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PETITION OF ENTERGY GULF §
STATES, INC. TO MODIFY §
SCHEDULE LQF, TO MAKE §
CORRESPONDING REVISIONS TO §
BILLINGS UNDER SCHEDULE SMS, §
AND FOR AUTHORIZATION TO §
IMPLEMENT MODIFICATION ON §
AN INTERIM BASIS §

PUBLIC UTILITY
COMMISSION
OF TEXAS

**OCCIDENTAL CHEMICAL CORPORATION'S AND
OCCIDENTAL POWER SERVICES, INC.'S MOTION TO COMPEL
ENTERGY GULF STATES, INC.'S RESPONSE TO
FIRST SET OF REQUESTS FOR INFORMATION**

Pursuant to § 22.144(e) of the Procedural Rules, Occidental Chemical Corporation and Occidental Power Services, Inc. ("Oxy") files this motion to compel Entergy Gulf States, Inc. ("EGSI") to respond to Oxy's First Set of Requests for Information ("RFI's"). Oxy received EGSI's objections to its RFIs by facsimile transmission after 3:00 pm on February 17, 2004. Accordingly, pursuant to Order No. 3, such objections are deemed to have been received on February 18, 2004, and this motion to compel is timely filed.

Responses to Specific Objections

EGSI agreed to provide responses to several questions, but reserved its right to object in the event that Oxy seeks to introduce the responses into evidence at the hearing in this proceeding.¹ Oxy is seeking to compel responses at this time only with respect to those RFIs that EGSI declined to answer. Since all of EGSI's objections with respect to

¹ Counsel for EGSI has agreed that Oxy has not waived its right to seek to introduce such responses into evidence by not responding to EGSI's objections at this time.

RFIs that EGSI has declined to answer relate to RFIs which request similar information, Oxy will address all of such objections in one response. The specific questions to which EGSI has refused to provide answers are as follows:

- 1-7 If your answer to the preceding question was that Entergy increased its own generation, please provide (a) the spot price for wholesale power during the applicable hourly intervals identified in Question 1-5 above, and (b) Entergy's incremental unit ramp up cost for such intervals. If the spot price for wholesale power during such hourly intervals was lower than Entergy's incremental unit ramp up cost, please explain why Entergy elected to increase its own generation rather than purchase such wholesale power.
- 1-8 Apart from the month of October 2003 identified in Question 1-5, please identify by date and specific hourly intervals any other instance during the period beginning January 1, 2001, and ending December 31, 2003, in which a significant unexpected reduction in the amount of QF energy that was forecasted to be "put" to Entergy during off-peak hours occurred and state whether Entergy: (a) increased its own generation; (b) purchased wholesale power; (c) utilized a combination of the preceding actions; or (d) took other actions (please specify such actions) during such hourly intervals in order to serve its load. For purposes of this question, assume that a "significant unexpected reduction in QF energy" represents an amount of energy that requires Entergy to take some action in order to assure that it is able to serve its load.
- 1-9 For each instance identified in response to Question 1-8, please provide (a) the spot price for wholesale power, and (b) Entergy's incremental ramp up unit cost during the applicable hourly intervals.

EGSI objects to the above questions on the grounds that: (1) they seek information that is irrelevant and beyond the scope of this proceeding; (2) they are overly broad and seek the production of information and/or documents that would be unduly burdensome to produce; and (3) the term "incremental unit ramp up cost" is vague and ambiguous.

The foregoing questions all relate to the issue of how Entergy responds to sudden reductions in energy “put” to Entergy by Qualifying Facilities (“QFs”) when such reductions have not been forecast by Entergy and occur on short notice (*e.g.*, because of a forced outage experienced by the QF). Since EGSI is proposing in this proceeding to reflect the cost of so-called “rejected purchases” in calculating avoided cost, the manner in which Entergy responds to actual instances in which QF power is unavailable is relevant to the issue of the feasibility of utilizing “rejected purchases” in such calculation. For example, if Entergy is physically unable to respond to a specific need for additional power caused by a sudden drop in QF deliveries by purchasing spot power on the wholesale market, and instead has to ramp up its own generation to serve its load, that indicates that EGSI’s proposal to reflect such purchases in calculating avoided cost may be unrealistic, at least without appropriate restrictions as to the time available to implement the purchase. If Entergy is not physically able to procure wholesale power on short notice, then it is inappropriate to include such purchases in the calculation. The specific questions set forth above are designed to elicit information regarding the manner in which Entergy has actually responded to such situations in the past in order to determine whether appropriate time restrictions are necessary to insure that wholesale purchases can be implemented in the time necessary to meet the need. In addition, by requesting information as to whether the spot price for wholesale power paid by Entergy during such periods exceeded the incremental unit ramp up cost, the questions seek to determine whether Entergy utilized its own generation to serve its load rather than purchasing power on the spot market even when its own generation cost more than the spot purchase price because Entergy was physically unable to procure such wholesale

power on short notice. This relates to the propriety of reflecting “rejected purchases” in the avoided cost calculation without assuring that such purchases are realistically available to Entergy within an appropriate time frame.

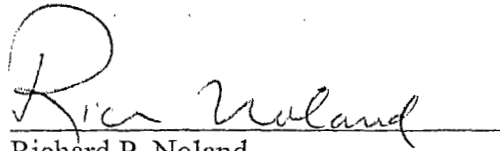
With respect to EGSI’s claims that Oxy’s requests are overly broad and unduly burdensome, Oxy notes that it has specifically limited its requests in Oxy 1-8 and 1-9 to a restricted period of time (January 1, 2001, through December 31, 2003).² EGSI has failed to demonstrate how providing such information for a two-year period in response to Oxy’s requests imposes any unreasonable burden on it over and above the normal burdens associated with litigation.

Finally, with respect to EGSI’s claim that the term “incremental unit ramp up cost” is vague and ambiguous, Oxy disagrees that the term is in any way unclear. It should be obvious that the purpose of the questions is to determine whether Entergy has utilized its own generation in response to sudden reductions in QF energy when wholesale power is available on the market at a lower cost than the incremental cost of ramping up Entergy’s own generation because of Entergy’s practical inability to obtain such wholesale power on a timely basis. Oxy has placed a call to EGSI’s counsel to discuss this matter further and will inform the Administrative Law Judge in the event that the parties are able to amicably resolve the issue.

Accordingly, in light of the above, Oxy respectfully submits that the information it has requested in the three RFIs identified above is reasonably calculated to lead to the discovery of admissible evidence, is not unduly burdensome, and is not vague and ambiguous, and that the Administrative Law Judge should therefore issue an order compelling EGSI to respond.

² EGSI does not object to Oxy 1-7 on grounds of undue burden.

Respectfully submitted,



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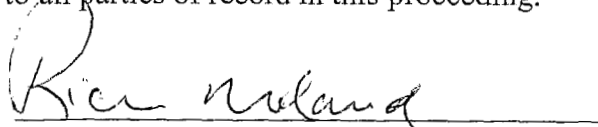
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*Attorneys for
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and Occidental Power Services, Inc*

February 25, 2004

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was mailed by U.S. Mail, postage prepaid, or delivered via facsimile, Federal Express, or hand delivery on the 25th day of February, 2004, to all parties of record in this proceeding.



Richard P. Noland