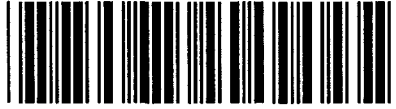


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DOCKET NO. 28818

PETITION OF ENTERGY GULF  
STATES, INC. FOR CERTIFICATION  
OF AN INDEPENDENT ORGANIZATION  
FOR THE ENTERGY SETTLEMENT  
AREA IN TEXAS

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RECEIVED  
2004 APR -7 PM 2:47  
BEFORE THE  
PUBLIC UTILITY COMMISSION  
PUBLIC UTILITY COMMISSION  
OF TEXAS

OBJECTIONS OF ENTERGY GULF STATES, INC.  
TO TIEC'S REQUESTS FOR INFORMATION TIEC 2-3 AND 2-9

TO THE HONORABLE ALJ IRENE MONTELONGO:

In accordance with P.U.C. PROC. R. 22.144(d), Entergy Gulf States, Inc. (EGSI or the Company) hereby files its objections to Texas Industrial Energy Consumers' (TIEC's) Second Requests for Information to EGSI, specifically TIEC 2-3 and TIEC 2-9. In support of these objections, EGSI states as follows:

I.

TIEC served its Second Requests on EGSI on April 1, 2004. In accordance with the procedural schedule in this docket, EGSI's objections were due yesterday, April 6. Given the truncated response time in this docket, both as to potential objections and to the actual responses, counsel did not become aware of the potential objections to TIEC 2-3 and TIEC 2-9 until late on April 6. It is EGSI's intention to fully respond to all of TIEC's other RFIs in its Second Request, including information that is responsive in part to TIEC 2-3 and TIEC 2-9. Some information that may be responsive to those two RFIs, however, is objectionable and/or otherwise subject to privileges as discussed in more detail below. Given the truncated deadlines and the fact that the responses to TIEC's Second Set are not due until April 12, EGSI respectfully requests that Your Honor accept and consider these objections one day out-of-time.

II.

The undersigned counsel for EGSI and counsel for TIEC have exchanged numerous voice mail messages regarding these data requests since the evening of April 6, but have been unable to connect directly to discuss these objections. Thus,

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counsel for EGSi has attempted to negotiate these discovery disputes diligently and in good faith prior to the filing of these objections.

### **III.**

#### **Specific Objections**

The discovery requests at issue and the objections are as follows. EGSi's specific objections to these two requests are included within the following descriptions.

#### **TIEC 2-3**

Referring to the supplemental direct testimony of Patricia C. Waters, page 7, lines 9-10, provide detailed workpapers and assumptions supporting the TPO cost estimate of the \$2 million per year.

At this time, EGSi intends to provide two documents responsive to this request, one of which will be provided as a "Confidential" document subject to the proposed Protective Order in this docket. The other document will be a copy of an email message. EGSi objects to providing any additional documents in response to this request.

EGSi does not object to providing the document that will be provided under seal, but notes that that document is marked as "confidential and proprietary" by the outside party that provided the document to Entergy. For this reason, EGSi will provide that document subject to the proposed Protective Order requested by EGSi in this docket on April 5, 2004.

Additional documents appended to the email message to be provided, or referenced in that email message, are subject to attorney-client privilege, work product doctrine, and are also irrelevant to the \$2 million per year figure quoted by Ms. Waters. The email message to be provided in response to TIEC 2-3 is in response to emails that involve attorney-client communications and work products, and which address matters that are not relevant to EGSi's application in this docket. The email to be provided may, itself, be subject to a work product privilege in that it was prepared in anticipation of potentially litigated matters involving EGSi's "Interim Solution" proposal ultimately filed in Docket No. 27273. EGSi, however, agrees to waive any work product privilege

applicable to that single email message in support of EGSI's \$2 million projected cost of a Third-Party Overseer for the ESAT region.

Because EGSI's objections include relevance objections, EGSI requests waiver of any obligation to file a privileged document index in this docket unless and until ordered to do so by Your Honor.

## **TIEC 2-9**

Describe in detail all compliance audits of ETO's activities conducted by the FERC or other regulatory agencies during the last 24 months. Summarize the results of such audits, and provide all available documentation concerning the audits.

At this time, EGSI intends to provide copies of the two public notices filed by the FERC of audits that may be covered by this request. EGSI, however, objects to providing any additional documents that may be related to the two referenced non-public audits.

EGSI objects to providing any further documentation that may be related to these two audits because to do so would require the production of information or documents related to ongoing FERC audits or non-public matters, and would be inconsistent with the non-public nature both of any documents and information related to these audits and matters. Federal Power Act Section 301(b) provides, among other things, that:

[n]o member, officer, or employee of the [FERC] shall divulge any fact or information which may come to his knowledge during the course of an examination of books or other accounts, as hereinabove provided, except insofar as he may be directed by the Commission or by a court.

See 16 U.S.C. 825(b).

The referenced audits are non-public; no information other than the two notices that will be provided, is filed or released publicly by the FERC or Entergy. To provide such information to TIEC, even under a Protective Order, would compromise the nature of the applicable FERC audits process, as recognized in FPA § 301(b). Further, disclosure of information provided by Entergy to the FERC staff in conjunction with the audits would reveal details regarding the nature of the audits, and would thereby compromise the non-public nature of the audits.

EGSI further objects to the extent TIEC2-9 seeks documents and information that are protected by the attorney-client privilege and the work product doctrine. Entergy further objects on the grounds that any additional information regarding these audits is irrelevant to the ESAT TPO independence issues in this docket, and is commercially sensitive, proprietary, and confidential.

Because EGSi's objections include relevance objections, EGSi requests waiver of any obligation to file a privileged document index in this docket unless and until ordered to do so by Your Honor.

#### **IV.**

##### **General Objections**

1. Although EGSi has sought to identify all applicable objections, it may become apparent later as responses are prepared, or as documents are obtained, that additional objections may be appropriate. EGSi reserves its right to make such objections.

2. Particularly, with respect to those requests seeking identification and/or production of all Documents or Documentation, these requests are overly broad and unduly burdensome; the Company may be unable to identify any and all Documents or Documentation, as defined, that relate to the information being sought in these requests. In response to such requests the Company shall perform a reasonable search for Documents or Documentation responsive to the request and provide the Documents or Documentation responsive to the request, if any, collected as a result of the search.

3. With respect to confidential and/or highly sensitive information, if any, that may be responsive to one or more of the requests and the production of which is not otherwise objectionable, EGSi will make such information available to appropriate signatories pursuant to the terms of the Protective Order in this proceeding.

4. With respect to documents or information that may be protected by any privilege including but not limited to the attorney-client privilege and/or the work-product privilege or doctrine, if any, that may be responsive to one or more of the requests,

EGSI objects to providing such material, and reserves its right to make such objections as it deems necessary to protect such documents or information from disclosure.

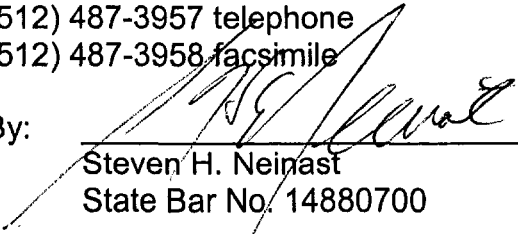
5. The providing of a response by the Company to a request should not be construed as a waiver of any claim that the Company may have regarding the admissibility of the response in this proceeding or other proceedings, or as a waiver of any substantive rights the Company may have.

Dated: April 7, 2004

Respectfully submitted,

L. Richard Westerburg, Jr.  
Steven H. Neinast  
Entergy Services, Inc.  
919 Congress Avenue, Suite 701  
Austin, Texas 78701  
(512) 487-3957 telephone  
(512) 487-3958 facsimile

By:

  
\_\_\_\_\_  
Steven H. Neinast  
State Bar No. 14880700

ATTORNEYS FOR  
ENTERGY GULF STATES, INC.

#### CERTIFICATE OF SERVICE

I certify that a copy of this pleading has been served to all parties in this Docket No. 28818 on April 7, 2004 by hand delivery, first class mail, or facsimile transmission.

  
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Steven H. Neinast