Q. But you can't guaranty that they won't be at some
11 point in the future?

12 A. No. I cannot.

13 Q. Before the current situation, when was the last time
14 that the operating committee allowed EAI to construct or
15 purchase a generating plant?

16 A. Well, it's been -- this is the first EAI addition of
17 a resource since the early '80s.

18 Q. How long has Entergy system planners known that EAI
19 is short or deficient load following capacity?

20 A. I couldn't tell you the exact number of years. Last
21 several years.

22 Q. Several years?

23 A. Yeah.

24 Q. Has the operating committee allowed any of the other
25 operating companies to acquire new generation since the

1 middle '80s?

2 A. Yes, absolutely.

3 Q. And do you recall what plants those might be?

4 A. Most immediately, the last three years, Entergy
5 Louisiana acquired through a similar request for proposal
6 process the Perryville plant which actually is only
7 located within 5 miles distance to the Ouachita plant.
8 Entergy Mississippi shortly after received approval by
9 their Commission for the acquisition of the Attala.
10 These are -- the Perryville plant in Louisiana and the
11 Attala plant in Mississippi are both combined cycle gas
12 turbine plants similar to Attala. And just most recently
13 Entergy Gulf States was given approval of the Calcasieu
14 combustion turbine plant in south Louisiana.

15 Q. And those plant acquisitions have been in the last
16 three years?

17 A. Last three to five years.

18 Q. And you said that Entergy knew that Entergy Arkansas
19 was short on load following capacity for several years?

20 A. That's correct.

21 Q. Did the operating committee require Entergy
22 Mississippi, Entergy Louisiana to share ownership of the
23 Perryville, Attala, or Calcasieu plant with Entergy
24 Arkansas?

25 A. No. They didn't. One of the -- an additional

1 principle that the operating committee uses in making its
2 decisions to allocate resources is relative production
3 costs of the various operating companies. If you recall,
4 back before this Commission, part of the overall process
5 to try to reduce production costs of the higher cost
6 companies, we proposed at this Commission to actually
7 sell Entergy Arkansas' -- had some wholesale base load
8 assets which this Commission approved about 200 megawatts
9 being sold to Entergy Louisiana and Entergy New Orleans
10 which helped reduce their production cost and mitigated
11 any future System Agreement payments that we at the time
12 were concerned with.

13 Since that time in 2006, there's an additional 220
14 megawatts EAI wholesale base load assets. These
15 megawatts were used -- used to be used to sell -- serve
16 wholesale customers that we served -- Entergy Arkansas
17 served in Arkansas like North Little Rock and Prescott,
18 for example. Those contracts expired and we used them to
19 sell to the other higher cost operating companies. So
20 that the 2003 wholesale base load was used to reduce the
21 production costs of Entergy Louisiana and Entergy New
22 Orleans. That actually helped Entergy New Orleans, I
23 guess, settle or get out of the FERC litigation.

24 In 2006 on a year-to-year basis, the additional 220
25 megawatts are sold between I believe it's Entergy Gulf

1 States and Entergy Mississippi, and there's a third
2 tranche that becomes available in the future. So
3 coupling that with looking at how to reduce the relative
4 production cost differences between the company to
5 mitigate future System Agreement payments, we looked at
6 Entergy Gulf States, Entergy Louisiana, and Entergy
7 Mississippi were still higher cost companies. And they
8 also needed load following capacity, and it was based on
9 those principles they were the first operating companies
10 that would benefit from those acquisitions.

11 Q. So -- and I think I understand you just to have
12 testified that the system's principles effectively
13 prevented Entergy Arkansas from getting the benefit of
14 new efficient generation at the same time that Entergy
15 Arkansas ratepayers were being asked to subsidize
16 production costs in the rest of the system?

17 A. Well, at the time the Entergy Arkansas customers
18 were not being asked to subsidize. The FERC order hadn't
19 come out. We were --

20 Q. The FERC order has been out since 2003, has it not,
21 or 2004?

22 A. FERC order's 2005 is when the FERC order came out,
23 December 2005.

24 Q. Okay.

25 A. That was the same day that EAI terminated its --

Pages 165 – 192 Intentionally Omitted

1 CHAIRMAN HONORABLE: Mr. Trotter, ready for
2 your next witness.

3 MR. TROTTER: EAI calls Curtis Castleberry.

4 KURTIS CASTLEBERRY

5 called as a witness by instance of EAI, being previously
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. TROTTER:

9 Q. Mr. Castleberry, could you state your name for the
10 record.

11 A. Kurt Castleberry.

12 Q. Are you the same Kurtis W. Castleberry who filed in
13 this docket rebuttal testimony as well as sur-surrebuttal
14 testimony?

15 A. Yes, I am.

16 Q. Could you look at what purports to be your rebuttal
17 testimony and please tell me if that is, in fact, the
18 testimony you prefiled in this case?

19 A. Yes, it is.

20 Q. Okay. And do you have any corrections or additions
21 to that testimony today?

22 A. Not to the rebuttal, no.

23 Q. Okay. And if these questions were put to you today,
24 would your answers be the same?

25 A. Yes, they would.

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Pages 194 - 227 Intentionally Omitted

1 loads from one or both of the other operating companies;
2 is that correct?

3 A. That's correct, but the system is not dispatched
4 against Entergy Arkansas only load. It's dispatched as a
5 system, so, you know, that's just the way the system
6 operates under the -- the System Agreement amongst the
7 operating companies.

8 Q. But Entergy Arkansas is proposing to acquire this
9 plant as a load following plant for the benefit of
10 Entergy Arkansas; is that correct?

11 A. That's correct. And this Commission has determined
12 that we have a current need for load following capacity,
13 provides benefits now, and provides benefits in the
14 future regardless of whatever happens in the future. So
15 an electric utility needs to have appropriate load
16 following capacity to meet our customers' changing loads
17 and Entergy Arkansas is short in that area. The
18 Commission recognizes that and we're trying to fill that
19 gap with this highly efficient resource.

20 Q. Entergy's system dispatchers will not dispatch this
21 plant if you're allowed to acquire it to satisfy Entergy
22 Arkansas' needs explicitly and only?

23 A. Entergy Arkansas' needs are now combined into the
24 system's needs.

25 Q. Okay. Looking again at 7 o'clock on the chart

1 there. There's not much flexibility for that plant to
2 serve an increase in Entergy Arkansas' load, is there, at
3 7 o'clock?

4 A. An increase in?

5 Q. An increase in Entergy Arkansas' load?

6 A. Well, first off, it's not Entergy Arkansas only
7 load. It's load for the system. If the unit is running
8 at its maximum output, certainly, you can't serve more
9 load with it. It won't go any more than that, but
10 certainly, you can turn it down so you can follow the
11 load down.

12 Q. And this plant will be dispatched to serve Entergy
13 Louisiana's load and Entergy Mississippi's load and
14 Entergy Gulf States' load; is that correct?

15 A. The System Agreement that is in place today, the
16 loads of all the operating companies are integrated
17 together. The dispatcher doesn't know if it's EAI's load
18 or whatever operating company's load. Resources are
19 dispatched and committed to meet that load. And then at
20 the end of the month, there's an after the fact
21 accounting that distributes the costs or allocates the
22 costs for running the system. This is an EAI resource.
23 It's a very efficient resource, is a low operating cost,
24 and to the extent that that resource was operated and
25 Entergy Arkansas' load required it, then Entergy Arkansas

1 is going to get that low cost energy. It's going to have
2 first call on that low cost energy. If it doesn't need
3 it, then the other operating companies will buy it. But
4 the point is the big advantage for EAI owning it is
5 highly efficient resources.

6 MR. DONAHUE: No further questions.

7 CHAIRMAN HONORABLE: Thank you, Mr. McMurray.

8 MR. MCMURRAY: Thank you, Madam Chairman.

9 CROSS-EXAMINATION

10 BY MR. MCMURRAY:

11 Q. Good morning, Mr. Castleberry.

12 A. Good morning.

13 Q. Looking first at your exhibit you just introduced,
14 Exhibit KWC-4, the page saying *Power Finance & Risk*,
15 that's not an official document, is it? That's a trade
16 press? Would we call that trade press?

17 A. Yes, sir. It's my understanding.

18 Q. And looking at the second to last paragraph, when
19 there's a -- I guess the third line right after 800 to
20 \$1,000 per kW there's a reference and, quote, the market
21 is coming to equilibrium says one deal watcher. We don't
22 know who that deal watcher is, that, quote, deal watcher
23 is, do we?

24 A. No, sir. I don't.

25 Q. And that would be presumably that person's unnamed

Pages 231 – 322 Intentionally Omitted

EXHIBIT 7

Excerpts From Order No. 14 In APSC Docket 06-152-U

Pages 2 – 34 Intentionally Omitted

customers certainly would be harmed (T(B). 63). As Mr. McDonald noted, Independent Power Producers ("IPP") sellers act in their own economic interest based upon current circumstances and their view of the future, as has already been seen when one potential seller withdrew a bid because of changed perceptions of market value (T(B). 147).

The Commission also is persuaded by EAI's concern regarding potential negative commercial implications arising from delaying the closing as Mr. Falkenberg recommends. As EAI noted, ITAs or interim PPAs have been negotiated with the sellers for all of the prior acquisitions by other Entergy Operating Companies of existing CCGT power plants or Combustion Turbines for the specific purpose of providing a "bridge" transaction from the time of execution to the closing of the acquisition. The Commission does not believe it is appropriate to risk a potential negative reaction from the wholesale market, which ultimately could adversely affect all retail customers in Arkansas, or to potentially make it more difficult to transact with other parties on what historically have been commercially reasonable terms (T(B). 63-64).

Issue IV. The Selection of an Acquisition v. PPA

Both Messrs. Falkenberg and Woodruff take issue with the Company's decision to purchase the plant rather than enter into a long-term PPA. Both witnesses suggest that the acquisition decision reflected the Company's bias against a PPA and in favor of an acquisition. Mr. Woodruff concludes that this issue should be addressed through changes to the Commission's rules regarding the competitive solicitation process, and Mr. Falkenberg uses this issue as part of the reason that he recommends that the Commission should not approve the transaction. Both recommendations are rejected (T(B). 362, 366-367, 468).

EAI asserts that it selected an asset acquisition as the preferred form for the transaction rather than entering into a long-term PPA because it was determined that the acquisition alternative provides greater benefits for customers. The RFP economic evaluation indicated that the economics of the Ouachita PPA proposal and acquisition proposal were comparable, with the PPA alternative being slightly less costly. However, the RFP economic evaluation did not take into account all the considerations that might influence the relative value of structuring the transaction as a PPA or as an acquisition. Given that the RFP economic results were close, some of these considerations had the potential to change the relative merits of the two alternatives. In light of these circumstances, a supplemental analysis was prepared to assess the effect of value drivers that were not captured or not fully captured by the RFP analysis (T(B) 79-80).

The supplemental analysis considered a number of value drivers including, but not limited to, financing flexibility, counterparty risk, investment optionality, and operating flexibility. Some value drivers were quantified; others were not. The analysis indicated that some value drivers favored the PPA alternative. However, most favored the acquisition alternative. On the whole, the results of the analysis indicated that the acquisition alternative provides greater benefits to the Company's customers, including a number of benefits in the form of optionality or flexibility that would not be available under the PPA alternative (T(B). 80-81).

The Commission agrees with EAI's analysis of the issue and concludes that the acquisition alternative was appropriately evaluated to be a more attractive transaction structure than a long-term PPA. Moreover, the Commission agrees that some of the operational

synergies discussed by EAI that can be achieved through an acquisition could not be realized under a PPA scenario.

Mr. Woodruff further recommended that the scope of work for an IM should explicitly include the review and analysis of a utility's evaluation of and choice between ownership and PPA options, and that the IM should express an opinion on whether the Company's specific choice was the best choice. Mr. Woodruff stated that the IM analyses might even explicitly disagree with a decision or identify a flawed decision process (T(B). 542). EAI witness Mohl explained in his rebuttal testimony that the IM's proper role is to ensure the competitive solicitation process is carried out fairly and impartially and not to be a decision maker, noting that the ultimate responsibility for decision-making lies with the utility (T(B). 78). Mr. Woodruff did not disagree with Mr. Mohl on this point, but maintained his belief that the participation of an IM in this part of the process may change the nature of the Company's analysis.

Mr. Woodruff suggests a change to the RFP process that is not appropriate to decide in this Docket. The Commission considered the need for rules regarding resource planning and procurement in Docket No. 06-028-R. In Order No. 6 in that Docket, the Commission elected not to adopt rules regarding the conduct of competitive solicitations, other than to generally require the use of a competitive process. This is not the proper docket to weigh or determine the merits of Mr. Woodruff's suggestion. Should the Commission choose to address his concern, the Commission will do so in a rulemaking docket that would include all of the parties that participated in the Resource Planning Docket.

Pages 38 – 52 Intentionally Omitted

EXHIBIT 8

**Excerpts from Mr. Hugh McDonald's Phase II (B) Rebuttal
Testimony in APSC Docket 06-152-U**

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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

PHASE II(B) REBUTTAL TESTIMONY
OF
HUGH T. MCDONALD
PRESIDENT AND CHIEF EXECUTIVE OFFICER
ENTERGY ARKANSAS, INC.

ON BEHALF OF
ENTERGY ARKANSAS, INC.

FEBRUARY 26, 2008

Pages 1 – 5 Intentionally Omitted

1 **III. SALE OF ONE-THIRD OF PLANT OUTPUT TO EGSL**

2 Q. IN ITS APPLICATION, EAI REQUESTED THE APSC APPROVE A
3 ONE-THIRD SALE OF THE OUACHITA PLANT TO EGSL. WHAT
4 POSITION DID THE OTHER PARTIES TAKE ON THIS ISSUE?

5 A. The Staff witness, Richard Hornby, recommended that the APSC and EAI
6 do whatever they could to obtain the additional one-third of the plant for
7 EAI to serve its retail customers. Mr. Hornby also recommended that the
8 APSC consider limiting the term of the sale to EGSL to expire in
9 December 2013, when EAI's participation in the System Agreement ends.²

10 AG witness Keith Woodruff recommended that the APSC condition
11 approval of the Ouachita Plant purchase on EAI's retaining the entire
12 output of plant to serve its retail customers.³ AEEC witness Randall
13 Falkenberg made no specific recommendation on this issue because he
14 recommended in general that the APSC deny the Company's request to
15 purchase the Ouachita Plant.⁴

16
17 Q. DOES EAI HAVE DISCRETION TO ALTER THE TERMS OF THE SALE
18 TO EGSL?

19 A. No. As I explained in my Phase II(A) sur-surrebuttal testimony, the
20 Operating Committee is charged with determining the appropriate
21 allocation of generating resources among the Operating Companies. The
22 Operating Committee does this pursuant to its authority under the Entergy

² Hornby Direct Testimony at 7-8.

³ Woodruff Direct Testimony at 21.

⁴ Falkenberg Direct Testimony at 2.

1 System Agreement, a contract among the Operating Companies that is
2 also a tariff subject to the exclusive jurisdiction of the FERC.⁵ In its
3 exercise of this authority, the Operating Committee has determined that
4 the Ouachita Plant should be allocated two-thirds to EAI and one-third to
5 EGSL, subject to the necessary regulatory approvals. EAI cannot
6 unilaterally alter the Operating Committee's determination or take actions
7 inconsistent with such determination. In this case, the Operating
8 Committee has set a condition on EAI's purchase of the Ouachita
9 Plant - that EAI sell one-third of the capacity and associated energy on a
10 long-term basis to EGSL under Service Schedule MSS-4 of the Entergy
11 System Agreement, and that EGSL be granted an option to convert that
12 purchase at a future time to ownership.

13
14 Q. SOME PARTIES SUGGESTED THE OPERATING COMMITTEE'S
15 DECISION WAS UNFAVORABLE TO EAI. PLEASE RESPOND.

16 A. The decision was not unfavorable to EAI. As I have described previously,
17 two resources offered in response to the 2006 Long-Term RFP that were
18 determined to be suitable to meet the load-following capacity needs of EAI
19 were selected to a short list for final consideration. One of the resources
20 was in south Arkansas, and the other was the Ouachita Plant. Both

⁵ See, e.g., *Entergy Louisiana, Inc. v. Louisiana Pub. Serv. Comm'n*, 539 U.S. 39; 123 S. Ct. 2050; 156 L. Ed. 2d 34, (U.S. 2003) ("Where, as here, public utilities share capacity, the allocation of costs of maintaining capacity and generating power constitutes "the sale of electric energy at wholesale in interstate commerce." 16 U.S.C. § 824(b)(1) [16 USCS § 824(b)(1);" "It matters not whether FERC has spoken to the precise classification of ERS units, but only whether the FERC tariff dictates how and by whom that classification should be made. The amended system agreement clearly does so, and therefore the LPSC's second-guessing of the classification of ERS units is pre-empted.")

Pages 8 – 20 Intentionally Omitted

FEDERAL REGISTER NOTICE OF COMPLAINT

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UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY
REGULATORY COMMISSION

ARKANSAS ELECTRIC ENERGY)
CONSUMERS, INC.)
)
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.)

Docket No. EL08-_____

NOTICE OF COMPLAINT

August __, 2008

Take notice that on August __, 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") to review whether Entergy Corporation's decision to acquire a combined cycle gas turbine generating plant located near Sterlington, Louisiana, called the Ouachita Plant violates the Entergy System Agreement and is otherwise just and reasonable as required by the Federal Power Act. The AEEC Complaint also asks the Commission to determine that the Ouachita Plant is an Entergy Arkansas resource rather than an Entergy system resource.

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, NE., 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, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: _____

Kimberly D. Bose,
Secretary

Document Content(s)

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