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OUR FILE NUMBER

38,107

December 1, 2011

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Re: Docket No. U-29764, Entergy Successor System Agreement Issues

Dear Commissioners:

Entergy recently filed an interlocutory appeal seeking to halt the proceeding considering the Commission's options for the Entergy System Agreement after the withdrawal of Entergy Arkansas and Entergy Mississippi from the Entergy System. Entergy Arkansas will exit the System at the end of 2013, with enormous potential consequences for Entergy Louisiana and Entergy Gulf States. The attached response explains that Entergy should not be allowed to shut down the proceeding designed to develop protections for Louisiana. The reasons, as described more fully in the response, are the following:

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The Commission has several vital issues facing it regarding the imminent withdrawal of Entergy Arkansas and Entergy Mississippi. The Commission must decide whether it wishes to support a new agreement to govern transactions on the Entergy System, and what terms should be included in any new agreement, or whether it believes changes should be made to the existing System Agreement to protect the interests of Entergy's Louisiana ratepayers. The Staff, with the assistance of Stone Pigman and Kennedy and Associates, has been investigating these issues and has a procedural schedule in place to allow for a recommendation and Commission consideration in the third quarter of 2012.

Entergy seeks to upset this schedule and to indefinitely delay the Commission's consideration of post-System Agreement successor arrangements. The administrative law judge presiding over this proceeding rejected Entergy's motion, finding it would "impede [an] investigation" within the constitutional and statutory authority of the Commission and "fly in the face of Commission directive." [Ruling at 9].

Entergy claims that the post-System Agreement proceeding should be shut down because Entergy withdrew its proposal for a successor arrangement. But Entergy should not control whether and when the Commission considers potential successor arrangements. Decisions must be made imminently, and the Commission should be fully informed in making those decisions. The purpose of this docket is to investigate, inform the Commission, and seek to influence the details of potential successor arrangements. Other regulatory agencies, particularly the APSC, are aggressively pursuing this course. The Federal Energy Regulatory Commission has stated that it expects Entergy to negotiate a successor arrangement with all interested parties, including the regulatory commissions. Shutting this proceeding down would put the Louisiana Commission at a disadvantage by preventing it from influencing the development of the agreement.

Entergy also claims that this proceeding may overlap with Docket No. U-32148, the MISO change of control proceeding. But the fact that RTO membership might require modifications to the System Agreement provides more reason, not less, to thoroughly consider post-System Agreement arrangements for resource planning, transactions and operations. The System Agreement or a successor arrangement will allocate the costs and benefits if Entergy joins MISO.

This docket *will not* delay the RTO proceeding. The Staff in both dockets, under the direction of the Executive Secretary, has coordinated to ensure there is no duplication of effort. If information developed in this docket would aid the Commission in that docket, the Staff will simply provide a report.

Entergy further claims that this docket addresses issues within the exclusive jurisdiction of the FERC. That claim has no merit. The Commission has the authority to investigate any and all issues it deems appropriate to inform itself regarding issues that affect Louisiana consumers. FERC jurisdiction certainly has not stopped the Arkansas Commission

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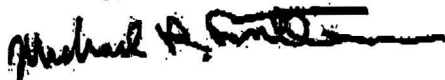
December 1, 2011

from conducting an investigation and imposing requirements on Entergy Arkansas with respect to post-System Agreement arrangements.

As you know, Entergy Arkansas will exit the System at the end of 2013. The Arkansas Commission recently issued an order requiring Entergy Arkansas to complete its post-withdrawal reorganization plans *on or before January 11, 2012*. The Arkansas Commission issued a lengthy series of detailed edicts for this plan, many of which have huge potential cost consequences for Louisiana. For instance, the Arkansas Commission is requiring Entergy Arkansas to (1) cease the joint planning of generation and purchase power agreements; (2) extricate itself entirely from successor arrangements with the other operating companies; (3) cease participation in any joint operations, commitments or dispatch of generating units and (4) withdraw from any cost sharing or cost allocation arrangements with the other operating companies. [Arkansas Order at pp. 58, 84, 108-08]. The cost allocations from service companies exceed a billion dollars annually. Entergy Arkansas responded that it "appreciates the Commission's guidance on these matters. . . ." [BAI Motion for Clarif. at 7, APSC Docket No. 10-011-U].

Entergy would have this Commission shut down its consideration of post-System Agreement issues while the Arkansas Commission simultaneously moves forward on an aggressive schedule and imposes rigid requirements on Entergy Arkansas. This Commission should not acquiesce to Entergy's demands and permit the Arkansas Commission to single-handedly shape the post-System Agreement landscape.

Sincerely,



Michael R. Fontham

Of

Stone Pigman Walther Wittmann L.L.C.

MRF/sxn

Enclosure

cc: Service List, Docket U-29764 (via e-mail)

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

DOCKET NO. U-29764

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE

In re: Entergy Louisiana, LLC and Entergy Gulf States, Inc., retail proceeding to estimate and implement in retail rates in 2007 the rough equalization impact of FERC Opinion No. 480 and 480-A, FERC Docket EL01-88-000, LPSC v. Entergy Corp. Pursuant to the directive of the Commission at the January 16, 2008 Business and Executive Session, the Staff will conduct an investigation per that directive with the purpose of making recommendations to the Commission regarding the advisability of negotiating a new System Agreement to govern transactions on the Entergy System upon the withdrawal of Entergy Arkansas, Inc. or Entergy Mississippi, Inc., and the terms of any such new System Agreement, including the feasibility of adopting a new Entergy System Agreement before the time for withdrawal of those companies, retaining the benefits to Louisiana consumers of Opinions 480 and 480-A of the Federal Energy Regulatory Commission. Additionally, this docket will review retail issues related to the computations contained in Attachment A to Rider Schedules RPCEA (Rough Production Cost Equalization Adjustment Rider) and NRPCEA (Non-Fuel Rough Production Cost Equalization Adjustment Rider) and supporting workpapers that has been filed for customer billings for June 2009 through December 2009 and the true up of the recovery through the Rider Schedules. The docket will permit the filing and disposition of motions addressing the Commission's jurisdiction to determine the jurisdictional allocation methodology issue with respect to 2008 and 2009 RPCE payments to EGSL and ELL.

**RESPONSE OF THE LOUISIANA PUBLIC SERVICE COMMISSION STAFF TO
JOINT MOTION OF ENTERGY LOUISIANA LLC AND ENTERGY GULF STATES
LOUISIANA LLC FOR RECONSIDERATION AND INTERLOCUTORY REVIEW**

This Louisiana Public Service Commission Staff ("Staff") files this response to the Joint Motion of Entergy Louisiana LLC and Entergy Gulf States Louisiana LLC for Reconsideration and Interlocutory Review ("Motion for Interlocutory Review"). The ALJ Ruling that Entergy seeks to overturn was rendered on November 10, 2011 in response to the Motion of Entergy Louisiana LLC ("ELL") and Entergy Gulf States Louisiana LLC ("EGSL"), which effectively asks the Commission to shut down a proceeding that the Commission commenced to protect Louisiana ratepayers from the adverse consequences of Entergy Corp.'s

breakup of the Entergy System Agreement. [Entergy Corp. and the Louisiana companies will sometimes be referred to as "Entergy"]. With enormous potential cost consequences now only two years away, Entergy requests that the Commission cease its efforts to ensure that Louisiana customers receive fair treatment, and instead wait for Entergy to propose specific changes in cost allocations at the FERC that will affect Louisiana consumers indefinitely. Many of the cost allocation changes are now being directed by the Arkansas Public Service Commission ("APSC").

SUMMARY OF RESPONSE

The Entergy System since at least the mid-20th century has planned and operated its regulated generation and transmission facilities on a single-system basis. Under Federal Energy Regulatory Commission ("FERC") and court precedent, the resulting costs must be apportioned so that each company's share is roughly equal. After the FERC issued Orders enforcing this standard in 2005, however, Entergy directed Entergy Arkansas, Inc. ("EAI") to withdraw from the Entergy System Agreement and remove the System's most-economic generating assets. Entergy Mississippi, Inc. later filed a notice of withdrawal as well.

The breakup of the System Agreement has enormous potential cost consequences for consumers in the various jurisdictions. The APSC has instituted a proceeding to examine all aspects of the breakup and has issued a number of Orders regarding the details of EAI's exit. Essentially, the APSC insists that Entergy remove EAI from an allocation of any common costs, including costs unrelated to the System Agreement, although the costs were incurred to serve EAI as well as the other companies. See Order No. 54, Docket No. 10-011-U (APSC) at 86-87. EAI recently filed a pleading saying it "appreciates the [APSC's] guidance on these matters. . . ." [EAI Motion for Clarif. at 7]. In New Orleans, the City Council similarly has pursued an

investigation of the breakup and its consequences for New Orleans ratepayers, without objection from Entergy.

Before the LPSC, on the other hand, Entergy seeks to strike issues and stay the proceedings until *Entergy and the other jurisdictions decide* how resources should be planned and costs allocated. It asserts that the Commission's regional transmission organization ("RTO") transfer-of-control docket could look at the System Agreement consequences that will result from joining an RTO, and all other aspects of the System Agreement investigation are beyond the Commission's authority. [Motion for Interlocutory Review]. Entergy asserts that this Commission (unlike other commissions) can have no say in how Entergy plans to serve customers or how it allocates billions of dollars of costs. [*Id.*].

The presiding administrative law judge ("presiding judge") did not accept Entergy's arguments. She ruled that "[t]he Commission is a regulator, not just a passive bystander." [Ruling at 9]. She determined that Entergy's motion, if granted, would "impede [an] investigation" within the constitutional and statutory authority of the Commission and "fly in the face of Commission directive." [*Id.*]. The presiding judge determined that the Commission needs to inform itself and determine appropriate strategies concerning resource planning, cost sharing, contingency plans, the validity of ELL ratepayers paying transmission upgrade costs incurred for EAI, and the modifications to the System Agreement necessary to apportion RTO costs and benefits. These rulings are correct. They should not be reconsidered and the Commission should not intervene on an interlocutory appeal to overrule them.

OPPOSITION TO INTERLOCUTORY REVIEW

Entergy requests that the Commission provide interlocutory review of the ruling of the presiding judge. Rule 57 of the Commission's Rules of Practice and Procedure provides that a party may obtain interlocutory review only upon a showing of irreparable harm resulting

from the ruling: "Any party may apply for immediate review of an interlocutory ruling, which may be obtained only upon a showing of irreparable injury, as defined in the Louisiana jurisprudence."

The presiding judge's ruling allows an investigation to proceed that was instituted in 2008. Nothing has changed to suddenly threaten irreparable harm. Entergy's claim of "irreparable harm" did not arise until Entergy decided that the Commission should not be investigating Entergy's cost allocations. Entergy argues that the investigation is *inconvenient* for Entergy's busy employees, but that claim does not establish irreparable injury. Apparently Entergy believes it can devote resources to the Arkansas System Agreement Proceeding, and the New Orleans System Agreement Proceeding, but an LPSC proceeding is too inconvenient. [Entergy Motion at 12 (Entergy is busy in "other retail regulatory jurisdictions"). That argument is ridiculous.

Entergy argues it is unconstitutional for the Commission to perform an investigation. [Entergy Motion at 10]. That claim is specious. As the presiding judge ruled, "[n]o matter whether there might be any restraints on certain actions, there are no restraints on the Commission's becoming fully informed." [Ruling at 8]. Beyond that, Entergy asserts that the Staff's recognition of changing circumstances that will affect cost allocations makes it difficult for Entergy to respond. But if the Staff did not react to changing circumstances -- many of which result from Entergy's actions -- it could not aid the Commission in protecting ratepayers. Entergy's conclusory arguments do not justify shutting down the proceeding and allowing other regulatory bodies, particularly the APSC, to guide Entergy's actions.

BACKGROUND

1. Commission directive in this docket and subsequent events.

After EAI and EMI announced their withdrawal from the System Agreement, the Commission recognized that the breakup would have huge potential consequences for Louisiana consumers. In 2008, the Commission decided to expand the "System Agreement" docket to include an investigation of the planning and cost consequences of the withdrawals. The Commission unanimously approved a motion that was sponsored by Commissioner Field. He explained the reasons for the investigation as follows:

The potential withdrawal of EAI and EMI raise complex and serious issues with the future of the Entergy System; and, particularly, the Louisiana companies. These issues include the effect on transmission and generation planning, resource sharing, energy exchanges and cost allocations. To properly -- plan properly for potential changes in System operation, the Commission should begin addressing these issues now. . . .

[Bus. & Exec. Sess. Tr. at 75 (Jan. 16, 2008)]. The Commission directed the Staff to conduct an investigation for the purpose of: a) advising the Commission regarding the negotiation of a successor agreement and the terms of any such agreement; and b) retaining the benefits of the rough equalization cost standard recognized by the FERC in Opinions No. 480 and 480-A. [*Id.*].

Entergy initially cooperated in the investigation. The Staff sought and obtained information on resource planning, System operation, transmission planning and operation, service company involvement in the planning process, and terms of a proposed successor arrangement. [Initial Report to Commission 16-18]. Entergy initially proposed a new agreement -- the Commitment, Operations and Dispatch Agreement ("CODA") -- to take the place of the System Agreement. Subsequently, however, Entergy committed to the APSC that it would not permit any company to enter a successor arrangement without approval of the

applicable retail regulator. [Letter from EAI President McDonald to APSC, LPSC 7-14 Add. 4].

Entergy later withdrew the CODA, apparently at the urging of the APSC.

Entergy earlier this year announced its intention to join an RTO -- the Midwest System Operator ("MISO") RTO. Entergy's participation in that or in any other RTO produces cost and benefit allocation issues for the Entergy companies. In Arkansas, the APSC is moving aggressively to require EAI to join an RTO independent of the other operating companies, which compounds these allocation issues. Thus, even if an RTO may produce benefits to the Entergy region, the impact on any company cannot be known until the procedure for allocating the RTO costs and benefits *within Entergy* is determined. The current System Agreement will have to be modified to deal with these issues, or a successor arrangement created to ensure fair allocations to the Louisiana companies.

In order to deal with these issues, the Commission's internal Staff met with counsel and consultants in both the System Agreement and RTO change-of-control dockets. It was decided that the change-of-control docket would deal with the issues before the Commission there related to the "public interest" finding necessary for approval of a change in control, and the Staff in this docket would address the likely allocations of benefits and costs resulting from an RTO that would occur under the System Agreement and any changes to the System Agreement that would be necessary or desirable given RTO membership. To accommodate the schedule in the other docket, the Staff in this docket will simply provide a report explaining any findings to the Commission. All the issues in that docket will remain in that docket.

Entergy initially *agreed* to provide certain information regarding RTO benefit and cost allocations through the System Agreement. Entergy even filed testimony on the subject,

although it was non-informative. [Louiselle Dir. Test. at 2-3]. Entergy chose not to address the other pending issues in the proceeding.

In response, Staff witness Stephen Baron filed testimony reviewing the Staff concerns about past and present resource planning, cost allocations, and the RTO benefit and cost allocations that will be handled through the System Agreement or a successor arrangement. He recommended that Entergy be called upon to provide information on the following matters:

1. Necessary changes to the current System Agreement required for RTO membership;
2. Reasons for withdrawing the CODA;
3. How Entergy will protect Louisiana customers from paying the transmission upgrade costs incurred by ELL so that EAI can receive power from the Ouachita generating station, which will be used by EAI;
4. System resource planning in the past as compared to future planning -- particularly, whether planning was and will be done on a "System" basis;
5. What actions the Louisiana companies have taken to retain the benefits of rough equalization, as EAI has acted to eliminate those benefits;
6. Whether and how Entergy is planning for the possibility that the D.C. Circuit will reverse the FERC decision permitting EAI to withdraw.

Entergy then filed its motion to strike much of Mr. Baron's testimony and cut off the Commission's inquiry. The presiding judge denied the motion. By now asking for interlocutory review, Entergy is effectively requesting that the Commission terminate its investigation.

2. FERC directive to negotiate a new Agreement.

As the Commission is aware, the FERC has issued Orders permitting EAI and EMI to withdraw from the System Agreement. The Commission has appealed that ruling. The FERC has also stated that it expects a successor agreement or arrangement to be negotiated by Entergy and *all interested parties*. In *Entergy Services, Inc.*, 129 F.E.R.C. ¶ 61,143 (2009), the FERC stated: "[W]e expect Entergy and all interested parties to move forward and develop the details of all needed successor arrangements." *Id.*, ¶ 63. In its brief to the D.C. Circuit court of appeals, the FERC reiterated its understanding that all interested parties were supposed to be working on successor arrangements. [FERC Br. at 10].

The purpose of this docket is to investigate, inform the Commission, and seek to influence the details of successor arrangements. Other regulatory agencies, particularly the APSC, are aggressively pursuing that course. Entergy does not want the LPSC to do so, even though ELL and EGSL constitute 40 percent of the System. But agreeing to shut down the investigation at Entergy's demand would only prejudice Louisiana ratepayers as immense cost allocation issues are addressed and resolved.

ARGUMENT

Entergy's motion to halt this proceeding should be rejected. The System Agreement has two essential purposes: a) to prescribe the goals and methods for planning Entergy's generation and transmission facilities, and b) to allocate the costs associated with the System planning approach. The Commission needs to inform itself as to the planning approach used under the current System Agreement arrangement, so that it can influence the contract in a way that protects Louisiana ratepayers in the future. The Commission also needs to examine how to avoid unfavorable cost allocations.

Entergy's motion to stay the proceeding pending the RTO docket is similarly meritless. Entergy agreed to address certain transmission issues in this docket, but now wishes to retract that agreement and address them only in the RTO docket. But an RTO will impose costs and benefits that need to be allocated among the operating companies through the System Agreement or a successor agreement. Further, it will require changes in Entergy's dispatch of its units and its transmission rules. The issues need to be addressed in both dockets, but the System Agreement impacts need to be dealt with in this proceeding. If there are benefits from an RTO, they will do Louisiana consumers no good unless the System Agreement allocates a fair share to them.

This is the only jurisdiction in which Entergy seeks to shut down a retail System Agreement proceeding. In Arkansas and New Orleans, Entergy has cooperated with its regulators. Entergy provides no reason to support its unwillingness to do so in this jurisdiction. Therefore, the appeal should be denied.

A. The Purpose of This Proceeding Is to Investigate System Agreement Changes and Potential Successor Arrangements With a Goal of Protecting Louisiana Ratepayers, and Encompasses Issues Relevant to That Purpose.

Entergy is incorrect in contending that issues relating to Entergy's planning and the extent to which individual companies have and should protect their own interests is not properly within this docket. The question of Entergy's future planning requirements is not before the FERC and will not even be considered by the FERC until it is too late to influence the initial proposal. After that, the LPSC would have to show the proposal was unjust and unreasonable to obtain a modification. To evaluate that issue effectively, the Commission must know how Entergy planned in the past and whether it intends to change that planning. The fact that a court proceeding is pending concerning the rough equalization *remedy* does not preclude an inquiry into current or future planning.

Entergy has been on notice of the scope of the Staff's investigation for the past two years. The Staff has conducted technical conferences that have covered cost allocation provisions, resource planning issues and dispatch and operational issues under potential successor arrangements. The Staff has issued discovery on those topics. The Staff has submitted several status reports describing the Staff's investigation into the economics of alternative potential arrangements and key cost allocation, planning, and operation provisions of alternative arrangements. [E.g., Attach. B]. Potential revisions necessary for RTO benefit and cost allocations constitute only one area of several that the Staff has investigated. All of these issues are properly within this docket.

Entergy's motion suggests that the proceeding should be shut down because the Staff testimony represents an attempt to litigate matters pending in the D.C. Circuit. That is not true, because the matter pending in the D.C. Circuit is the legitimacy of the FERC's decision to allow EAI and EMI to withdraw from the rough equalization remedy. The legitimacy of the FERC decision is not an issue in this case. The Staff does not seek to litigate that issue.

What the Staff does seek is information concerning the FERC's pronouncement that individual operating companies always had the responsibility to protect their own interests, regardless of the provisions of the System Agreement. Entergy did not question this finding, and appears to have supported it. It is certainly legitimate for this Commission to inquire as to whether Entergy miscommunicated the requirements of the System Agreement in the past and to determine what it *truly* will do in the future. ELL and EGSL did not take actions to protect their independent interests in the past, so their actions are inconsistent with Entergy's apparent position at the FERC. Neither the D.C. Circuit nor the FERC has undertaken that inquiry, and neither is likely to do so.

This factual issue is crucial to any determination of the Commission. Depending on Entergy's "System planning" representations over several decades, the Commission permitted Entergy to locate natural gas rather than base load units in Louisiana. The base load units were located elsewhere to optimize System costs. The Commission clearly had no idea that the Companies should have been planning to diversify their own fuel mixes to benefit their respective customers. The exact nature of Entergy's past and current planning needs to be identified, along with any changes that are planned for the future.

Entergy itself committed that it will not pursue successor arrangements without the agreement of retail regulators. Entergy witness Louiselle's testimony concedes that the System Agreement has got to change. [e.g., Louiselle Dir. Test. at 3 (might be eliminated) (certain changes required), 8 ("certain" that RTO will necessitate changes), 9, 10, 11]. Entergy was aware of FERC proceedings when it made its commitment. Therefore, its position is baseless and conflicts with its own prior representations.

B. Entergy's Motion to Stay Any Consideration of the Additional Issues It Agreed to Review in This Proceeding Has No Merit.

After agreeing to consider the System Agreement effects of joining an RTO in this docket, the Companies now retrench and advocate staying this proceeding until Entergy makes a filing with the FERC to approve its MISO proposal. The Companies effectively contend that it would be pointless to examine how the benefit and cost allocations would affect Louisiana consumers through the System Agreement, until after the RTO membership is approved. Entergy seeks a "public interest" determination in the transmission docket without an examination of the impacts on customers in either docket.

The Staff recognizes that issues in each docket affect the other. But an examination of the benefit and cost allocations must be made in order to evaluate the advisability

of approving the transfer of control. That requires the expertise available in this docket concerning System Agreement provisions and how modifications to those provisions might realistically operate. The Staff has made efforts to communicate this concern to Entergy and work out the most economic approach, but the issues must be analyzed comprehensively.

Just as important is the effort to ensure that *the right provisions* are introduced into the successor arrangement to ensure that any benefits of RTO participation actually reach Louisiana customers, and that there are no undue cost allocations. That issue can only be dealt with effectively in this docket. Other regulators are doing so in their System Agreement retail dockets.

These issues need to be addressed now, not later. Only if the Commission informs itself now can it adequately control the future consequences for ratepayers. Entergy's motion seeks to have the Commission abdicate that responsibility.

C. The Propriety of the Ouachita Transmission Issue is Properly Within the Commission's Jurisdiction.

The Companies argue that the Commission cannot investigate Entergy's allocation to ELL of transmission upgrade costs associated with EAI acquiring the Ouachita generating unit, which will provide power to EAI after it withdraws from the System Agreement. Entergy relies solely on the fact that the Commission authorized a complaint filing at the FERC regarding the allocation of transmission costs. Entergy does not address why the FERC should decide whether Louisiana ratepayers should pay costs associated with an EAI acquisition.

The *allocation* of costs may properly be a FERC issue. An allocation of costs to an operating company for an acquisition made to benefit a different operating company, no longer a part of the System, violates the Federal Power Act and Entergy's fundamental principle of "participant funding." That principle requires the requesting participant to advance the costs

of necessary upgrades for a new resource. The FERC Ouachita proceeding thus will be designed to ensure that the allocation is made to the correct *company*.

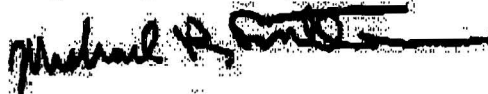
That is an entirely different issue than the issue of whether the decision of ELL to accept the allocation was reasonable. Ratepayers should not be required to pay costs incurred for an affiliate of the company, especially if the affiliate is leaving the System. There is no FERC tariff that assigns the Ouachita costs to ELL; Entergy simply made that decision. Thus, there is no basis to claim FERC preemption of the issue.

The allocation of transmission costs for EAI's Ouachita acquisition is an issue in part because of EAI's withdrawal from the System Agreement. The proper treatment of the costs could and should be dealt with in a successor arrangement. Therefore, the issue properly should be considered in this proceeding.

CONCLUSION

Entergy's motion has no basis. Entergy's conclusory assertions are no substitute for actual support. Therefore, the motion should be denied.

Respectfully submitted,



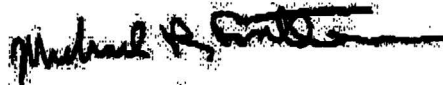
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Counsel for the Louisiana Public Service Commission

CERTIFICATE

I hereby certify that a copy of the above and foregoing Response has been served upon all counsel of record by email this 1st day of December, 2011.



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From: Justin Swaim**Date:** Thursday, December 01, 2011**Pages:** 18**Phone:** (504) 593-0979**File No.:** 038107**Message:**

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