

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY COMMISSION

ENTERGY SERVICES, INC.

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)

DOCKET NO. ER13-432-002

ANSWERING TESTIMONY

OF

THOMAS D. CROWLEY

ON BEHALF OF

ENTERGY SERVICES, INC.

PUBLIC REDACTED

JUNE 6, 2014

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## LIST OF EXHIBITS

Exhibit ESI-16	Thomas D. Crowley Statement of Qualifications
Exhibit ESI-17	2008 Evaluation of Settlement Between Entergy and UP ( <b>Highly Sensitive Protected Material – Filed Under Seal</b> )
Exhibit ESI-18	2010 Evaluation of Settlement Between Entergy and UP ( <b>Highly Sensitive Protected Material – Filed Under Seal</b> )
Exhibit ESI-19	2014 Evaluation of Settlement Between EAI and UP ( <b>Highly Sensitive Protected Material – Filed Under Seal</b> )
Exhibit ESI-20	Deposition Excerpt of Messrs. Baron, Cain and Kollen ( <b>Highly Sensitive Protected Material – Filed Under Seal</b> )
Exhibit ESI-21	2011 Request for Proposals for Rail Transportation of Coal and Railroad Responses ( <b>Highly Sensitive Protected Material – Filed Under Seal</b> )
Exhibit ESI-22	First Confidential Addendum to Rail Transportation Contract UP-C-53106 ( <b>Highly Sensitive Protected Material – Filed Under Seal</b> )

1 **I. INTRODUCTION**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

3 A. My name is Thomas D. Crowley. My business address is 1501 Duke Street, Suite  
4 200, Alexandria, Virginia 22314-3449.

5  
6 Q. PLEASE DESCRIBE YOUR EDUCATIONAL AND PROFESSIONAL  
7 BACKGROUND.

8 A. I am an economist and President of the economic consulting firm of L.E. Peabody &  
9 Associates, Inc. I am a graduate of the University of Maine, from which I obtained a  
10 Bachelor of Science degree in Economics. I served three years in the United States  
11 Army. Since 1971, I have been employed by L.E. Peabody & Associates, Inc. I am a  
12 member of the Transportation Research Forum, and the American Railway  
13 Engineering and Maintenance-of-Way Association. A detailed statement of my  
14 background and qualifications is attached to my testimony in Exhibit ESI-16.

15 Over the last 43 years I have advised clients, including electric utility  
16 companies, on a wide variety of issues, including economic, marketing, transportation,  
17 fuel supply and fuel management problems. I have been involved in the negotiation of  
18 over 100 coal transportation agreements, as well as provided consultation relating to  
19 the administration of economic, operational, and logistical aspects of those  
20 agreements. In the course of providing those duties, I have obtained an intimate  
21 familiarity with the economic and operating aspects of the two major western  
22 railroads, the BNSF Railway Company ("BNSF") and Union Pacific Railroad

1 Company ("UP") (collectively the "Railroads"). This familiarity includes detailed  
2 knowledge of railroad operations and market conditions relating to the principal  
3 supply regions they serve, including the Southern Powder River Basin ("PRB") coal  
4 fields located in Campbell and Converse Counties, Wyoming.

5  
6 Q. ON WHOSE BEHALF ARE YOU OFFERING THIS ANSWERING TESTIMONY?

7 A. This Answering Testimony is submitted on behalf of Entergy Services, Inc. ("ESI").  
8

9 Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THIS COMMISSION?

10 A. Yes. I testified on behalf of Alamito Company in FERC Docket No. ER79-97-002  
11 regarding the negotiation of coal transportation rates for the Tucson Electric Power  
12 Company. I also filed rebuttal testimony in that same docket.  
13

14 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

15 A. I have been asked to respond to the Direct Testimony submitted by Collin Cain,  
16 M.S.C., on behalf of the Mississippi Service Commission, Stephen J. Baron on behalf  
17 of the Louisiana Public Service Commission and Lane Kollen on behalf of the  
18 Louisiana Public Service Commission. In particular, I will address the conclusions  
19 offered by Messrs. Cain, Baron and Kollen as they relate to the value of the UP  
20 Settlement for the post-January 2014 period, and whether, and to what extent, there is  
21 any residual value to that settlement. Based on my review of their testimony, I  
22 understand that these three witnesses have concluded that some of the benefits that

1 EAI achieved through the UP Settlement will be realized between January 2014 and  
2 June 30, 2015, and that as a result EAI will retain any such benefits because of EAI's  
3 withdrawal from the Entergy System Agreement ("ESA") on December 18, 2013.  
4

5 Q. DO YOU AGREE WITH THAT CONCLUSION?

6 A. No. As I explain in this Answering Testimony, [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9

10 Q. HAVE YOU PREVIOUSLY TESTIFIED AS AN EXPERT ON COAL  
11 TRANSPORTATION AGREEMENTS?

12 A. Yes. I have prepared and testified on the value of coal transportation agreements on  
13 several occasions, including testimony before this Commission, state regulatory  
14 commissions, State and Federal courts, and Arbitration proceedings.  
15

16 Q. HAVE YOU PREVIOUSLY TESTIFIED CONCERNING RAILROAD MARKET  
17 CONDITIONS FOR COAL TRANSPORTATION SERVICES?

18 A. Yes. I have previously testified about railroad market conditions for coal  
19 transportation in a variety of forums, including, state regulatory commissions, State  
20 and Federal courts, and Arbitration proceedings.

1 Q. HAVE YOU PREVIOUSLY TESTIFIED CONCERNING THE VALUE OF THE UP  
2 SETTLEMENT AT ISSUE IN THIS PROCEEDING?

3 A. Yes. I first submitted testimony concerning the estimated value of the UP Settlement  
4 to the Arkansas Public Service Commission ("APSC") in APSC Docket No. 05-116-U  
5 on October 16, 2008. The purpose of that testimony was two-fold. First, I addressed  
6 the issue of whether EAI's inventory levels were in compliance with APSC's  
7 inventory standard during the relevant review period (2005 and 2006). Second, I  
8 explained the economic analysis that I conducted to assign an estimated value to the  
9 April 2008 settlement reached with UP (referred to herein as the "UP Settlement") in  
10 connection with its litigation of service-related disputes in *Entergy Arkansas, Inc. and*  
11 *Entergy Services, Inc. v. Union Pacific Railroad Company*, Case No. CV2006-2711  
12 (Circuit Court of Pulaski County, Arkansas). A copy of my initial valuation is  
13 attached as Exhibit ESI-17. I later submitted an updated estimated valuation of the UP  
14 Settlement in APSC Docket No. 08-165-U on July 16, 2010. A copy of my 2010  
15 valuation is attached as Exhibit ESI-18.

16  
17 Q. BESIDES PROVIDING TESTIMONY TO THE APSC ON THE ESTIMATED UP  
18 SETTLEMENT VALUE, WERE YOU INVOLVED IN THE UNDERLYING UP  
19 LITIGATION?

20 A. Yes, I was one of the expert witnesses who provided testimony on behalf of EAI in  
21 that litigation. In that role, I prepared expert reports relating to a variety of issues,

1 including calculation of delivery shortfalls, transportation logistics, and coal inventory  
2 practices.

3  
4 **II. THE UP LITIGATION AND SETTLEMENT**

5 **A. Settlement Terms**

6 Q. PLEASE DESCRIBE THE CONTRACT THAT WAS THE SUBJECT OF THE UP  
7 LITIGATION.

8 A. The contract for coal transportation services (“UP Agreement”) was entered [REDACTED]  
9 but did not become effective until [REDACTED], and had a term running through

10 [REDACTED]. The UP Agreement had [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 The UP Agreement was known in the industry as one of UP’s so-called  
16 “Legacy Contracts.” [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

1 Q. PLEASE DESCRIBE THE LITIGATION THAT AROSE WITH UP THAT LED TO  
2 THE UP SETTLEMENT.

3 A. In the Spring of 2005, both UP and BNSF were transporting coal to the White Bluff  
4 Steam Electric Station ("White Bluff"), and UP was transporting coal to Independence  
5 Steam Electric Station ("ISES"). UP shares a portion of the trackage used to transport  
6 coal from the PRB (known as the "Joint Line") with BNSF. On May 14 and 15, 2005,  
7 two derailments occurred at two separate locations near the south end of the PRB Joint  
8 Line. [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 BNSF lifted its Force Majeure on June 3, 2005. UP, on the other hand, continued its  
15 Force Majeure until November 23, 2005, and even after that date continued to fall well  
16 below its delivery requirements under the UP Agreement as well as other coal  
17 transportation agreements with other shippers.

18 EAI responded to UP's Force Majeure claim by seeking additional information  
19 about the claimed events to assure these events were proper Force Majeure events  
20 "beyond UP's control." In addition, EAI pressed UP extensively to maintain delivery  
21 levels and manage equipment in a manner that would minimize the disruption to EAI's  
22 coal supply. [REDACTED]



1 [REDACTED]  
2 [REDACTED] For  
3 these reasons, EAI challenged the Force Majeure claim and sought to enforce the  
4 delivery commitments and other rights contained in the UP Agreement.

5 Despite EAI's efforts, UP's deliveries continued to be below contract  
6 requirements well into 2006, with the shortfalls in deliveries to White Bluff and ISES  
7 exceeding [REDACTED]. EAI's efforts to work with UP to maintain deliveries and  
8 resolve the dispute over shortfalls through negotiation proved unsuccessful. On  
9 March 14, 2006, UP filed a Complaint and Application for Declaratory Judgment in  
10 the Circuit Court of Pulaski County (the "Court Case"), asking the Court to rule that  
11 its Force Majeure claim was valid under the UP Agreement. On April 11, 2006, EAI  
12 filed its Answer and Counterclaim in Pulaski County seeking a declaration that the  
13 Force Majeure claims were not valid events under the Agreement. EAI further  
14 claimed that absent a valid Force Majeure, UP's delivery shortfalls constituted  
15 breaches of the UP Agreement and that EAI should not be limited to its liquidated  
16 damages for the breaches. Based on calculations I sponsored in the litigation, had EAI  
17 been limited to recovery of the contract specified liquidated damages, the maximum  
18 amount that it could have recovered would have been approximately [REDACTED].  
19 While I did not prepare the actual damages calculation, it was my understanding that  
20 the actual damages being pursued were several magnitudes of the liquidated damages  
21 amount under the UP Agreement. The parties litigated the claims for almost two years

1 and engaged in substantial discovery, expert presentations and motions practice. The  
2 matter was ultimately settled in April 2008.

3  
4 Q. PLEASE DESCRIBE THE RELEVANT TERMS OF THE UP SETTLEMENT.

5 A.

[REDACTED]

17  
18 **B. Previous Valuations of UP Settlement Benefits**

19 Q. WHAT PROMPTED YOU TO PREPARE THE INITIAL ESTIMATE OF THE  
20 VALUATION IN 2008?

21 A. EAI's response to failed coal deliveries by UP was the subject of inquiry in APSC  
22 Docket No. 05-116-U. EAI presented testimony in that proceeding describing the

1        ensuing litigation between UP and EAI and the resolution of that litigation via the UP  
2        Settlement.<sup>1</sup> I prepared my initial valuation in 2008 to support EAI's explanation in  
3        APSC Docket No. 05-116-U of the estimated value of the settlement relative to the  
4        damages claimed against UP. The initial valuation in 2008 was a prospective  
5        valuation that was based on market conditions at that time and the projection of  
6        various indices based on economic indicators and forecasts that were available in  
7        2008.

8  
9        Q.    WHAT DID YOU CONCLUDE WHEN YOU PERFORMED YOUR INITIAL  
10        VALUATION IN 2008?

11        A.    [REDACTED]  
12        [REDACTED]  
13        [REDACTED]  
14        [REDACTED] [REDACTED]  
15        [REDACTED] [REDACTED]  
16        [REDACTED]  
17        [REDACTED]  
18        [REDACTED]  
19        [REDACTED]  
20        [REDACTED]  
21        [REDACTED]

---

<sup>1</sup>        ESI was also a party to the litigation and settlement with UP.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15

16 Q. PLEASE EXPLAIN WHAT YOU MEAN WHEN YOU REFER TO THE “VALUE”  
17 OF THE SETTLEMENT.

18 A. [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12

13 Q. DID YOU SUBSEQUENTLY UPDATE YOUR BENEFITS VALUATION?  
14 A. Yes. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

1 Q. HAVE YOU AGAIN UPDATED YOUR BENEFITS ANALYSIS FOR THE  
2 PURPOSE OF THIS PROCEEDING [REDACTED]

3 [REDACTED]

4 A Yes. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

1 Q. PLEASE EXPLAIN HOW YOUR 2008 VALUATION (EXHIBIT ESI-17)  
2 ARRIVED AT THE VALUATION OF [REDACTED].

3 A.

[REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]



1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

---

2 [REDACTED]

1

2

3

4

5

6

7

8 Q. WHAT PROMPTED YOU TO RECALCULATE THE VALUATION OF THE  
9 SETTLEMENT IN 2010?

10 A. The APSC initially opened Docket No. 05-116-U to consider EAI's actions in  
11 responding to UP's service shortfalls. Docket No. 05-116-U was subsequently stayed  
12 pending the resolution of the UP litigation. Upon settling the UP litigation, EAI  
13 submitted a motion to lift the stay of Docket No. 05-116-U. My initial valuation in  
14 2008 was submitted in support of that motion. By Order dated December 10, 2008,  
15 the APSC denied the motion to lift the stay and initiated a separate proceeding (APSC  
16 Docket No. 08-165-U) solely to consider the UP Settlement. The APSC directed in  
17 APSC Docket No. 08-165-U that EAI submit testimony regarding the UP Settlement  
18 in July 2010. I therefore prepared the July 2010 valuation to support EAI's testimony  
19 in APSC Docket No. 08-165-U.

20

21

22

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4

5 Q. [REDACTED]

6 [REDACTED]

7 A. [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13

14 Q. PLEASE EXPLAIN HOW YOUR 2010 VALUATION (EXHIBIT ESI-18)

15 ARRIVED AT THE VALUATION OF [REDACTED].

16 A. [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

1 Q. PLEASE EXPLAIN WHY YOUR JULY 2010 BENEFITS ESTIMATE WAS  
2 SIGNIFICANTLY [REDACTED] THAN YOUR 2008 BENEFITS ESTIMATE.

3 A. [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED] [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16  
17 Q. [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 A. [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15

16 **C. Use of Benefits Valuations in this Proceeding**

17 Q. IN YOUR OPINION, SHOULD YOUR INITIAL 2008 VALUATION BE RELIED  
18 ON TODAY TO ASSESS THE VALUE OF THE UP SETTLEMENT?

19 A. [REDACTED]  
20 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

14 Q. IN YOUR OPINION, SHOULD YOUR JULY 2010 VALUATION BE RELIED ON  
15 TODAY TO ASSESS THE VALUE OF THE UP SETTLEMENT?

16 A.

[REDACTED]

17

[REDACTED]

18

[REDACTED]

19

[REDACTED]

20

[REDACTED]

21

[REDACTED]

22

[REDACTED]



1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

13 Q. ARE YOU AWARE THAT MR. CAIN AND MR. BARON HAVE ACCEPTED  
14 YOUR JULY 2010 VALUATION AND HAVE USED THAT VALUATION AS  
15 THE BASIS FOR DETERMINING THEIR CALCULATIONS OF THE CURRENT  
16 OR REMAINING VALUE OF THE UP SETTLEMENT?

17 A. Yes. I am aware that both witnesses are using my July 2010 valuation for that  
18 purpose.

19

20 Q. DO YOU AGREE THAT IT IS APPROPRIATE TO USE THE JULY 2010  
21 VALUATION FOR THIS PURPOSE?

22 A. No, I do not.

1 Q. WHY NOT?

2 A. [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19

20 Q. WHEN DID THIS OCCUR?

21 A. Following my July 2010 valuation.

1 Q. DID MR. CAIN, MR. BARON OR MR. KOLLEN OFFER ANY INDEPENDENT  
2 ANALYSIS TO SUPPORT THEIR RELIANCE ON THE 2010 VALUATION AS

3 [REDACTED]  
4 [REDACTED] ?  
5 A. No, they did not.<sup>4</sup> [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12

13 **D. Updated Benefits Valuation**

14 Q. HAVE YOU PERFORMED A VALUATION OF THE UP SETTLEMENT [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 A. Yes.

---

<sup>4</sup> See Baron Deposition at pp. 140-142 and p. 190; Kollen Deposition at pp. 77-78 and pp. 129-130; Cain Deposition at p. 101 (relevant pages of which are attached as Exhibit ESI-20).

<sup>5</sup> See, e.g., Baron Deposition at 141; Kollen Deposition at 77 (“I took [the Entergy expert reports] at face value. I did not perform an independent assessment of the accuracy of those expert reports and opinions that were offered by Entergy’s experts.”), 91-93 (stating repeatedly that he did not perform any analysis of the Entergy expert reports but instead simply took them “at face value.”), 98 (“I did not critique or assess Entergy’s experts. As I said, I took it at face value and reported it.”), and 129-130 (“Again, my intention and my task in this proceeding was not to second-guess Entergy or its witnesses with respect to representations, conclusions that those witnesses had made in the UP litigation or before the Arkansas Commission. Again, we accepted those at face value.”). See Exhibit ESI-20.

1 Q. WHY HAVE YOU PERFORMED THIS UPDATED VALUATION?

2 A. [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12  
13 Q. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]

16 A. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]

---

6 [REDACTED]  
7 [REDACTED]  
[REDACTED]

1 Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 A. [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17

18 Q. HOW DID YOUR UPDATE AFFECT THE VALUATION OF THE UP  
19 SETTLEMENT?

20 A. I have summarized my updated valuation in the attached Exhibit ESI-19. [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9  
10 Q. PLEASE EXPLAIN HOW YOUR EXHIBIT ESI-19 ARRIVED AT THE  
11 VALUATION OF [REDACTED]  
12 [REDACTED]  
13 A. [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]



1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3

[REDACTED]

4

[REDACTED]

5

[REDACTED]

6

[REDACTED]

7

[REDACTED]

8

[REDACTED]

9

[REDACTED]

10

[REDACTED]

11

[REDACTED]

12

[REDACTED]

13

[REDACTED]

14

[REDACTED]

15

[REDACTED]

16

[REDACTED]

17

18 Q. HAVE YOU REVIEWED MR. BARON'S DEPOSITION?

19 A. Yes, I have.

1 Q. DOES MR. BARON EXPRESS AN OPINION IN HIS DEPOSITION AS TO  
2 WHETHER YOUR 2010 VALUATION IS SUPERIOR TO YOUR 2008  
3 VALUATION?

4 A. Yes, he does. Mr. Baron, at pages 133-136 of his deposition,<sup>8</sup> discusses the two  
5 valuations and states that [REDACTED]

6 [REDACTED]

7 [REDACTED]

8

9 Q. YOU PREVIOUSLY DESCRIBED IN DETAIL HOW YOU DEVELOPED YOUR  
10 2008 AND 2010 ANALYSES. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

---

<sup>8</sup> See Exhibit ESI-20.

1 Q. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 A. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9

10 Q. ARE YOU AWARE THAT MR. CAIN STATED AT HIS DEPOSITION AT PAGE  
11 101 THAT HE DID NOT “SEE A BASIS FOR ASSUMING NECESSARILY THAT  
12 ANY OTHER POINT IN TIME IS BETTER THAN THE ONE MR. CROWLEY  
13 USED IN 2010”?

14 A. I did review that testimony.

15

16 Q. DO YOU AGREE?

17 A. No. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17

18 Q. BASED ON YOUR UPDATED ANALYSIS OF THE UP SETTLEMENT VALUE,  
19 DO YOU HAVE AN OPINION AS TO WHETHER THERE IS ANY REMAINING  
20 VALUE TO THE UP SETTLEMENT THAT WAS NOT REALIZED PRIOR TO  
21 JANUARY 1, 2014?

1 A. Yes. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4  
5 Q. MESSRS. BARON AND CAIN SUGGEST THAT THE VALUE OF THE UP  
6 SETTLEMENT INDICATED IN YOUR JULY 2010 VALUATION SHOULD BE  
7 MONETIZED AND THEN SHARED AMONG THE ENTERGY OPERATING  
8 COMPANIES. DO YOU HAVE AN OPINION REGARDING WHETHER YOUR  
9 VALUATION SHOULD BE USED FOR THAT PURPOSE?

10 A. No, it should not. The purpose of both the April 2008 and July 2010 valuations was to  
11 assign an estimated value to the UP Settlement for the benefit of the APSC in  
12 assessing how the UP Settlement came about. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

1

[REDACTED]

2

[REDACTED]

3


4 Q. DOES THIS CONCLUDE YOUR ANSWERING TESTIMONY?

5 A. Yes.

# AFFIDAVIT

STATE OF VIRGINIA )  
CITY )  
COUNTY OF ALEXANDRIA )

Thomas D. Crowley, being duly sworn, deposes and states that the attached are his sworn testimony and exhibits and that the statements contained therein are true and correct to the best of his knowledge, information and belief.

  
Thomas D. Crowley

SWORN AND SUBSCRIBED BEFORE ME,  
this 6 day of June, 2014.

Diane R. Kavounis  
Notary Public DIANE R. KAVOUNIS

My Commission Expires: November 30, 2016





UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY COMMISSION

ENTERGY SERVICES, INC.

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DOCKET NO. ER13-432-002

EXHIBIT ESI-16

**THOMAS D. CROWLEY**  
**STATEMENT OF QUALIFICATIONS**

My name is Thomas D. Crowley. I am an economist and President of the economic consulting firm of L. E. Peabody & Associates, Inc. The firm's offices are located at 1501 Duke Street, Suite 200, Alexandria, Virginia 22314, 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 7 Horicon Avenue, Glens Falls, New York 12801.

I am a graduate of the University of Maine from which I obtained a Bachelor of Science degree in Economics. I have also taken graduate courses in transportation at George Washington University in Washington, D.C. I spent three years in the United States Army and since February 1971 have been employed by L. E. Peabody & Associates, Inc.

I am a member of the American Economic Association, the Transportation Research Forum, and the American Railway Engineering and Maintenance-of-Way Association.

The firm of L. E. Peabody & Associates, Inc. specializes in analyzing matters related to the rail transportation of all commodities. As a result of my extensive economic consulting practice since 1971 and my participation in maximum-rate, rail merger, service disputes and rule-making proceedings before various government and private governing bodies, I have become thoroughly familiar with the rail carriers that move coal over the major coal routes in the United States. This familiarity extends to subjects of railroad service, costs and profitability, cost of capital, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of traffic by rail.

**THOMAS D. CROWLEY**  
**STATEMENT OF QUALIFICATIONS**

As an economic consultant, I have organized and directed economic studies and prepared reports for railroads, freight forwarders and other carriers, for shippers, for associations and for state governments and other public bodies dealing with transportation and related economic problems. Examples of studies I have participated in include organizing and directing traffic, operational and cost analyses in connection with multiple car movements, unit train operations for coal and other commodities, freight forwarder facilities, TOFC/COFC rail facilities, divisions of through rail rates, operating commuter passenger service, and other studies dealing with markets and the transportation by different modes of various commodities from both eastern and western origins to various destinations in the United States. The nature of these studies enabled me to become familiar with the operating practices and accounting procedures utilized by railroads in the normal course of business.

Additionally, I have inspected and studied both railroad terminal and line-haul facilities used in handling various commodities, including unit train coal movements from coal mine origins in the Powder River Basin and in Colorado to various utility destinations in the eastern, mid-western and western portions of the United States and from the Eastern coal fields to various destinations in the Mid-Atlantic, northeastern, southeastern and mid-western portions of the United States. These operational reviews and studies were used as a basis for the determination of the traffic and operating characteristics for specific movements of numerous commodities handled by rail.

**THOMAS D. CROWLEY**  
**STATEMENT OF QUALIFICATIONS**

I have frequently been called upon to develop and coordinate economic and operational studies relative to the rail transportation of various commodities. My responsibilities in these undertakings included the analyses of rail routes, rail operations and an assessment of the relative efficiency and costs of railroad operations over those routes. I have also analyzed and made recommendations regarding the acquisition of railcars according to the specific needs of various shippers. The results of these analyses have been employed in order to assist shippers in the development and negotiation of rail transportation contracts which optimize operational efficiency and cost effectiveness.

I have developed property and business valuations of privately held freight and passenger railroads for use in regulatory, litigation and commercial settings. These valuation assignments required me to develop company and/or industry specific costs of debt, preferred equity and common equity, as well as target and actual capital structures. I am also well acquainted with and have used the commonly accepted models for determining a company's cost of common equity, including the Discounted Cash Flow Model ("DCF"), Capital Asset Pricing Model ("CAPM"), and the Farma-French Three Factor Model.

Moreover, I have developed numerous variable cost calculations utilizing the various formulas employed by the Interstate Commerce Commission ("ICC") and the Surface Transportation Board ("STB") for the development of variable costs for common carriers, with particular emphasis on the basis and use of the Uniform Railroad Costing System ("URCS") and its predecessor, Rail Form A. I have utilized URCS/Rail form A

**THOMAS D. CROWLEY**  
**STATEMENT OF QUALIFICATIONS**

costing principles since the beginning of my career with L. E. Peabody & Associates Inc. in 1971.

I have frequently presented both oral and written testimony before the ICC, STB, Federal Energy Regulatory Commission, Railroad Accounting Principles Board, Postal Rate Commission and numerous state regulatory commissions, federal courts and state courts. This testimony was generally related to the development of variable cost of service calculations, rail traffic and operating patterns, fuel supply economics, contract interpretations, economic principles concerning the maximum level of rates, implementation of maximum rate principles, and calculation of reparations or damages, including interest. I presented testimony before the Congress of the United States, Committee on Transportation and Infrastructure on the status of rail competition in the western United States. I have also presented expert testimony in a number of court and arbitration proceedings concerning the level of rates, rate adjustment procedures, service, capacity, costing, rail operating procedures and other economic components of specific contracts.

Since the implementation of the *Staggers Rail Act of 1980*, which clarified that rail carriers could enter into transportation contracts with shippers, I have been actively involved in negotiating transportation contracts on behalf of shippers. Specifically, I have advised shippers concerning transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate

**THOMAS D. CROWLEY**  
**STATEMENT OF QUALIFICATIONS**

adjustment provisions, contract reopeners that recognize changes in productivity and cost-based ancillary charges.

I have been actively engaged in negotiating coal supply contracts for various users throughout the United States. In addition, I have analyzed the economic impact of buying out, brokering, and modifying existing coal supply agreements. My coal supply assignments have encompassed analyzing alternative coals to determine the impact on the delivered price of operating and maintenance costs, unloading costs, shrinkage factor and by-product savings.

I have developed different economic analyses regarding rail transportation matters for over sixty (60) electric utility companies located in all parts of the United States, and for major associations, including American Paper Institute, American Petroleum Institute, Chemical Manufacturers Association, Coal Exporters Association, Edison Electric Institute, Mail Order Association of America, National Coal Association, National Industrial Transportation League, North America Freight Car Association, the Fertilizer Institute and Western Coal Traffic League. In addition, I have assisted numerous government agencies, major industries and major railroad companies in solving various transportation-related problems.

In the two Western rail mergers that resulted in the creation of the present BNSF Railway Company and Union Pacific Railroad Company and in the acquisition of Conrail by Norfolk Southern Railway Company and CSX Transportation, Inc., I reviewed the railroads' applications including their supporting traffic, cost and operating data and

**THOMAS D. CROWLEY**  
**STATEMENT OF QUALIFICATIONS**

provided detailed evidence supporting requests for conditions designed to maintain the competitive rail environment that existed before the proposed mergers and acquisition. In these proceedings, I represented shipper interests, including plastic, chemical, coal, paper and steel shippers.

I have participated in various proceedings involved with the division of through rail rates. For example, I participated in ICC Docket No. 35585, *Akron, Canton & Youngstown Railroad Company, et al. v. Aberdeen and Rockfish Railroad Company, et al.* which was a complaint filed by the northern and mid-western rail lines to change the primary north-south divisions. I was personally involved in all traffic, operating and cost aspects of this proceeding on behalf of the northern and mid-western rail lines. I was the lead witness on behalf of the Long Island Rail Road in ICC Docket No. 36874, *Notice of Intent to File Division Complaint by the Long Island Rail Road Company.*

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY COMMISSION

ENTERGY SERVICES, INC.

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DOCKET NO. ER13-432-002

EXHIBIT ESI-17

HIGHLY SENSITIVE PROTECTED MATERIAL

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EXHIBIT ESI-18

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EXHIBIT ESI-19

HIGHLY SENSITIVE PROTECTED MATERIAL

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UNITED STATES OF AMERICA  
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DOCKET NO. ER13-432-002

EXHIBIT ESI-20

PUBLIC REDACTED

1 settlement benefits.

2 Are you aware that there was  
3 also a quantification of settlement  
4 benefits performed in 2008?

5 A. Yes.

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED] [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 Q. Let me ask you about the  
23 2008 -- Do you remember what the  
24 results of that quantification were?

25 A. I've probably got it

1       somewheres. I was thinking it was  
2       [REDACTED] but let me check to make  
3       sure it's on the same basis. Oh,  
4       actually, I think it's in one of my  
5       exhibits because I've got Mr. Crowley's  
6       2010 testimony, which is my  
7       Exhibit LC-8, and in there, he talks  
8       about the change.

9               Q.     That's all right. We can  
10       work around this.

11               Do you know whether  
12       Mr. Crowley used the same methodology  
13       in 2008 and 2010?

14               A.     [REDACTED]  
15       [REDACTED]  
16       [REDACTED]  
17       [REDACTED]     [REDACTED]  
18       [REDACTED]     [REDACTED]  
19       [REDACTED]  
20       [REDACTED]     [REDACTED]  
21       [REDACTED]  
22       [REDACTED]

23               Q.     Do you think that one is  
24       more reliable than the other?

25               A.     I think the -- I mean, he

1 argued -- I mean, I'm not assessing his  
2 analysis per se, [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. So you don't have a point of  
8 view on whether one --

9 A. [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED]

21 A. Total damages?

22 Q. Total damages, all owners?

23 A. That's probably -- I think

24 it was [REDACTED] for Entergy -- No. For

25 Entergy and then the co-owners would

1 question.

2 A. Okay. Well, I want to make  
3 it clear that when I'm answering these  
4 questions, that that's my position.

5 Q. Okay. But even looking at  
6 the 2010 Crowley analysis, you would  
7 agree that that is an estimate of  
8 value?

9 A. Yes. It's based on a  
10 reasonable methodology that Mr. Crowley  
11 presented in sworn testimony on behalf  
12 of EAI and implicitly Entergy to the  
13 Arkansas Commission. It seemed like a  
14 reasonable methodology.

15 Q. To that point, what analysis  
16 or review have you undertaken to  
17 determine that the methods or  
18 assumptions used by Crowley were  
19 reasonable?

20 A. I did not do any independent  
21 review. I relied on Entergy's  
22 calculation and its testimony to the  
23 Arkansas Commission as to what it  
24 believed the settlement benefits were.

25 Q. So you have no basis to



1 challenge Mr. Crowley's methodology or  
2 question it?

3 A. No, and I'm not doing that.  
4 I'm accepting it for the purposes of  
5 coming up with a reasonable transition  
6 measure.

7 Q. You accept it at face value.  
8 Is that fair to say?

9 A. I guess. I'm not sure what  
10 you mean by accepting at face value.  
11 I've accepted his analysis, his  
12 quantification, his methodology because  
13 that's -- that basically provides the  
14 distribution to these benefits over  
15 time.

16 Q. Let me try and state it  
17 another way. It's your point of view  
18 that it's reasonable to use  
19 Mr. Crowley's analysis because Entergy  
20 at one point in time said it was  
21 reasonable?

22 A. And presented it in sworn  
23 testimony to the Arkansas Commission,  
24 yes.

25 Q. You've not taken any

1 independent steps to verify the  
2 validity or the accuracy of any of the  
3 assumptions of the underlying data?

4 A. That's correct. [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 but I'm taking it on -- that  
9 Mr. Crowley was presenting a reasonable  
10 analysis and he would have known that  
11 or certainly Entergy would have known  
12 that.

13 Q. Do you have any basis to  
14 question Mr. Crowley's expertise or  
15 ability to undertake that analysis?

16 A. Based on my reading of  
17 Mr. Crowley's testimony and his  
18 credentials, it appears that he has the  
19 expertise to address that issue.

20 Q. How did you obtain or become  
21 aware of the Crowley analysis?

22 A. The settlement benefit  
23 analysis was provided in discovery.  
24 It's attached to his testimony  
25 actually.

1 operating companies, compare that to  
2 each company's accrued benefits.

3 Q. And what you're telling me  
4 is conceptually, your preliminary  
5 analysis did the same --

6 A. Yes.

7 Q. -- although it might have  
8 achieved a different result?

9 A. Correct.

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15 A. I did not, no.

16 MR. BREEDVELD:

17 Give me just a second here.

18 I'll pass the witness.

19 MR. KEEGAN:

20 I'm Bob Keegan, James  
21 Keegan, from the FERC staff. Do  
22 you need a break, Mr. Baron?

23 THE WITNESS:

24 I'm thinking maybe a couple  
25 of minutes, yeah.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 Q Okay. And just to make sure we firm this  
13 up on the record, is it fair to describe these  
14 quantifications by Mr. Crowley as estimates?

15 A Yes.

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 Q So why, in your mind, is it appropriate to  
20 monetize an estimate in this instance?

21 A [REDACTED]

22 [REDACTED]

1 [REDACTED]  
2 [REDACTED] And it's  
3 not -- I would have to -- I don't see a basis for  
4 assuming necessarily that any other point in time  
5 for doing that estimate is better than the one  
6 Mr. Crowley used in 2010.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 Q. Did you perform any  
2 independent verification of the facts  
3 alleged in the Entergy expert reports?

4 A. I took them at face value.  
5 I did not perform an independent  
6 assessment of the accuracy of those  
7 expert reports and opinions that were  
8 offered by Entergy's experts.

9 Q. So you've assumed that all  
10 factual allegations in those expert  
11 reports were true; correct?

12 A. I didn't assume that they  
13 were true or not true. I simply  
14 reported them as being the claims and  
15 the assessments and the conclusions and  
16 quantifications of Entergy's experts in  
17 the UP litigation. I did not attempt  
18 to make an assessment of whether or not  
19 they were true, accurate, or correct.

20 Q. So when you make statements  
21 of fact in your testimony, is it  
22 correct to say that you are not making  
23 those statements to say that, in fact,  
24 the statements are true, but instead to  
25 state that Entergy and its experts have

1 stated these facts to be true?

2 A. The latter. I mean, it's  
3 true that Entergy's witnesses did state  
4 these as factual matters and stated  
5 their conclusions. I can personally  
6 attest to the fact that they filed  
7 expert reports that stated that. But  
8 as far as the substantive statements  
9 and the conclusions that the witnesses  
10 for Entergy reached and that were  
11 contained in their expert reports, I  
12 did not perform an independent  
13 assessment as to the accuracy of those  
14 statements.

15 Q. So what is your  
16 understanding of the terms of the  
17 settlement agreement?

18 A. Well, I mean, it's a  
19 multi-page document. There's a  
20 settlement agreement, and then there's  
21 a term sheet that is referred to within  
22 the body of the settlement agreement  
23 itself, and essentially it resolves all  
24 of the litigation between and among the  
25 parties, including EAI, ESI, and the

1           that, or can she read it back?

2           MR. STRAIN:

3                   Sure. I'll repeat it.

4           EXAMINATION BY MR. STRAIN:

5           Q.    Are you aware that the  
6           Arkansas state court granted what is  
7           called a Daubert motion to reject  
8           the -- portions of the testimony of  
9           Mr. Emmert?

10          MS. SHELTON:

11                   Object to the form. It  
12           assumes a fact not in evidence.

13          THE WITNESS:

14                   I don't know.

15          EXAMINATION BY MR. STRAIN:

16          Q.    In deciding which expert  
17           reports or testimonies to include as  
18           your exhibits, is it correct to say  
19           that you did not perform an analysis to  
20           determine whether those -- whether the  
21           testimony and reports as you include  
22           them were either admitted or rejected  
23           by any Arkansas court or Commission?

24          A.    That's true. I did not make  
25           that assessment. I took them at face



1 value. They were Entergy's witnesses.  
2 Entergy paid and sponsored these  
3 witnesses for their testimony and I  
4 assumed from that that Entergy agreed  
5 with that testimony.

6 Q. Have you met Mr. Marwitz?

7 A. No.

8 Q. Mr. Reistrup?

9 A. No.

10 Q. Mr. Crowley?

11 A. No.

12 Q. Mr. Emmert?

13 A. No, at least not to my  
14 recollection.

15 Q. So you've never had a  
16 conversation with them about these  
17 particular reports, have you?

18 A. No. I didn't see the need  
19 to do that. I was -- I had the  
20 reports, you know. I've heard it said  
21 before and I agree with this, the  
22 reports or the testimony speaks for  
23 itself.

24 Q. You did not question or  
25 analyze whether, in fact, any of these

1 individuals qualified as an expert with  
2 regards to the subject matter of their  
3 reported testimony, did you?

4 A. I did not personally.  
5 Again, I took the testimony and the  
6 expert reports at face value. Entergy  
7 retained these experts presumably  
8 prudently and reasonably and I just  
9 accepted that at face value.

10 Q. You did not participate in  
11 any way in the development of these  
12 reports or testimonies, did you?

13 A. No, I did not.

14 Q. And to be clear, these  
15 exhibits that are the reports and  
16 testimonies do not include any  
17 statement of your own, do they?

18 A. No. I did not participate  
19 in those reports. The reports are the  
20 work product of the Entergy witnesses  
21 and experts.

22 Q. Did you undertake to  
23 replicate and confirm the mathematical  
24 calculations included in those reports?

25 A. I did not.

1 manner, I should say.

2 Q. How would you determine the  
3 extent of that harm?

4 A. I simply took at face value  
5 what Entergy's witnesses identified as  
6 the basis for the harm and then their  
7 quantification of the harm. So it's  
8 kind of a two-step process. You first  
9 have to identify what the harm is and  
10 how Entergy was harmed and then you  
11 have to determine what the  
12 quantification of that was. And so  
13 Entergy's experts went through that  
14 process and developed expert reports to  
15 describe and quantify that harm.

16 Q. And is it correct that you  
17 do not have any independent opinion as  
18 to how that quantification should be  
19 performed or could be performed?

20 A. I did not critique or assess  
21 Entergy's experts. As I said, I took  
22 it at face value and reported it.

23 MR. STRAIN:

24 Y'all want to take a break  
25 now?

1 Q. In that paragraph on -- the  
2 full paragraph, second full paragraph  
3 on page 34, you use quotation marks

4 [REDACTED]

5 [REDACTED]

6 different occasions there. Is there  
7 any particular reason that you used  
8 quotation marks?

9 A. I don't recall. I don't  
10 recall if that was how it was notated  
11 in Mr. Crowley's testimony or if I did  
12 that. I just don't recall.

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 Again, my intention and my  
22 task in this proceeding was not to  
23 second-guess Entergy or its witnesses  
24 with respect to representations,  
25 conclusions that those witnesses had

1 made in the UP litigation or before the  
2 Arkansas Commission. Again, we  
3 accepted those at face value.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 A. I don't know what market  
20 rates are today.

21 Q. On pages -- well, page 35,  
22 you have a summary of Mr. Dingle's  
23 analysis; correct?

24 A. I do.

25 Q. First of all, on line 10,

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY COMMISSION

ENTERGY SERVICES, INC.

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EXHIBIT ESI-21

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UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL REGULATORY COMMISSION

ENTERGY SERVICES, INC.

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EXHIBIT ESI-22

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