

1 Q. FOR THE COMPANY'S ROUTINE BUSINESS PURPOSES, DOES THE  
2 COMPANY NEED TO DISAGGREGATE SALARY AND EXPENSES BY  
3 EMPLOYEE BY PROJECT CODE?

4 A. No. This is something that the Company has not been required to do in  
5 rate proceedings and is not necessary for cost management purposes.

6  
7 Q. WHAT IS THE TOTAL AMOUNT OF SALARY AND BENEFITS IN THE  
8 TTC COST REQUESTED IN THIS CASE?

9 A. The Company is seeking to recover \$23.9 million of internal payroll and  
10 benefits, including incentive compensation, costs in this proceeding. On  
11 page 35 of his testimony, Mr. Higgins refers to an adjustment to the  
12 Company's request of \$26 million in such costs in this TTC case. Mr.  
13 Higgins apparently derived his higher number by performing a calculation  
14 based in part on employee year-end salaries, rather than referring to the  
15 internal payroll/benefits costs actually billed to EGSI Texas for the TTC  
16 work. In any event, the correct number cannot exceed the \$23.9 million  
17 amount of total salaries and benefits requested as part of the TTC cost.  
18 The requested amount includes both charges to expense accounts and  
19 capital accounts.

20  
21 Q. IS THIS NUMBER IN ANY MANNER UNRELIABLE?

22 A. Absolutely not. The total amount of internal payroll and benefits included  
23 in EGSI's TTC request was developed from employee timesheets, which

1           were allocated to various TTC project codes (among others) at or near the  
2           time when the internal labor associated with those projects was actually  
3           expended.    The salary associated with the various employees' time  
4           devoted to TTC projects is determined based on the time that employee  
5           coded to the project in question and the salary level of the employee.  
6           Then, benefits and other labor related adders are added in the manner  
7           described above. This is a superior method of accounting for internal  
8           labor related costs because it relies on contemporaneous documentation  
9           of employee time and on standardized practices for recording and  
10          accounting for these costs.

11

12   Q.   MR. HIGGINS PRESENTS A CALCULATION TO SHOW WHAT  
13          AMOUNT OF SALARY AND BENEFIT COSTS ARE ALREADY  
14          RECOVERED THROUGH THE COMPANY'S BASE RATES. DO YOU  
15          AGREE WITH HIS CALCULATION?

16   A.   No. Although I did not study Mr. Higgins' calculation in great detail, his  
17          attempt to calculate the amount of salary and benefit costs already  
18          recovered in rates is flawed for three reasons. First, Mr. Higgins did not  
19          account for the need to separate costs between capital and expense in his  
20          calculation. This is an important distinction to consider in the calculation  
21          because wholly different considerations apply in determining whether the  
22          Company's base rates reflect a particular amount of capitalized labor  
23          costs, as opposed to labor related expenses. From one rate proceeding

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1 to another, the only capital costs that are added to rate base are capital  
2 additions that occur between the time of the utility's last base rate case  
3 and the end of the test year in the new base rate case. The TTC-related  
4 capitalized labor was not incurred until after May 31, 1999, while the test  
5 year in the Company's last base rate case ended much earlier, on June  
6 30, 1998. Thus, it is incorrect to assume that payroll and benefit costs  
7 charged to capital projects are already provided for in base rates.

8 Second, Mr. Higgins incorrectly assumes that payroll and benefits  
9 costs for employees hired after June 30, 1998 but before June 1, 1999 are  
10 reflected in the Company's current base rates. The base rates currently in  
11 effect reflect costs based on a test period ending June 30, 1998. Thus, it  
12 would be wrong to conclude that payroll and benefits costs for employees  
13 hired after June 30, 1998, are included in base rates. Also, of course, the  
14 TTC cost incurrence period did not begin until June 1999—almost one  
15 year after the close of the test year that set the current rates. Accordingly,  
16 no TTC-related labor charges could be reflected in those base rates.  
17 Also, because no capital additions have been included in rate base since  
18 June 1998, there can be no capitalized TTC-related labor in base rates in  
19 any event. Therefore, because EGSI's base rates have remained frozen  
20 since June 1999, those base rates cannot reflect TTC costs.

21 Lastly, Mr. Higgins uses annual employee salaries subsequent to  
22 June 1, 1999 in his calculation of the estimated amount of payroll and  
23 benefits already in base rates. If there were in fact any TTC-related labor

1 in base rates (which there is not), such labor would have been priced at  
2 the current employee salaries in effect during the test period ending June  
3 30, 1998, not at employee salary rates in effect after this date. Mr.  
4 Higgins' use of annual employee salaries in effect after June 1, 1999 taints  
5 his calculation of this estimate.  
6

7 Q. MR. HIGGINS REFERS, AT PAGE 22, LINE 7 OF HIS TESTIMONY, TO  
8 THE COMPANY'S EXPLANATION THAT THERE WAS NO EFFECT TO  
9 THE CHANGES IN ADDENDUMS 1 AND 2 OF STATE OF TEXAS RFI 2-  
10 1. PLEASE EXPLAIN WHY THERE WAS NO EFFECT ON TTC COSTS  
11 AS A RESULT OF THESE CHANGES.

12 A. The addenda did not revise the ultimate \$23.9 million in TTC-related  
13 affiliate labor and benefits charges. Instead, the addenda were revising  
14 the data format used to answer the State's requests. As the Company  
15 clearly explained in Addendum 3 to State of Texas RFI 2-1, there were  
16 some calculation errors in the presentation of the data in the form  
17 requested by State of Texas. The data format requested by the State of  
18 Texas is not a reporting format used by the Company to manage its  
19 business. It was developed solely to respond to and satisfy the State's  
20 request for information based on \$23.9 million of internal payroll and  
21 benefits. While the Company's initial presentations of the data in the form  
22 prescribed by the State contained some calculation errors (which the  
23 Company subsequently remedied), the \$23.9 million of requested internal

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1 payroll and benefits costs underlying the data presentation was not  
2 affected by the presentation errors and has never changed.  
3

4 IV. CONCLUSION

5 Q. DO YOU HAVE ANY CHANGES OR REVISIONS TO YOUR AUGUST 24,  
6 2005 DIRECT TESTIMONY FILED IN THIS DOCKET?

7 A. Yes. On page 23 of 48, lines 18 - 21, of my direct testimony, I state "PWC  
8 concluded that the cost assignment process results in billings to affiliates  
9 that reasonably reflect the actual cost of services provided and that the  
10 existing control procedures and cost assignments were consistently  
11 applied." The phrase "the existing control procedures" should be removed  
12 from this sentence. The revised sentence should read as follows "PWC  
13 concluded that the cost assignment process results in billings to affiliates  
14 that reasonably reflect the actual cost of services provided and that cost  
15 assignments were consistently applied."

16 On page 24 of 48, lines 2-4, of my direct testimony, I state "Further,  
17 PWC identified, reviewed, and tested internal controls related to the billing  
18 process including the accumulation and distribution of affiliate costs." This  
19 sentence should be deleted in its entirety.  
20

21 Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

22 A. Yes, at this time.

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SOAH DOCKET NO. 473-06-0092  
PUC DOCKET NO. 31544

APPLICATION OF ENTERGY  
GULF STATES, INC. FOR  
RECOVERY OF TRANSITION  
TO COMPETITION COSTS

§  
§  
§  
§

PUBLIC UTILITY COMMISSION  
  
OF TEXAS

REBUTTAL TESTIMONY

OF

MARK W. NIEHAUS

ON BEHALF OF

ENTERGY GULF STATES, INC.

FEBRUARY 10, 2006

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SOAH DOCKET NO. 473-06-0092

PUC DOCKET NO. 31544

APPLICATION OF  
ENTERGY GULF STATES, INC.  
FOR RECOVERY OF  
TRANSITION TO COMPETITION COSTS

REBUTTAL TESTIMONY OF MARK W. NIEHAUS

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III. The PwC Review of ESI's TTC-Related Affiliate Charges	5
IV. Conclusion	10

EXHIBITS

MWN-R-1 EGSi Audit Opinions for the Years 1999 – 2004

1 I. INTRODUCTION AND PURPOSE OF TESTIMONY

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Mark W. Niehaus. My business address is 2001 Market  
4 Street, Suite 1700, Philadelphia, Pennsylvania 19103.

5

6 Q. ARE YOU THE SAME MARK NIEHAUS WHO FILED DIRECT  
7 TESTIMONY IN THIS DOCKET ON AUGUST 24, 2005?

8 A. Yes. For both my direct and rebuttal testimony, I am testifying on behalf of  
9 Entergy Gulf States, Inc. ("EGSI" or the "Company").

10

11 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

12 A. In response to the Direct Testimony of State's witness Hugh Higgins, I  
13 explain why it is not and was not necessary for EGSI to commission "one  
14 or more comprehensive special-purpose audits" to review the TTC costs  
15 requested in this case. In this rebuttal, I explain that EGSI's financial  
16 statements are audited annually by independent auditors, which have  
17 concluded that the Company's financial statements are presented fairly, in  
18 all material respects, in conformity with generally accepted accounting  
19 principles. The TTC costs are a component of those audited financial  
20 statements. Therefore, the Commission can take comfort that the TTC  
21 costs were properly recorded both for book and TTC case-specific  
22 purposes.



1 I also reiterate in response to Mr. Higgins that the review of affiliate  
2 services charges that I undertook for my direct testimony provides  
3 additional assurance that the Company's claimed TTC costs were  
4 appropriately recorded as TTC costs.

5

6 Q. DO YOU SPONSOR ANY EXHIBITS TO YOUR REBUTTAL  
7 TESTIMONY?

8 A. Yes. I sponsor Exhibit MWN-R-1 which includes the EGSI audit opinions  
9 issued by its independent accountants for the years 1999 through 2004.

10

11 Q. PLEASE BRIEFLY SUMMARIZE MR. HIGGINS' POSITION ON  
12 INDEPENDENT AUDITS AS STATED IN HIS JANUARY 13, 2006  
13 TESTIMONY.

14 A. Mr. Higgins concludes "one or more comprehensive special-purpose  
15 audits should have been conducted on Texas TTC costs." (Higgins Direct  
16 at page 9, lines 17-18). Because such audits were not undertaken, Mr.  
17 Higgins recommends that the Commission "totally disallow the Company's  
18 entire Application" and direct EGSI to retain an independent public  
19 accounting firm "to review a new reorganized application and to opine on  
20 the quality of the dollar amounts included in such new application."  
21 (Higgins Direct at page 36, lines 1-8.)

22

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II. INDEPENDENT AUDITS

1  
2 Q. BASED ON MR. HIGGINS' TESTIMONY, SHOULD THE COMMISSION  
3 ESSENTIALLY REJECT EGSi'S TTC FILING AND DIRECT THE  
4 COMPANY TO UNDERTAKE "ONE OR MORE COMPREHENSIVE  
5 SPECIAL PURPOSE-AUDITS" AND THEN PERHAPS REFILE ITS TTC  
6 APPLICATION?

7 A. No. The Company's financial statements are audited annually by an  
8 independent accounting firm. These audits have concluded that the  
9 Company properly accounts for and presents its costs for financial  
10 reporting purposes. The TTC costs are a component of the Company's  
11 financial statements and are recorded in its accounting records.  
12 Therefore, the Commission can take comfort that the Company's claimed  
13 TTC costs are costs that are properly recorded in the Company's books  
14 and records.

15  
16 Q. WHAT COMFORT WITH RESPECT TO THE TTC COSTS REQUESTED  
17 IN THIS CASE CAN THE COMMISSION TAKE FROM THE AUDIT  
18 OPINIONS ISSUED ON EGSi'S FINANCIAL STATEMENTS?

19 A. EGSi has had annual audits performed for each of the years included in  
20 the TTC period. The audit opinions for each of these years indicate these  
21 audits were performed in accordance with generally accepted auditing  
22 standards, or in 2004, in accordance with auditing standards of the Public  
23 Company Accounting Oversight Board (United States). Both generally

1           accepted auditing standards and the auditing standards of the Public  
2           Company Accounting Oversight Board (United States) require the auditors  
3           to obtain sufficient competent evidential matter to support their  
4           conclusions on the financial statements. Accordingly, assuming that the  
5           independent auditors were competent and undertook their audit in  
6           accordance with the appropriate standards, the audits performed on  
7           EGSI's financial statements during the TTC period included obtaining  
8           evidence of costs included in the financial statements. To the extent that  
9           TTC costs were selected as part of audit tests performed, the independent  
10          auditor would have reviewed corroborating evidential matter, such as  
11          invoices. However, I have not reviewed any of the audit workpapers  
12          associated with those audits to determine if any of the TTC costs were  
13          actually selected for testing.

14

15   Q.   HOW DO YOU KNOW THAT THESE INDEPENDENT AUDITS WERE  
16          PERFORMED FOR EACH YEAR OF THE TTC COST INCURRENCE  
17          PERIOD?

18   A.   I reviewed the audit opinions filed and publicly available as part of EGSI's  
19          Annual Report on Form 10-K ("Form 10-K") filed with the Securities and  
20          Exchange Commission for each of the years 1999 through 2004. These  
21          audit opinions are attached as my Exhibit MWN-R-1. For each of those  
22          years, the report of independent accountants included in the Form 10-K  
23          contained an unqualified audit opinion on the financial statements of

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1 EGSi. Additionally, for the year 2004, the report of the independent  
2 registered public accounting firm contained an unqualified audit opinion on  
3 EGSi's internal controls over financial reporting and on management's  
4 assessment of internal control over financial reporting. The audit of EGSi  
5 for 2005 has not yet been completed and, accordingly, it has not yet filed  
6 its 2005 Form 10-K.

7  
8 II. THE PWC REVIEW OF ESI'S TTC-RELATED  
9 AFFILIATE CHARGES

10 Q. MR. HIGGINS' TESTIMONY SUGGESTS THAT THERE WAS NO  
11 INDEPENDENT REVIEW OF ANY TYPE OF THE TTC COSTS. DOES  
12 THE REVIEW YOU PERFORMED FOR YOUR DIRECT TESTIMONY IN  
13 THIS CASE PROVIDE THE COMMISSION WITH AN ADDITIONAL  
14 LEVEL OF ASSURANCE THAT THE TTC COSTS WERE ACTUALLY  
15 INCURRED AND PROPERLY RECORDED AS TTC COSTS?

16 A. Yes, it does, but unfortunately, Mr. Higgins was unaware of the work I did.  
17 Mr. Higgins testified at his February 2, 2006 deposition that he merely  
18 "scanned" my testimony, "but not well"; had no idea who my employer is,  
19 or what conclusions I reached in my Direct Testimony. In fact, his  
20 conclusions in this case were not in any way based on my testimony.  
21 (Deposition of Hugh K. Higgins, page 50, line 17 - page 51, line 20).  
22 Thus, he did not consider that I and my firm undertook a detailed review of  
23 the affiliate portion of the TTC costs (that is, \$81.9 million of the \$164

1 million in TTC costs as of June 17, 2005 exclusive of carrying costs.) In  
2 that review, we sampled 75 individual TTC transactions involving affiliate  
3 billings from Entergy Services, Inc. ("ESI") to EGSI, using a well-  
4 recognized and widely used sampling technique. That review included  
5 examination of supporting documentation and evidence of the specific  
6 cost being incurred, such as review of an underlying invoice or invoices,  
7 employee time sheets, purchase orders and journal entries. Based on  
8 that review we determined, among other things, that the cost assignment  
9 procedures used by the affiliate (ESI) were consistently applied; the cost  
10 assignment procedures resulted in charges to EGSI that reasonably  
11 approximated the actual cost of the services; the price for services  
12 charged to and paid by EGSI were no higher than the prices charged to  
13 and paid by other affiliates for similar projects; and the affiliates billed for  
14 the charge (in this case EGSI) were only billed for services provided.  
15 While this review did not sample non-affiliate transactions, it revealed  
16 appropriate and consistently followed accounting practices.

17

18 Q. WOULD YOUR REVIEW OF THE SAMPLED TRANSACTIONS INVOLVE  
19 A REVIEW OF ALL INVOICES PERTAINING TO A SAMPLED  
20 TRANSACTION?

21 A. Yes. As indicated in my direct testimony (page 17, lines 17-23), in most  
22 cases the sampling record selected for testing was comprised of multiple  
23 transactions with the same characteristics or determinants. In those

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1 cases, we reviewed supporting evidence for each of the included  
2 individual transactions and have included that information in my  
3 workpapers.  
4

5 Q. DID YOU NEED ADDITIONAL INFORMATION, NOT PROVIDED BY  
6 EGSI, TO COMPLETE YOUR REVIEW OF THE AFFILIATE  
7 TRANSACTIONS?

8 A. No. We deemed the information provided by EGSI in connection with our  
9 review to be sufficient to complete our review of affiliate transactions.  
10

11 Q. IN YOUR REVIEW, COULD YOUR TRACK (OR "TIE") A SPECIFIC  
12 INVOICE THROUGH THE ACCOUNTING SYSTEM AND VERIFY THAT  
13 COSTS STATED ON THAT INVOICE WERE RECORDED AND  
14 REFLECTED IN THE TTC COSTS SOUGHT FOR RECOVERY IN THIS  
15 DOCKET.

16 A. Yes. While there could be subsequent adjustments to a particular invoice,  
17 or allocations to other, non-TTC project codes, we were able to track the  
18 costs stated on an invoice, as may have been adjusted, through to the  
19 TTC cost request. In that sense, we were able to "tie" the invoices subject  
20 to our samples to the TTC costs requested in this docket.  
21

22 Q. WHY DID YOUR REVIEW NOT INCLUDE NON-AFFILIATE  
23 TRANSACTIONS?

1 A. I was asked only to review the affiliate transactions because, as I  
2 understand it, the standard for recovery of affiliate costs in Texas is  
3 considered higher than the standard for recovery of non-affiliate costs. My  
4 retention by EGSi was to focus on the transactions subject to that higher  
5 affiliate standard.

6  
7 Q. DO CURRENT GENERALLY ACCEPTED AUDITING STANDARDS  
8 REQUIRE THAT ALL INVOICES MUST BE PAPER INVOICES, WITH  
9 THE TYPE OF INFORMATION ASSERTED BY MR. HIGGINS' ON  
10 PAGES 14-16 OF HIS SUPPLEMENTAL DIRECT TESTIMONY?

11 A. No. Current generally accepted auditing standards recognize the advent  
12 of electronic invoices in many situations, and these electronic invoices do  
13 not necessarily need to follow a format such as that laid out by Mr.  
14 Higgins.

15  
16 Q. HOW CAN YOU AND MR. HIGGINS COME TO SUCH DIFFERENT  
17 CONCLUSIONS REGARDING THE LEVEL OF SUPPORTING  
18 DOCUMENTATION AVAILABLE OR NECESSARY TO COMPLY WITH  
19 GENERALLY ACCEPTED AUDITING STANDARDS AND GUIDELINES?

20 A. My response is based on the same standards related to "evidential  
21 matters" as referred to by Mr. Higgins and included in Attachment 11 to his  
22 direct testimony. The following refers to the document included in the last  
23 eight pages of Mr. Higgins' Attachment 11, starting on the page titled "AU

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1           Section 326," with page number 445 indicated in the top right corner.  
2           Paragraph 18 of AU 326, page 448, *Evidential Matter* (U.S. Auditing  
3           Standards as promulgated by the American Institute of Certified Public  
4           Accountants), acknowledges that accounting data and corroborating  
5           evidential matter may be available only in electronic form.

6           .18     In certain entities, some of the accounting data and  
7           corroborating evidential matter are available only in  
8           electronic form. Source documents such as purchase orders,  
9           bills of lading, invoices, and checks are replaced with  
10          electronic messages. For example, entities may use  
11          Electronic Data Interchange (EDI) or image processing  
12          systems. In EDI, the entity and its customers or suppliers  
13          use communication links to transact business electronically.  
14          Purchase, shipping, billing, cash receipt, and cash  
15          disbursement transactions are often consummated entirely  
16          by the exchange of electronic messages between the  
17          parties. In image processing systems, documents are  
18          scanned and converted into electronic images to facilitate  
19          storage and reference, and the source documents may not  
20          be retained after conversion. Certain electronic evidence  
21          may exist at a certain point in time. However, such evidence  
22          may not be retrievable after a specified period of time if files  
23          are changed and if backup files do not exist. Therefore, the  
24          auditor should consider the time during which information  
25          exists or is available in determining the nature, timing, and  
26          extent of his or her substantive tests, and, if applicable, tests  
27          of controls.

28  
29          In this type of situation, the auditor is required to consider the nature,  
30          timing and extent of work to determine the appropriate audit procedures to  
31          apply and to gain satisfaction on the subject of the work being performed.  
32          Current generally accepted auditing standards do not limit acceptable  
33          forms of evidence to non-electronic formats. I do not see from his

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1 testimony that Mr. Higgins has taken these standards and considerations  
2 into account.  
3

4 III. CONCLUSION

5 Q. DO YOU HAVE ANY REVISIONS OR CHANGES AT THIS TIME TO  
6 YOUR DIRECT TESTIMONY FILED ON AUGUST 24, 2005 IN THIS  
7 DOCKET?

8 A. No.  
9

10 Q DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

11 A. Yes, at this time.

**REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

To the Board of Directors and Shareholders  
Entergy Gulf States, Inc.:

We have audited the accompanying balance sheets of Entergy Gulf States, Inc. as of December 31, 2004 and 2003, and the related statements of income, retained earnings and comprehensive income, and cash flows (pages 194 through 198 and applicable items in pages 284 through 348) for each of the three years in the period ended December 31, 2004. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of Entergy Gulf States, Inc. as of December 31, 2004 and 2003, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2004 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 5 and Note 8 to the notes to respective financial statements, in 2003 Entergy Gulf States, Inc. adopted the provisions of Statement of Financial Accounting Standards Board Interpretation No. 46, *Consolidation of Variable Interest Entities*, and Statement of Financial Accounting Standards No. 143, *Accounting for Asset Retirement Obligations*.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the effectiveness of the Company's internal control over financial reporting as of December 31, 2004, based on the criteria established in *Internal Control - Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated March 8, 2005 expressed an unqualified opinion on management's assessment of the effectiveness of the Company's internal control over financial reporting and an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

DELOITTE & TOUCHE LLP

New Orleans, Louisiana  
March 8, 2005

INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of  
Entergy Gulf States, Inc.:

We have audited the accompanying balance sheets of Entergy Gulf States, Inc. as of December 31, 2003 and 2002, and the related statements of income, retained earnings and comprehensive income, and cash flows (pages 190 through 194 and applicable items in pages 270 through 331) for each of the three years in the period ended December 31, 2003. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of Entergy Gulf States, Inc. as of December 31, 2003 and 2002, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2003 in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1 and Note 9 to the notes to respective financial statements, Entergy Gulf States, Inc. adopted the provisions of Statement of Financial Accounting Standards No. 143, *Accounting for Asset Retirement Obligations*, and Financial Accounting Standards Board Interpretation No. 46, *Consolidation of Variable Interest Entities*, in 2003.

DELOITTE & TOUCHE LLP

New Orleans, Louisiana  
March 9, 2004

**INDEPENDENT AUDITORS' REPORT**

To the Board of Directors and Shareholders of  
Entergy Gulf States, Inc.:

We have audited the accompanying balance sheets of Entergy Gulf States, Inc. as of December 31, 2002 and 2001, and the related statements of income, retained earnings and comprehensive income, and cash flows (pages 176 through 180 and applicable items in pages 250 through 303) for each of the three years in the period ended December 31, 2002. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of Entergy Gulf States, Inc. as of December 31, 2002 and 2001, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2002 in conformity with accounting principles generally accepted in the United States of America.

DELOITTE & TOUCHE LLP

New Orleans, Louisiana  
February 21, 2003

## INDEPENDENT AUDITORS' REPORT

Exhibit MWN-R-1  
2005 TTC Cost Case  
Page 4 of 6

To the Board of Directors and Shareholders of Entergy Gulf States, Inc.:

We have audited the accompanying balance sheets of Entergy Gulf States, Inc. as of December 31, 2001 and 2000, and the related statements of income, retained earnings, and cash flows (pages 111 through 115 and pages 161 through 227) for each of the three years in the period ended December 31, 2001. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such financial statements present fairly, in all material respects, the financial position of Entergy Gulf States, Inc. as of December 31, 2001 and 2000, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2001 in conformity with accounting principles generally accepted in the United States of America.

### DELOITTE & TOUCHE LLP

New Orleans, Louisiana  
January 31, 2002

**Report of Independent Accountants**

Exhibit MWV-R-1  
2005 TTC Cost Case  
Page 5 of 6

To the Board of Directors and Shareholders of Entergy Gulf States, Inc.:

In our opinion, the accompanying balance sheets and the related statements of income, of retained earnings and of cash flows (pages 99 through 103 and pages 147 through 209) present fairly, in all material respects, the financial position of Entergy Gulf States, Inc. at December 31, 2000 and 1999, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2000 in conformity with accounting principles generally accepted in the United States of America. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States of America, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

**PricewaterhouseCoopers LLP**

New Orleans, Louisiana  
February 1, 2001

**Report of Independent Accountants**

Exhibit MW-N-R-1  
2005 TTC Cost Case  
Page 6 of 6

To the Board of Directors and Shareholders of Entergy Gulf States, Inc.:

In our opinion, the accompanying balance sheets and the related statements of income, of retained earnings and of cash flows present fairly, in all material respects, the financial position of Entergy Gulf States, Inc. at December 31, 1999 and 1998, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 1999 in conformity with accounting principles generally accepted in the United States. These financial statements are the responsibility of the Company's management; our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits of these statements in accordance with auditing standards generally accepted in the United States, which require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for the opinion expressed above.

**PricewaterhouseCoopers LLP**

New Orleans, Louisiana  
February 17, 2000

SOAH DOCKET NO. 473-06-0092  
PUC DOCKET NO. 31544

APPLICATION OF ENTERGY	§	PUBLIC UTILITY COMMISSION
GULF STATES, INC. FOR	§	
RECOVERY OF TRANSITION	§	
TO COMPETITION COSTS	§	OF TEXAS

REBUTTAL TESTIMONY

OF

RICHARD N. FERGUSON

ON BEHALF OF

ENTERGY GULF STATES, INC.

FEBRUARY 10, 2006

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R-00273



SOAH DOCKET NO. 473-06-0092

PUC DOCKET NO. 31544

APPLICATION OF  
ENTERGY GULF STATES, INC.  
FOR RECOVERY OF  
TRANSITION TO COMPETITION COSTS

REBUTTAL TESTIMONY OF RICHARD N. FERGUSON

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1 I. WITNESS INTRODUCTION AND PURPOSE OF TESTIMONY

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Richard N. Ferguson. My business address is Entergy  
4 Services, Inc., 500 Clinton Center Drive, Clinton, Mississippi 39056.

5

6 Q. ARE YOU THE SAME RICHARD N. FERGUSON WHO FILED DIRECT  
7 TESTIMONY IN THIS DOCKET ON AUGUST 24, 2005?

8 A. Yes. For both my direct and rebuttal testimony, I am testifying on behalf of  
9 Entergy Gulf States, Inc. ("EGSI" or the "Company").

10

11 Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

12 A. I address two points raised in the testimony of State of Texas ("State")  
13 witness Hugh K. Higgins, Jr.

14 First, I explain that Entergy Services, Inc. ("ESI") and EGSI do not  
15 maintain job descriptions for either job titles or for individual employees.

16 Second, I explain EGSI's responses to State request for information  
17 ("RFI") 2-1 regarding the employees whose time charges are reflected in  
18 the Transition to Competition ("TTC") costs requested in this docket.

19 In addition to these two points, I provide an errata to my Direct  
20 Testimony.

21

22 Q. DO YOU SPONSOR ANY REBUTTAL EXHIBITS?

23 A. No.

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1 II. RESPONSE TO MR. HIGGINS

2 Q. MR. HIGGINS EXPRESSES SURPRISE THAT EGSI AND ESI DO NOT  
3 MAINTAIN JOB DESCRIPTIONS.<sup>1</sup> ARE JOB DESCRIPTIONS  
4 NECESSARY FOR EGSI'S OR ESI'S BUSINESS PURPOSES?

5 A. No. EGSI and ESI are able to hire and manage their personnel without  
6 the need to maintain job descriptions for job positions or for individual  
7 employees. The Human Resources ("HR") Department has found that job  
8 descriptions are not a useful tool for determining the scope of an  
9 employee's specific job responsibilities. Even if an employee remains in  
10 the same job position (e.g., Accountant I or Regulatory Analyst II) over a  
11 number of years, the employee's specific job responsibilities and tasks will  
12 change over time. It is not productive to update the job description every  
13 time those responsibilities and tasks change. In addition, two employees  
14 with the same job title (e.g., HR Specialist IV) may have different specific  
15 job responsibilities and perform different tasks. For example, one HR  
16 Specialist IV may assist employees with enrolling in benefit plans and  
17 processing claims, while another HR Specialist IV may assist  
18 management with hiring, promotion, and disciplinary matters. Thus, a  
19 single job description for the job position HR Specialist IV would be too  
20 general to be useful for business purposes.

---

<sup>1</sup> Direct Testimony of Hugh K. Higgins at page 18, line 21 through page 20, line 11; and at page 24, lines 7 – 11.

1                   Consequently, instead of job descriptions, EGSi and ESI manage  
2                   their employees' performances through annual performance goals. The  
3                   employee and his or her supervisor establish the performance goals  
4                   applicable to the employee, and then the employee is evaluated based  
5                   upon those goals. The HR Department has followed this practice since  
6                   before I started my employment with ESI (then called Middle South  
7                   Services, Inc.) in 1992. The use of individual performance goals specific to  
8                   each employee, in lieu of job descriptions tied to a job titles, is an efficient  
9                   HR management practice.

10

11       Q.     HAVE EGSi AND ESI TRIED TO THWART OR FRUSTRATE MR.  
12             HIGGINS'S ANALYSIS BY NOT PROVIDING JOB DESCRIPTIONS?

13       A.     No. As I have explained, EGSi and ESI do not maintain job descriptions.  
14             The descriptions that Mr. Higgins seeks do not exist. In addition, in none  
15             of the four EGSi base rate or unbundled cost of service cases in which I  
16             have been involved<sup>2</sup> prior to this docket has any party, or the Commission,  
17             requested or required job descriptions for each employee whose time  
18             charges were included in the costs sought to be recovered. EGSi and ESI  
19             had no reason to create these job descriptions as part of its preparation of  
20             this docket. Finally, the State agreed that EGSi did not need to prepare  
21             job descriptions in response to the State's RFIs in this docket. As part of  
22             the resolution of the discovery dispute regarding State RFI 2-1, the State

1           agreed to accept EGSi's explanation that job descriptions do not exist.<sup>3</sup>  
2           Thus, it is unclear why Mr. Higgins continues to make an issue about not  
3           receiving job descriptions.

4

5   Q.   LET'S TURN TO YOUR SECOND TOPIC. MR. HIGGINS PROVIDES A  
6       LENGTHY EXPLANATION OF EGSi'S RESPONSES TO STATE RFI 2-  
7       1.<sup>4</sup> DO YOU AGREE WITH HIS CHARACTERIZATIONS OF EGSi'S  
8       ANSWERS TO THIS DISCOVERY REQUEST?

9   A.   No. EGSi has been straightforward about explaining its answers to State  
10       RFI 2-1.<sup>5</sup> This RFI requested, among other things, two pieces of  
11       information: (1) a list of each employee whose time charges are reflected  
12       in the TTC costs requested in this docket; and (2) the percentage of each  
13       of those employees' time billed to TTC costs for each year during the TTC  
14       cost period (June 1, 1999 through June 17, 2005). The answers provided  
15       by EGSi to that RFI contained two errors, both of which were corrected.

16               EGSi's initial response to State RFI 2-1 was a single sentence  
17       stating that EGSi had objected to the question. After the State and EGSi

---

<sup>2</sup> Docket Nos. 16705, 20150, 22356, and 30123.

<sup>3</sup> EGSi's Response to State RFI 2-1, Addendum 1, provided in Mr. Higgins's Attachment HKH-3, handwritten page number 91.

<sup>4</sup> Direct Testimony of Hugh K. Higgins at page 17, line 19 through page 23, line 14.

<sup>5</sup> The text of EGSi's answers to State RFI 2-1, including the three addenda, are found in Mr. Higgins's Attachment HKH-3, handwritten page numbers 91-99.

1 resolved the discovery dispute, EGSI filed Addendum 1 to its initial  
2 response to State RFI 2-1.

3 Addendum 1, however, contained an error (the first error) in the list  
4 of employees who charged time to TTC costs.<sup>6</sup> Therefore, EGSI filed  
5 Addendum 2, which acknowledged and explained the error, and then  
6 corrected it. Mr. Higgins apparently overlooked the explanation in  
7 Addendum 2 about why certain employees who had been included in  
8 Addendum 1 were no longer listed on Addendum 2 (the explanation was  
9 that the employees who had been listed in Addendum 1 but who were no  
10 longer listed on Addendum 2 were employees who had no time charges  
11 reflected in the TTC costs requested in this docket). Consequently, he  
12 sent the Company approximately 200 RFI questions asking why certain  
13 employees who had been listed in Addendum 1 were not listed in  
14 Addendum 2. Those questions were unnecessary because the Company  
15 had already answered that question.

16 In preparing the response (Addendum 2) to correct that error,  
17 however, the Company made a second error. The second error was a  
18 miscalculation of the percentage of each of those employees' time billed to

---

<sup>6</sup> The error was that EGSI provided too much information. The question in State RFI 2-1 requested certain information about those employees whose time charges are included in the TTC costs requested in this docket. In Addendum 1 to this question, the Company included information not just about those employees whose time charges are included in the TTC costs requested in this docket, but also provided information about any employee of EGSI or its affiliates who charged time to a TTC project code even if those time charges have not been included in the TTC costs requested in this docket. Therefore, the information provided in Addendum 1 overstated the number of employees whose time charges are included in the TTC costs requested in this docket.

1       TTC costs. (This calculation error did not affect the correction to the list of  
2       employees whose time charges are included in the TTC costs. Thus, the  
3       corrected list of employees in Addendum 2 was accurate.) Upon  
4       discovering this second error, the Company provided a detailed  
5       explanation and a corrected calculation of the percentages. (Addendum 3  
6       to State RFI 2-1.)

7  
8    Q.   HAVE EGSI AND ESI TRIED TO THWART OR FRUSTRATE MR.  
9       HIGGINS'S ANALYSIS BY INTENTIONALLY PROVIDING HIM WITH  
10       ERRONEOUS INFORMATION IN THE ANSWERS TO STATE RFI 2-1  
11       OR IN DELAYING THE CORRECTED ANSWERS?

12   A.   No. The truth is much less interesting than Mr. Higgins imagines in his  
13       testimony. Again, in none of the four EGSI cases in which I have been  
14       involved prior to this docket has any party, or the Commission, requested  
15       or required a list of each employee whose time charges were included in  
16       the costs sought to be recovered or the percentage of each employee's  
17       time, per year, included in the costs to be recovered. EGSI and ESI  
18       simply made mistakes in extracting the requested information from its  
19       books and records.

1 III. ERRATA TO DIRECT TESTIMONY

2 Q. WHAT TOPIC DO YOU DISCUSS IN THIS SECTION OF YOUR  
3 TESTIMONY?

4 A. I provide an errata that lists several formatting, scrivener's, and labeling  
5 errors in my Direct Testimony that should be corrected.

6  
7 Q. PLEASE PROVIDE THE LIST OF ITEMS TO BE CORRECTED.

8 A. There are seven items.

9 1. The table of contents does not list subsection IV.D, which appears  
10 on pages 30 through 32 of my Direct Testimony. Please also see  
11 the correction in item 3 of this list.

12 2. On page 1 of my Direct Testimony, lines 6 – 7, my business  
13 address has changed. Please delete the address listed in my  
14 Direct Testimony and, in its place, insert the address provided on  
15 page 1 of this Rebuttal Testimony.

16 3. On page 30 of my Direct Testimony, line 10, subsection E should  
17 be relabeled as subsection D.

18 4. My Exhibit RNF-7AT has been mislabeled. The Exhibit, which is  
19 designated as highly sensitive, begins on Bates page 3B-HS-609  
20 and ends on Bates page 3B-HS-691. The header on those pages  
21 refers to Exhibit RNF-7AS, but should refer to Exhibit RNF-7AT.  
22 There is an Exhibit RNF-7AS, but it has been labeled correctly.

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1           5.     My Exhibit RNF-7AX has been mislabeled. The Exhibit, which is  
2                   designated as highly sensitive, begins on Bates page 3B-HS-840  
3                   and ends on Bates page 3B-HS-871. The header on those pages  
4                   refers to Exhibit RNF-7AW, but should refer to Exhibit RNF-7AX.  
5                   There is an Exhibit RNF-7AW, but it has been labeled correctly.

6           6.     The Bates range for Exhibit RNF-7AY needs to be clarified. The  
7                   Exhibit, which is designated as highly sensitive, begins on Bates  
8                   page 3B-HS-872 and ends on Bates page 3B-HS-902.

9           7.     The Bates range for Exhibit RNF-7AZ needs to be clarified. The  
10                  Exhibit, which is designated as highly sensitive, begins on Bates  
11                  page 3B-HS-903 and ends on Bates page 3B-HS-944.

12

13    Q.     DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?

14    A.     Yes, at this time.

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R-00282

SOAH DOCKET NO. 473-06-0092  
PUC DOCKET NO. 31544

APPLICATION OF ENTERGY	§	PUBLIC UTILITY COMMISSION
GULF STATES, INC. FOR	§	
RECOVERY OF TRANSITION	§	
TO COMPETITION COSTS	§	OF TEXAS

REBUTTAL TESTIMONY

OF

J. KAY TROSTLE

ON BEHALF OF

ENTERGY GULF STATES, INC.

FEBRUARY 10, 2006

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R-00283

SOAH DOCKET NO. 473-06-0092

PUC DOCKET NO. 31544

APPLICATION OF  
ENTERGY GULF STATES, INC.  
FOR RECOVERY OF  
TRANSITION TO COMPETITION COSTS

REBUTTAL TESTIMONY OF J. KAY TROSTLE

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EXHIBITS AND WORKPAPERS

JKT-R-1	EGSI's response to Cities RFI 17-32
JKT-R-2	EGSI's response to Cities RFI 16-8
JKT-R-3	Exhibit CR-5 with notes
JKT-R-4	Table of all Mr. Kever's Time Entries
JKT-R-5	Mr. Kever's 12.0 + Hour Combined Billings
JKT-R-6	Proceedings Included as "SB 7" Matter on Bickerstaff Invoices
JKT-R-7	EGSI's response to Cities RFI 21-5
WP/JKT-R-1	Bickerstaff supplemental invoices with JKT notes

I. WITNESS INTRODUCTION AND PURPOSE OF TESTIMONY

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is J. Kay Trostle. My office address is Sifuentes, Drummond & Smith,  
L.L.P., 1002 West Avenue, Suite 200, Austin, Texas 78701.

Q. ARE YOU THE SAME J. KAY TROSTLE WHO FILED DIRECT TESTIMONY IN  
THIS DOCKET ON AUGUST 24, 2005?

A. Yes. For both my direct and rebuttal testimony, I am testifying on behalf of  
Entergy Gulf States, Inc. ("EGSI" or the "Company").

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. I am presenting testimony to rebut: portions of Mr. Chris Reeder's Direct  
Testimony and Mr. Jacob Pous' Direct Testimony filed on behalf of Cities;  
portions of Mr. Hugh Higgins' Direct Testimony filed on behalf of the State of  
Texas; and portions of Ms. Anna Givens' Direct Testimony filed on behalf of the  
Staff.

II. REBUTTAL TO MR. CHRIS REEDER'S TESTIMONY

Q. PLEASE SUMMARIZE THE PORTIONS OF MR. REEDER'S TESTIMONY  
THAT YOU WILL ADDRESS IN THIS REBUTTAL TESTIMONY.

A. I respond to Mr. Reeder's testimony regarding:

1. The standard of view governing this docket;

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2. FERC Entergy System Agreement case (Company rebuttal witness Phillip May also addresses this issue);
3. H.B. 2107 (legislative advocacy);
4. Bruce Dailey invoices;
5. Andy Kever fees;
6. Office Supplies;
7. General Legal Research;
8. Meals and Travel; and
9. Various criticisms of invoices and entries for which Mr. Reeder has not, however, recommended or presented a disallowance.

Q. DO YOU AGREE WITH MR. REEDER'S OPINION THAT PURA SECTION 39.454 PUTS EGSI IN THE SAME POSITION AS THE ERCOT-AREA TDSPs WITH REGARD TO RECOVERY OF ITS TRANSITION TO COMPETITION EXPENSES (Reeder at p. 5, ln. 17-18)?

A. No. I do not agree that EGSI is in the same position as ERCOT-area TDSPs because EGSI is a fully integrated, bundled utility, providing service in an area of Texas in which there is no retail open access. That is not the situation with regard to the unbundled, ERCOT TDSPs. Nonetheless, if I understand Mr. Reeder's underlying point correctly, I agree that the standards of reasonableness and necessity found in Chapter 36 of the Utilities Code, applicable to TDSPs, are the correct standards applicable to EGSI under §39.454. I find it unnecessary to compare EGSI to ERCOT TDSPs in order to conclude that the "reasonable and necessary" standard found in PURA §39.454 should be applied consistently with the Commission's application of that standard in Chapter 36 rate cases.

1 Q. WHAT IS YOUR OPINION OF MR. REEDER'S SUGGESTION THAT ONLY  
2 EXPENDITURES MADE TO TAKE ADVANTAGE OF AFFIRMATIVE  
3 OBLIGATIONS UNDER CHAPTER 39 OF PURA ARE RECOVERABLE IN THIS  
4 PROCEEDING (Reeder at p. 7, ln. 3-15)?

5 A. Mr. Reeder's interpretation of the words "to comply with Chapter 39 of PURA" is  
6 unreasonably restrictive. Senate Bill ("SB") 7 brought about the historic  
7 restructuring of a multi-billion dollar industry within this state. As part of that  
8 restructuring effort, all participants were encouraged to embrace the newly  
9 created, competitive, open markets. Open, competitive markets thrive on  
10 participants' pursuing their own business interests, and the Commission sought  
11 input from all participants at every step of the process. EGSI's participation in  
12 the multitude of proceedings related to SB 7 is no different than Mr. Reeder's  
13 client, Shell Energy Services, whom Mr. Reeder describes as having "a fairly  
14 aggressive policy of intervening in as many SB 7 projects and dockets as  
15 possible." [Reeder at p. 1, ln. 10 – 14]. The multitude of proceedings initiated  
16 under Chapter 39 included workshops and rulemakings to flesh out the  
17 particulars of the new market, including its structure and operation, along with  
18 dockets for particular utilities wherein decisions could and were made that would  
19 directly impact other utilities. EGSI, along with most other investor-owned public  
20 utilities, actively participated in these proceedings.

21 Mr. Reeder testifies that "[i]f the Legislature had meant that EGSI should  
22 be reimbursed for all expenses necessary to protect its own interests, the  
23 legislation would have said so." [Reeder at p. 17, ln. 13 – 16]. Moreover, the

1 other side of the coin suggested by Mr. Reeder is that the Legislature did *not* say  
2 "EGSI is entitled to recover all reasonable and necessary expenditures made or  
3 incurred to comply with *the affirmative obligations imposed upon it by this*  
4 Chapter". Those are Mr. Reeder's words and interpretation, not the  
5 Legislature's. The Commission should reject his narrow interpretation of  
6 §39.454.

7  
8 Q. IS MR. REEDER CONSISTENT IN HIS EXPLANATION OF WHAT IT MEANS  
9 TO COMPLY WITH CHAPTER 39?

10 A. No. Mr. Reeder equivocates somewhat on his own interpretation of what it  
11 means to comply with Chapter 39, because he also discusses complying with a  
12 legislative policy reflected in Chapter 39, such as securitization, and concludes  
13 that expenditures for a securitization application, if EGSI had filed one, would be  
14 recoverable.

15 Notwithstanding this apparent equivocation, Mr. Reeder goes on to apply  
16 the standard later in his testimony when he concludes that EGSI's participation in  
17 other utilities' cases and rulemakings was not undertaken to comply with Chapter  
18 39 of PURA. [See Reeder at p. 16, ln. 13 – 18]. Nonetheless, in the final  
19 analysis, Mr. Reeder's opinion on what it means for EGSI to comply with Chapter  
20 39 is not applied by him or any other intervenor witness to recommend any  
21 specific disallowances. The Commission should reject any suggestion that Mr.  
22 Reeder's restrictive interpretation of the word "comply" should be applied to the  
23 evidence developed in this proceeding.

1

2 Q. DO YOU AGREE WITH MR. REEDER THAT IT IS APPROPRIATE FOR THE  
3 COMMISSION TO DISTINGUISH BETWEEN EXPENDITURES EGSI MADE TO  
4 PROTECT ITS INTEREST AND EXPENDITURES EGSI MADE TO COMPLY  
5 WITH CHAPTER 39, AND DISALLOW THE FORMER (Reeder at p. 16, ln. 19 –  
6 p. 18, ln. 3)?

7 A. No. As I just explained, the competitive markets created by SB 7 not only  
8 envisioned active participation by all utilities and all new market participants, but  
9 the Commission itself strongly encouraged full participation in Chapter 39  
10 proceedings which, by their very nature, were intended to design the new market  
11 and create a new system of operations that would fundamentally change every  
12 utility's business model. There is simply no way to divorce EGSI's own interest in  
13 the new market structure from the proceedings it was involved in that arose  
14 under Chapter 39.

15 Q. DO YOU AGREE WITH MR. REEDER'S CHARACTERIZATION AT PAGE 16,  
16 LINE 20 THROUGH PAGE 17, LINE 16, THAT EGSI IS CLAIMING EXPENSES  
17 THAT WERE REASONABLE AND NECESSARY ONLY BECAUSE THEY  
18 WERE UNDERTAKEN TO PROTECT EGSI'S INTEREST?

19 A. No. I do not agree with Mr. Reeder's assertion that EGSI's application relies on a  
20 new or unique standard of reasonableness or necessity. Mr. Reeder cites to the  
21 Company's response to Cities' RFI 17-32 in this portion of his testimony. I have  
22 included the Company's full response to this RFI (as well as the Company's  
23 responses to the State's RFIs referenced therein) as Exhibit JKT-R-1. In



1 addition, I think it is important to note that the RFI question itself could be  
2 misleading because it cites only a portion of Mr. Donisi's billing entry. That billing  
3 entry on October 26, 1999, states in its entirety:

4 Review Code of Conduct filings; Send summary of prehearing  
5 conference to client; PG&E, Southern California Edison,  
6 FirstEntergy filings in California and Ohio; Relevant issues to Texas  
7 filing; Prepare monthly report; Review filings and actions at PUCT;  
8 Confer with Steve Neinast; Monitor current filings at PUCT for  
9 client.

10 The Company's full response to Cities' RFI 17-32, which Mr. Reeder  
11 acknowledges he is citing only in part on page 17 of his testimony, demonstrates  
12 that the Company is seeking recovery of expenditures for services directly  
13 related to electric restructuring in Texas. The Company's RFI response is also  
14 supported by the context of Mr. Donisi's entire billing entry, quoted above. The  
15 fact that some of the work performed by Mr. Donisi concerned utilities in other  
16 states does not mean the research was not reasonable or necessary in order for  
17 EGSi to participate in Chapter 39 proceedings. PG&E was one of the California  
18 utilities that had faced or was preparing to face many of the same or similar  
19 electric restructuring issues that the Texas utilities were preparing to face. In  
20 addition, PG&E was an active participant in Commission rulemaking and  
21 contested case proceedings implementing Chapter 39 of PURA. The  
22 restructuring ideas, rules, or proposals that PG&E presented in California had the  
23 potential to be presented to the Commission or to affect the Commission's  
24 actions in rulemaking or contested case proceedings implementing Chapter 39.  
25 The Commission itself often referred to market restructuring activities in other

1 states (or nations) in determining how to implement all the policies and mandates  
2 of Chapter 39. In this context, it could well be that the initiatives of other states  
3 could provide a model on how (or how not) to implement ROA in Texas. It was  
4 neither unreasonable nor unnecessary for EGSI to incur expenses associated  
5 with research on restructuring activities in other states as part of its TTC efforts in  
6 Texas.

7  
8 Q. ARE THERE ANY OTHER EXAMPLES WHERE MR. REEDER HAS  
9 MISCHARACTERIZED THE COMPANY'S POSITION ON THE APPROPRIATE  
10 STANDARD FOR RECOVERY OF EXPENDITURES?

11 A. Yes. Mr. Reeder's characterization of the Company's Response to Cities' RFI  
12 16-8 at page 17, lines 5 – 11, misrepresents the Company's position by quoting  
13 only a portion of the RFI response. The entire response is attached as Exhibit  
14 JKT-R-2 and reveals that the billing entry related to research performed in  
15 preparing a discovery response in the Company's UCOS case, Docket No.  
16 22356. Expenditures related to asserting trade secret privileges under the open  
17 records act in a UCOS proceeding are undeniably reasonable and necessary in  
18 my opinion.

19  
20 Q. DO YOU FIND THAT MR. REEDER HAS FAIRLY LISTED THE HIGHLIGHTS  
21 OF EGSI'S "BILLING POLICY FOR OUTSIDE COUNSEL" (Reeder at p. 11, ln.  
22 15 – page 12, line 18)?

1 A. No. Mr. Reeder has accurately captured some aspects of the policy, but has  
2 omitted several important points. For example, while it is true that the Billing  
3 Policy in effect prior to mid-2003, which he is referring to, states that charges for  
4 legal services will be made on the basis of counsel's lowest hourly rates charged  
5 to other clients for like services, that provision is preceded by the important  
6 qualifier "Unless another basis for setting legal fees is agreed to in advance in  
7 writing." [See Reeder Exhibit CR-2 (Bates 43)]. This policy is also explained  
8 further in EGSI's Response to Cities RFI 9-7, wherein it is explained that "In  
9 many instances, however, the Company expects to pay the firm's prevailing rate,  
10 as there is often limited market availability for the needed services. The  
11 Company does not pay more than the firm's prevailing rate, plus reasonable and  
12 necessary out of pocket expenses." Mr. Reeder's testimony that "No evidence  
13 exists that any of the law firms involved or consultants provided services at a  
14 discounted rate, even though they were billing hundreds of thousands of dollars  
15 in fees" (Reeder at p. 21, ln. 22 – p. 22, ln. 1) is incorrect. As I explained in my  
16 Direct Testimony, the Company's primary regulatory counsel during the early part  
17 of the TTC period, Bickerstaff, billed at a blended discounted rate (\$165)  
18 throughout all of 1999 and most of 2000. [See also WP/JKT-1 at Bates4-VL-  
19 479]. Another example of discounted rates is found on the Skadden Arps  
20 invoices, which reflect a 10% discount on the total fees. [See, e.g., WP/JKT-1 at  
21 Bates 4-VL-2208 et. seq.]. This practice is consistent with the Billing Policy.

22

1 Q. ARE THERE OTHER EXAMPLES WHERE MR. REEDER OMITTED  
2 IMPORTANT POINTS ABOUT EGSI'S "BILLING POLICY FOR OUTSIDE  
3 COUNSEL"?

4 A. Yes. Although Mr. Reeder suggests that the Billing Policy requires a lead  
5 attorney to be assigned to a given project (Reeder at p. 12, ln. 1), it should be  
6 clarified that the Billing Policy gives Entergy's General Counsel supervisory  
7 responsibility, including coordination of outside legal counsel's activities, but does  
8 not require a "lead" outside counsel to be assigned. [See Reeder Exhibit CR-2  
9 (Bates 45)]. With respect to the number of attorneys allowed to interview  
10 witnesses or attend meetings (Reeder at p. 12, ln. 2-4), the Billing Policy states:  
11 "Most of Entergy's litigation can be handled adequately by one attorney (or by  
12 one associate under the supervision of one partner). We recognize, however,  
13 that in more complex litigation it may be necessary to have more than one  
14 attorney engaged in the project." [See Reeder Exhibit CR-2 (Bates 45)]. Based  
15 on my review of the invoices and consultations with Messrs. Williams (CTW),  
16 Neinast (ESI, formerly Bickerstaff) and Fogel (solo practitioner, formerly  
17 Bickerstaff), I conclude that the matters for which time was billed is fairly  
18 characterized as "complex" and the attorneys divided responsibilities to avoid  
19 overlapping or duplicative activity. Accordingly, I further conclude that the time  
20 entries that I found were reasonable and necessary as reflected in my Direct  
21 Testimony, would be reasonable and necessary under the EGSI Billing Policy as  
22 well.

23

1 Q. ONE OF THE PROVISIONS OF THE BILLING POLICY HIGHLIGHTED BY  
2 REEDER CONCERNS RESEARCH (Reeder at p. 12, In. 15). DOES MR.  
3 REEDER SUGGEST ANY DISALLOWANCES BASED UPON HIS  
4 UNDERSTANDING OF THIS BILLING POLICY?

5 A. Yes. Mr. Reeder does recommend disallowing all expenditures for what he  
6 characterizes as "General Legal Research." [See Reeder at p. 32, In. 22 – p. 33,  
7 In. 10; p. 29 (Table); and Exhibit CR-5].

8

9 Q. DO YOU AGREE WITH HIS RECOMMENDED DISALLOWANCE FOR  
10 RESEARCH?'

11 A. No. I have several responses to this recommendation. First, Mr. Reeder is not  
12 fairly applying the Company's Billing Policy on research, which states in its  
13 entirety: "Outside counsel should consult with the responsible in-house attorney  
14 prior to embarking upon any extensive research project. We retain firms, in part  
15 because of expertise and experience, and expect that basic research will not be  
16 billed to Entergy." [Reeder Exhibit CR-2 (Bates 46)]. The policy addresses basic  
17 research—not all research. The policy does allow research on a wide range of  
18 legal issues.

19 Second, the list of expenditures which Mr. Reeder characterizes as  
20 "General Legal Research" is both over-inclusive, because it includes every time  
21 entry that contains the word "research" and therefore does not distinguish  
22 between "general" and specific and necessary research, and under-inclusive  
23 inasmuch as it excludes virtually indistinguishable services such as "analysis."

1 [See WP/JKT-1, Bates 4-VL-6218: "analyze cost of equity issues" on 1/5/00 is  
2 allowed, but "research cost of equity issues" on 1/06/00 is disallowed; "analyze  
3 ROE issue" or "issues" is allowed on 1/11/00 and 1/13/00]. A review of the time  
4 entries that Mr. Reeder appears to be disallowing reveals that disallowing entries  
5 simply because they contain the word "research" is not the equivalent of  
6 disallowing what Mr. Reeder calls "general legal research." [See, e.g., Bates 4-  
7 VL-6227, CTW entry for "research commissioners' statements regarding  
8 functional separation issue"; Bates 4-VL-6612, Skadden Arps entry on Entergy  
9 System Agreement matter for "research formatting requirements for tariff filings  
10 under Order No. 614"; and Bates 4-VL-6761, Taggart Morton time entry  
11 "research re private letter rulings on tax normalization"]. In my opinion, it is  
12 unreasonable to assume that "research", which may mean "review", "read", or  
13 "analyze," means "basic legal research."

14 Third, the list of expenditures in Exhibit CR-5 includes numerous  
15 expenditures that are not included in the Company's TTC application and,  
16 accordingly, Mr. Reeder is *disallowing expenditures that are not part of the total*  
17 *dollars for which recovery is sought*. See Exhibit JKT-R-3 (Reeder's Exhibit CR-  
18 5, with Ms. Trostle's notations). The total expenditures included on Exhibit CR-5  
19 under the column "General Legal Research" that are *not* part of the TTC  
20 expenditures in the Company's filing equals \$40,523.29 out of the \$95,527.16  
21 Mr. Reeder has calculated.

22 Fourth, Mr. Reeder's list of exclusions for "General Legal Research"  
23 includes time entries from Cities' (GSU Steering Committee) invoices which were

1 submitted to and paid by EGSi during the TTC recovery period. Surely, Mr.  
2 Reeder is not suggesting that the party for whom he is testifying obtained  
3 reimbursement for services that are not reasonable and necessary!

4 Fifth, some of the disallowances Mr. Reeder recommends are for Lexis  
5 research, but at the same time Mr. Reeder and Mr. Boyle are charging the Cities  
6 for Lexis or Westlaw research in this proceeding, and the Cities are seeking  
7 recovery of those expenditures as reasonable and necessary. [See Pous Direct,  
8 Appendix B at Bates 106 (Brown McCarroll Lexis charges), 142 (J. Boyle  
9 Westlaw Research)]. In my opinion, charges for Lexis or Westlaw research are  
10 not only reasonable and necessary, but are commonly recoverable as rate case  
11 expenses.

12 Sixth, at least four entries, totaling \$1,568.25, are fees paid to Skadden  
13 Arps under the Entergy Corp. System Agreement matter. Since Mr. Reeder  
14 recommends disallowance of one-half of all fees and expenses associated with  
15 the System Agreement (Reeder at p. 24, Table and C. Reeder W/P p. 325),  
16 disallowing these "research" fees constitutes a double disallowance.

17 Finally, I note that the Cities are seeking reimbursement for their costs  
18 associated with this proceeding, including services described as "research."  
19 [See Pous Direct, Appendix B for examples at Bates page 97 (11/3/05 C.  
20 Reeder time entry for "research corporate attorney fee payment guidelines"),  
21 Bates page 98 (11/21/05 Edie Heuss "Research on PUC website "), Bates page  
22 124 (12/1/05 N. Gordon "research regarding prior dockets raised in prior Thomas  
23 deposition"), Bates page 158 (9/20/05 Stephen Mack "Research Issues"), and

1 Bates page 160 (6 time entries for Mr. Lawton for "Research"]]. I conclude that  
2 Mr. Reeder's review of this issue was insufficient to support disallowance of all  
3 time entries that contain the word "research", and certainly his recommendation  
4 must be disregarded inasmuch as it includes expenditures that are not and have  
5 never been part of EGSI's TTC recovery request.  
6

7 Q. MR. REEDER ALSO DESCRIBES PART OF THE BILLING POLICY THAT  
8 INDICATES THE COMPANY WILL NOT PAY FOR ITEMS CONSIDERED PART  
9 OF A LAW FIRM'S OVERHEAD (Reeder p. 12, ln. 5-8). DOES MR. REEDER  
10 SUGGEST ANY DISALLOWANCES BASED UPON HIS UNDERSTANDING OF  
11 THIS BILLING POLICY?

12 A. Yes. Mr. Reeder does suggest that all expenditures for "office supplies" fall  
13 within this policy concerning "routine office overhead" and should be disallowed.  
14 [Reeder at p. 32, ln. 14 – 21, Table on p. 29, and Exhibit CR-5].  
15

16 Q. DO YOU AGREE WITH HIS SUGGESTION REGARDING "OFFICE  
17 SUPPLIES"?

18 A. No. First, I do not agree that the Billing Policy covers what Mr. Reeder  
19 characterizes as "office supplies." The Billing Policy gives the following examples  
20 of items that the Company considers part of the law firm's "overhead": "rent,  
21 depreciation, overtime wages, secretarial or stenographic expenses, proof  
22 readers, general review of legal or industry literature, postage, word processing  
23 charges, bill preparation or other operational expenses." [See Reeder Exhibit



1 CR-2 (Bates 43)]. The Company Billing Policy goes on to explain that Entergy  
2 "will reimburse you for out-of-pocket expenses incurred on our behalf, except that  
3 no profit above your actual costs will be paid, such as additional or enhanced  
4 costs of photocopies, computerized legal research, long distance telephone calls,  
5 fax machine charges, or the like." [Id.]. The expenses listed on Exhibit CR-5  
6 represent out-of-pocket expenditures and there is no suggestion that they  
7 represent anything but actual costs.

8 Further, the costs must be examined in light of the activity occurring in the  
9 time-frame of the expenditure. For example, the second entry on Exhibit CR-5  
10 under "office supplies" is for \$5,215.61 in supplies furnished by Bickerstaff in  
11 Docket No. 22356 during the time when the firm was reorganizing and re-filing  
12 parts of EGSI's UCOS application in response to determinations of material  
13 deficiencies *and* providing significant numbers of RFI responses. Given this  
14 activity, I find it reasonable for the law firm to charge for the supplies needed to  
15 provide many discovery responses and to file supplemental portions of the  
16 application, which in my experience requires expenditures for items such as  
17 binders, tabs, labels, folders, and envelopes.

18 In addition to charges for "supplies", Exhibit CR-5 includes charges for  
19 printer and fax rental (WP/JKT-1, Bates 4-VL-6072) and Compaq rental (Bates 4-  
20 VL-6132), which I do not believe fall under the Billing Policy's prohibition on  
21 reimbursing for overhead. Instead those rentals represent expenditures  
22 necessitated by a temporary increase in work, which made rental of a fax, printer,  
23 and computer more economical than purchase of that equipment.

1 Finally, several of the expenditures Mr. Reeder lists on Exhibit CR-5 under  
2 Office Supplies, are not included in the Company's TTC costs. The first batch of  
3 entries that cover expenditures that are not classified as TTC costs because they  
4 predate the TTC recovery period and accordingly are not included in the  
5 expenditures which I am sponsoring are listed on Exhibit CR-5 at Bates 4-VL-528  
6 (\$751.41, \$446.50, \$311.55 and \$28.51) and Bates 4-VL-538 (\$11.82). The next  
7 charge that is not included in the Company's TTC request is the \$499.50 charge  
8 listed on Bates 4-VL-3554. That expenditure appears on a Deloitte and Touche  
9 expense report but is not included in the charges to EGSI. This can be  
10 confirmed by cross checking that the Total Trip cost of \$690.30 listed above the  
11 office supply entry of \$499.50 on Bates 4-VL-3554 is the only expenditure from  
12 that page reflected on the Summary Invoice found at Bates 4-VL-3538. Finally,  
13 the \$61.67 expenditure by Deloitte and Touche listed on Exhibit CR-5 on Bates  
14 4-VL-3957 was not charged to EGSI on that invoice, but rather was charged on  
15 the earlier invoice (See Bates 4-VL-3911), so disallowing it twice is an error. The  
16 total amount that is improperly listed as a disallowance because it is not included  
17 as TTC or is double-counted by Mr. Reeder equals \$2,110.96 out of the  
18 \$12,362.33 listed on Exhibit CR-5.

19  
20 Q. DO YOU AGREE WITH MR. REEDER THAT EGSI HAD AN INAPPROPRIATE  
21 OVER-RELIANCE ON OUTSIDE COUNSEL (Reeder at p. 18, ln. 12; and p. 19,  
22 ln. 20 – p. 21, ln 13)?