



Entergy Arkansas, Inc.  
425 West Capitol Avenue  
P. O. Box 551  
Little Rock, AR 72203-0551  
Tel 501 377 5876  
Fax 501 377 4415

**Laura Landreaux**  
Vice President  
Regulatory Affairs

November 17, 2017

Ms. Mary Loos, Secretary  
Arkansas Public Service Commission  
1000 Center Street  
P. O. Box 400  
Little Rock, AR 72203-0400

Re: APSC Docket No. 17-052-U  
In the Matter of Entergy Arkansas, Inc.'s Application for Approval of  
Proposed Internal Restructuring and for Related Relief

Dear Ms. Loos:

Please find enclosed the Highly Sensitive Protected Information (HSPI) for filing under seal pursuant to Arkansas Public Service Commission Interim Protective Order No. 1 in Docket No. 17-052-U issued October 4, 2017:

- HSPI Direct Testimony of James I. Warren

This information is commercially sensitive and includes cost and modeling information that if publicly disclosed would expose the company to an unreasonable risk of harm.

Should you have any questions concerning this filing, please call me at (501) 377-5876 or Abigail Arnold at (501) 377-3526.

Sincerely,

/s/ Laura Landreaux

LL/aa

Attachments

c: All Parties of Record

**ENTERGY ARKANSAS, INC.  
ARKANSAS PUBLIC SERVICE COMMISSION  
DOCKET NO. 17-052-U**

**DATE REQUESTED: NA**

**DATE PROVIDED: November 17, 2017**

**DATA REQUEST: NA**

**REQUESTING PARTY: NA**

**COMPANY CONTACT:**

Tucker Raney

[traney@entergy.com](mailto:traney@entergy.com)

501-377-3500

**HIGHLY SENSITIVE PROTECTED INFORMATION COVER SHEET**

Requested Information	
1. Document Title	<ul style="list-style-type: none"> <li>• HSPI_17-052-U_Holdco_Warren Direct_As Submitted 11-17-17.pdf</li> </ul>
2. Description of the document containing the Confidential Information	Please see the attached partially highly sensitive direct testimony of James L. Warren on behalf of EAI. The partial highly sensitive pages 5 through 23 contain expert tax law analysis of the Company's restructuring application.
3. Identification of each item of Confidential Information contained in the document	See section 2.
4. The applicable category of Confidential Information listed in the IPO under which each item of the Confidential Information falls	<p>The applicable categories of information listed in the IPO approved in Order No.1 in this proceeding includes:</p> <p>(F) Information or documents reflecting or relating to the financial plans, studies, or presentations of the Company, except to the extent that such information relates to plans that have already been implemented or abandoned or to the extent that such information relates to plans or studies that have already been disclosed publicly;</p> <p>(G) Information or documents reflecting or relating to operating budgets, actual budgets, original budgets, or revised budgets for prospective or projected time periods (not historical), supply or sales forecasts, demand forecasts and similar information including highly sensitive financial forecasts previously submitted under confidentiality agreements or orders to any and all financial ratings services; and</p> <p>(H) Income tax returns and supporting schedules and workpapers. Information or documents submitted to or received from accountants, tax consultants, the Internal Revenue Service ("IRS") or APSC by the Company of its affiliates regarding potential tax implications of the transaction.</p>

	The information also meets part (4) of the standard definition of HSPI regarding business operations or financial, cost or modeling information.
5. A description of why the Confidential Information within the document should be protected including the Company's reasons for claiming that each item of the Confidential Information is consistent with the description provided by the Company in its request for an IPO	See Section 6 below.
6. A description of why any specific item of Confidential Information identified above is claimed by the Company to be Highly Sensitive Protected Information (HSPI) and how such Confidential Information fits within the Commission's definition of HSPI	<p>The information is designated as HSPI because it contains business operations or financial, cost or modeling information which meets part (4) of the definition of HSPI in the IPO in this Docket as well as Categories (F), (G), and (H).</p> <p>This information is commercially sensitive and includes cost and modeling information that if publicly disclosed would expose the company to an unreasonable risk of harm and could cause EAI and its customers to suffer material damage to its competitive and financial position.</p>
7. Has the Confidential Information been previously disclosed? If so, when and in what context?	Not publicly.
8. What is the period of time that the Confidential Information should remain Confidential?	Indefinitely.
9. Have both a redacted and non-redacted version of the document containing the Confidential Information been provided?	No.

## ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF ENTERGY )  
ARKANSAS, INC.'S APPLICATION FOR )  
APPROVAL OF PROPOSED INTERNAL )  
RESTRUCTURING AND FOR RELATED )  
RELIEF )

DOCKET NO. 17-052-U  
ORDER NO. 1

### ORDER

On September 22, 2017, Entergy Arkansas, Inc. (EAI or Company) filed in the above-styled docket a *Motion for Protective Order of Non-Disclosure* (Motion), with the supporting Affidavit of Richard C. Riley, requesting that the Arkansas Public Service Commission (Commission) issue an interim protective order of non-disclosure pursuant to Ark. Code Ann. § 23-2-316 and Rule 4.04 of the Commission's *Rules of Practice and Procedure* (RPP).

By its Motion, Entergy seeks to protect from public disclosure the following Protected Information or categories of Protected Information identified in Paragraph 5:

- a. Information or documents relating to the Company's planned acquisition of capacity and/or energy resources from specific non-affiliated entities, including prices and quantities. Information, proposals, bids, offers or any related information received from marketers, independent power producers or other suppliers, either unsolicited or through a request for proposals, EAI's analysis or contracted analysis of any offers for capacity, energy or other products and services received by EAI, or of the competitive market including bidders lists, bids received, bid evaluations, decision memorandum, documentation related to models used in evaluating bid, and any information that is included in reports provided by an independent monitor;
- b. Information or documents relating to the billing records, including amounts paid or energy consumed, by individual customers of the Company, containing the names of individual customers, or from which individual customers could readily be identified, or with contain the terms of individual contracts, individual usage or individual prices or other individual material terms associated with EAI's business with those customers;

- c. Information or documents relating to EAI's or its affiliates' supply or sales forecasts, demand forecasts, pricing forecasts and similar information, as well as projections of the capacity or energy costs to their customers;
- d. Information or documents relating to the Company's transportation and fuel supply contracts including, but not limited to, information or documents reflecting the terms of gas, coal or other fuel purchases, sale or transportation, as well as all assessments of the Company's actual or potential liability under such contracts prepared by EAI, its attorneys, accountants, or agents;
- e. All current financial and financing information (including, but not limited to, balance sheets, financial statements, operating statements, lending facilities and credit lines, as well as plans, studies, or presentations of the Company) prior to its public disclosure, where appropriate, if the disclosure of the information could cause EAI to suffer damage to its competitive or financial position or cause it to be in violation of any financial or loan agreement covenant, or any state or federal law or regulatory provision;
- f. Information or documents reflecting or relating to the financial plans, studies, or presentations of the Company, except to the extent that such information relates to plans that have already been implemented or abandoned or to the extent that such information relates to plans or studies that have already been disclosed publicly;
- g. Information or documents reflecting or relating to operating budgets, actual budgets, original budgets, or revised budgets for prospective or projected time periods (not historical), supply or sales forecasts, demand forecasts; pricing forecasts and similar information including highly sensitive financial forecasts previously submitted under confidentiality agreements or orders to any and all financial ratings services;
- h. Income tax returns and supporting schedules and workpapers. Information or documents submitted to or received from accountants, tax consultants, the Internal Revenue Service ("IRS") or APSC by the Company or its affiliates regarding potential tax implications of the transaction;
- i. Information or documents relating to planning and strategic business decisions, marketing or operational plans, benchmarking, or other studies or presentation, market evaluations and program plans; plans

for issuance of securities or other sources of funding and similar documents;

- j. Information or documents relating to detailed personnel matters that contain specific information about the activities, salaries and benefits of specific named employees to the extent that such information has not already been disclosed; or containing information of a personal nature, about any specific EAI or affiliated company employee, unless otherwise publicly disclosed;
- k. Reports, workpapers and documents of internal or external auditors which contain (or to the extent they contain) information concerning controls of the Company, any information described therein, or any other non-public information or which otherwise would reflect the Company's operations in a manner which would reveal competitively-sensitive information;
- l. All computer software, files, operating procedures, or other similar competitively-sensitive information to the extent that they contain any information or data described above or represent a propriety product for which disclosure by the Company to a third party is constrained by a contract;
- m. Minutes of meetings of EAI's Resource Planning and Operations Committee ("RPOC") minutes of the Operating Committee for the System Agreement Operating Companies, minutes of the board of directors or shareholders of Entergy Corporation and EAI, or any other executive committee including all presentations or other materials provided in connection with or related to such meetings;
- n. Any information related to Homeland Security concerns or issues or any similar information that is deemed sensitive for reasons of national security or homeland security, including but not limited to, information deemed to be Critical Energy Infrastructure information by the Federal Energy Regulatory Commission ("FERC") or reflecting the location of key facilities which are critical to the Company's ability to deliver electricity for its customers;
- o. Competitively-sensitive negotiated contract prices and terms including, but not limited to, vendor agreements and contracts containing explicit confidentiality provisions;
- p. Documents or other information designated as Confidential or Highly Sensitive Protected Information ("HPSI") or another similar designation (such as Highly Sensitive Protected Material ("HPSM") in other dockets or proceedings;



- q. Information or documents related to valuation of EAI's or its affiliates' respective businesses, transmission business construction plans, financial models, forecasts of capital spending and requirements; analysis of credit metrics or credit quality;
- r. Information or documents containing hourly information, including costs regarding the Company's owned and purchased generation/power;
- s. Information or documents related to plant operating statistics, including availability, equivalent availability, outages, operating range, ramp rate, capacity factors, heat rate and useful life;
- t. Information regarding the operation of the Entergy Operating Companies' Transmission Systems, which is not public;
- u. Information or documents related to Integrated Resource Plans including memoranda, studies, presentations, workpapers, and models associated with those Plans;
- v. Contracts or agreements between EAI and a counter-party (or any affiliate thereof) related to a purchased power agreement ("PPA") including the agreement and schedules and exhibits thereto, and other agreements, documents, analyses or information relating to the negotiation or execution of such contracts or agreements;
- w. Information or documents related to fuel analysis reports and/or pricing;
- x. Contracts and agreements between EAI and third parties regarding the operation and maintenance of EAI-owned or operated generating resources, or a resource included in a PPA (in whole or in part), including analyses related thereto;
- y. Information or studies prepared by a counter-party, Midcontinent Independent System Operator, Inc. ("MISO") or third parties regarding the deliverability of or transmission of energy or other products from the counter-party or a resource included in a PPA that are subject to confidentiality agreement or otherwise constitute non-public information;
- z. Information or documents related to the development, financing, ownership, use, scheduling, operation, and repair of EAI-owned or operated generating resources, or a resource included in a PPA; and

- aa. Non-public information or documents provided to or prepared by MISO with respect to EAI's costs, billings, operations, revenues, or other similar non-public MISO information.

Motion at ¶ 5. *See also*, Riley Affidavit at ¶ 6.

Company Justification

EAI states that the listed Protected Information or category of Protected Information includes or might include certain propriety and sensitive information pertaining to competitive or financial matters or trade secrets. The Company states that release of this information would cause EAI to suffer material damage to its competitive and financial position, would reveal propriety facts and trade secrets and would impair the public interest due to the effect that this disclosure would have on the Company's costs and future relationships with third party vendors. Motion at ¶ 6, Affidavit at ¶ 6.

Additionally, EAI states that information set out in Paragraph 5 of its Motion and other information which may be requested may contain information for which EAI requests Highly Sensitive Protected Information (HSPI) status, and further states that such information, if released, could cause material damage to EAI's competitive or financial position in its respective markets and ultimately to its retail ratepayers. Motion at ¶ 7.

Staff Response

On September 27, 2017, the General Staff (Staff) of the Commission filed its Response to EAI's Motion. Therein Staff states that it does not concede that the information in EAI's Motion is Protected Information or contains information that may necessitate the designation of HSPI, as defined in previous Commission Orders. Staff also states that it does not concede that EAI has provided sufficient evidence pursuant to



the Commission's RPPs to show that the information is subject to protection. Staff's Response at ¶ 5. However, Staff does not object as long as Staff is reserved the right to contest at a future date, upon reasonable notice, EAI's entitlement to a protection for all or portions of the protected information. *Id.* at ¶ 6. Further, Staff requests that all protected information be provided in compliance with Rule 3.02(g) of the Commission's RPPs. *Id.* at ¶ 7.

### Discussion

Arkansas Code Annotated §23-2-316(b) provides as follows:

(b)(1) Whenever the commission determines it to be necessary in the interest of the public or, as to proprietary facts or trade secrets, in the interest of the utility to withhold such facts and information from the public, the commission shall do so.

(2) The commission may take such action in the nature of, but not limited to, issuing protective orders, temporarily or permanently sealing records, or making other appropriate orders to prevent or otherwise limit public disclosure of facts and information.

When considering a request for the entry of a protective order of non-disclosure, the Commission must carefully balance three competing needs, i.e., (1) the Company's need to protect from public disclosure its proprietary facts or trade secrets, (2) the Commission's investigative need to acquire information from the Company in an expeditious and efficient manner, and (3) the public's right of access to information in the possession of the Commission.

The entry of an Interim Protective Order which allows the other official parties the right to contest at a future date the Company's continuing entitlement to the protective order efficiently addresses the first two needs. To protect the public's right of access to the maximum extent possible the Commission directs that the Company hold

to an absolute minimum the amount of information to be protected from public disclosure.

### Ruling of the Commission

Having considered the Company's Motion and Staff's Response thereto, the Commission grants EAI's Motion and finds, orders, and directs as follows:

1. Based upon EAI's assertions of confidentiality, the Commission finds that the categories of Confidential Information identified in EAI's Motion and as set forth above should and shall be protected from public disclosure on an interim basis pursuant to Ark. Code Ann. §23-2-316 and Rule 4.04 of the Commission's RPPs;
2. To protect the public's right of access to the maximum extent possible, the Company shall hold to an absolute minimum the amount of data to be protected from public disclosure;
3. For each specific item of Confidential Information to be filed or submitted in this Docket by EAI, the Company shall affix thereto a written Confidential Information Cover Sheet in the form of Attachment 1 hereto providing detailed and complete responses to the information required thereby;
4. The following definition of HSPI shall be used for purposes of designation of Confidential Information as HSPI:

Highly Sensitive Protected Information is defined as: Documents or information that are commercially sensitive in a competitive electric market that if improperly disclosed would expose the Company to an unreasonable risk of harm, including but not limited to: (1) customer-specific information; (2) contractual information pertaining to contracts that specify that their terms are confidential or which are confidential pursuant to an order entered in litigation to which the Company is a party; (3) market-sensitive fuel price forecasts, wholesale transactions information and/or market-sensitive marketing plans; and (4) business operations or financial, cost or modeling information.

5. As to confidential information covered by the scope of this order, except for HSPI, the authorized reviewing representatives of an official party to this docket shall include its counsel of record in this docket and associated attorneys, paralegals, economists, statisticians, accountants, consultants, or other persons employed or retained by the official party and who are immediately and directly working on matters relating to the above referenced docket on behalf of such official;

6. Access to HSPI by the authorized reviewing representatives of an official party to this docket, other than Staff and the Attorney General, shall be restricted to those reviewing representatives (as defined in § 5 above) who are not themselves participants in the competitive energy and capacity market and who do not represent others who are participants in the competitive energy and capacity market. To be granted access to HSPI reviewing representatives must additionally certify to the Company that they are not themselves participants in the competitive energy and capacity market nor do they represent others who are participants in the competitive electric market. In the event that a reviewing representative ceases to be engaged in this docket, access to protected materials by such person shall be terminated and the reviewing representative shall return or destroy all copies of such protected information made available to him or her;

7. Confidential Information to be provided in paper format shall be reproduced and filed or submitted on distinctive pink paper only. Confidential Information to be provided in digital format shall be reproduced and filed or submitted on a CD that is distinctively red or pink in color;

8. The Commission's standard form AFFIDAVIT OF NON-DISCLOSURE (Attachment 2 hereto) shall be executed and filed in this docket by all official party representatives to be granted access to said Confidential Information pursuant to this Interim Protective Order;<sup>1</sup>

9. All official parties are hereby granted the right to contest at a future date, upon reasonable notice, the Company's continuing entitlement to protect from public disclosure all or any portions of any Confidential Information, including such Confidential Information that may be designated as HSPI, filed or submitted pursuant to this Interim Protective Order. Such Confidential Information shall be reviewed by the official parties for the express purpose of ascertaining (1) whether such Confidential Information, is consistent with the description provided by the Company in its Motion; (2) whether such Confidential Information is consistent with the Confidential Information transmittal cover document; (3) whether such Confidential Information identified as HSPI meets the Commission's definition of HSPI; and (4) whether the scope of this Interim Protective Order has been applied too broadly by the Company. Based upon such review any official party shall promptly file an objection in this Docket if such party determines that any portion of such Confidential Information should be removed from the scope of this Interim Protective Order;

10. Further, if any official party determines that any information previously deemed to be confidential should no longer be protected from public disclosure due to

---

<sup>1</sup> A digital copy of the Attachments to this Order can be accessed through the Commission's web site at the following internet address: <http://www.apscservices.info/orderattach.asp>. The digital copies can be filled in online and then printed for signature and filing. The standard form Attachments shall not be modified or amended in any way.

the passage of time or changed circumstances, such party shall promptly file an appropriate objection in this Docket;

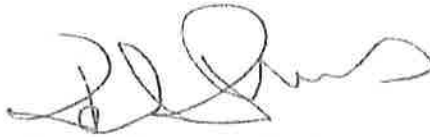
11. In the event of any objection filed pursuant to the terms and conditions of this Interim Protective Order, the burden of proof will rest on the Company;

12. The Commission hereby designates Commission Administrative Law Judge (ALJ) Susan D'Auteuil to review and examine all Confidential Information filed or submitted pursuant to this Interim Protective Order and to rule upon any objections filed pursuant to the terms and conditions of this Interim Protective Order. Based upon such examination the ALJ shall issue an appropriate amended Interim Protective Order if required. Further, after notice to the parties and after any hearing that may be necessary, the ALJ shall issue an appropriate Final Protective Order as may be needed. Any party aggrieved by any amended Interim Protective Order or the Final Protective Order issued by the ALJ may petition the Commission for review and rehearing of such Order within thirty (30) days of the issuance of same;

13. Accordingly, EAI's Motion, as conditioned herein, is granted on an interim basis. EAI shall forthwith cause said Confidential Information to be filed and/or otherwise submitted under seal as requested.

BY ORDER OF THE COMMISSION.

This 4<sup>th</sup> day of October, 2017.



Ted J. Thomas, Chairman



Elana C. Wills, Commissioner



Kimberly A. O'Guinn, Commissioner



Mary Loos, Secretary of the Commission

I hereby certify that this order, issued by the  
Arkansas Public Service Commission,  
has been served on all parties of record on  
this date by the following method:

☐ U.S. mail with postage prepaid using the  
mailing address of each party as  
indicated in the official docket file, or  
☒ Electronic mail using the email address  
of each party as indicated in the official  
docket file.