## UNITED STATES OF AMERICA BEFORE THE FEDERAL REGULATORY COMMISSION

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ENTERGY SERVICES, INC.	)	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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## 1 I. <u>INTRODUCTION</u>

- 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.

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- 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
- 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
- member of the Transportation Research Forum, and the American Railway
- Engineering and Maintenance-of-Way Association. A detailed statement of my
- background and qualifications is attached to my testimony in Exhibit ESI-16.

Over the last 43 years I have advised clients, including electric utility companies, on a wide variety of issues, including economic, marketing, transportation, fuel supply and fuel management problems. I have been involved in the negotiation of over 100 coal transportation agreements, as well as provided consultation relating to the administration of economic, operational, and logistical aspects of those agreements. In the course of providing those duties, I have obtained an intimate familiarity with the economic and operating aspects of the two major western 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.

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- 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").

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- 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.

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- 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 any residual value to that settlement. Based on my review of their testimony, I 21 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.
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5	Q.	DO YOU AGREE WITH THAT CONCLUSION?
6	A.	No. As I explain in this Answering Testimony,
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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.

- Q. HAVE YOU PREVIOUSLY TESTIFIED CONCERNING THE VALUE OF THE UP
   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. <u>Settlement Terms</u>
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
9		but did not become effective until , and had a term running through
10		. The UP Agreement had
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15		The UP Agreement was known in the industry as one of UP's so-called
16		"Legacy Contracts."
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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.
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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.

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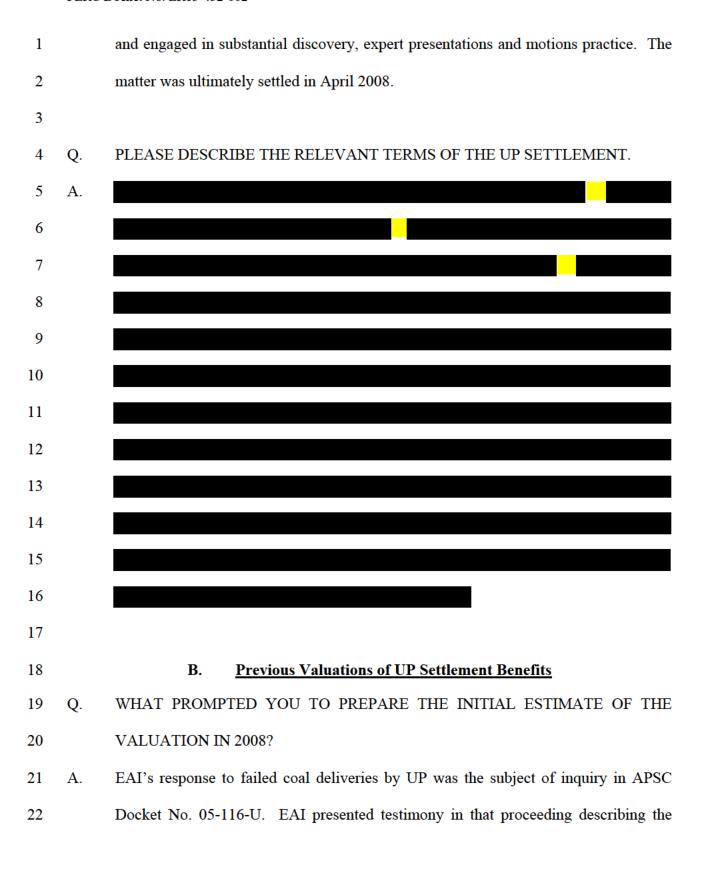
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these reasons, EAI challenged the Force Majeure claim and sought to enforce the delivery commitments and other rights contained in the UP Agreement.

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



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

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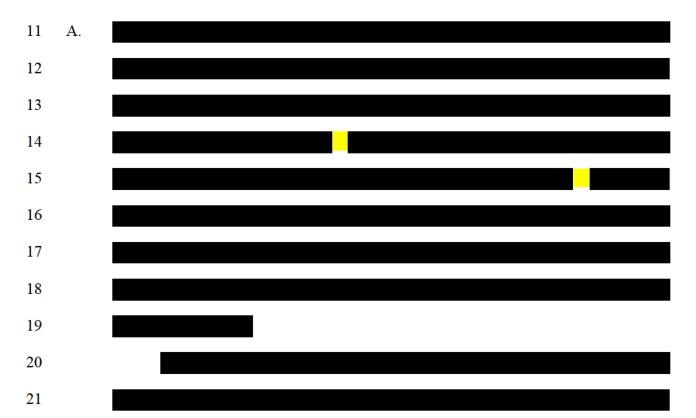
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## Q. WHAT DID YOU CONCLUDE WHEN YOU PERFORMED YOUR INITIAL VALUATION IN 2008?



ESI was also a party to the litigation and settlement with UP.

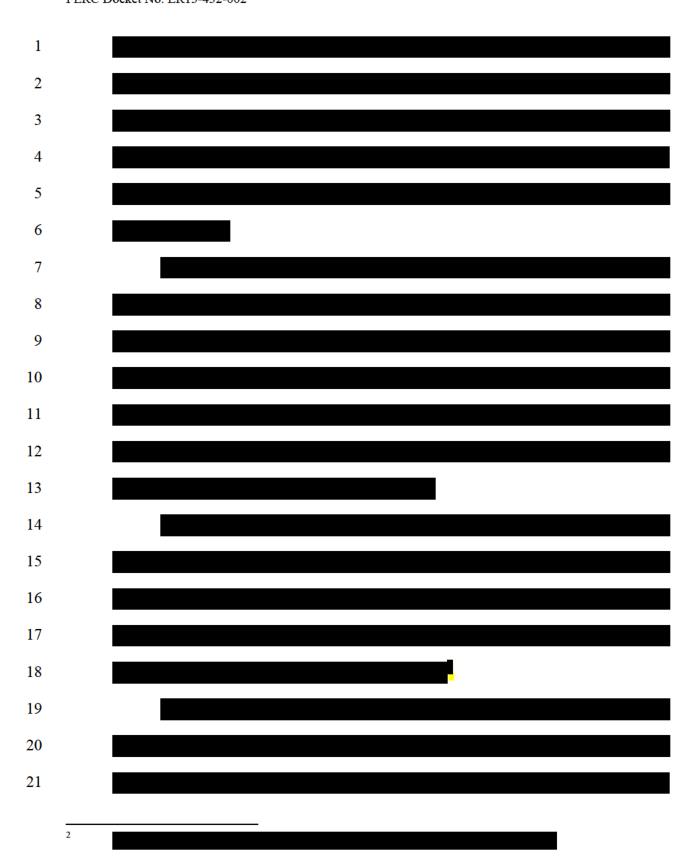
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16	Q.	PLEASE EXPLAIN WHAT YOU MEAN WHEN YOU REFER TO THE "VALUE"
17		OF THE SETTLEMENT.
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Q.	DID YOU SUBSEQUENTLY UPDATE YOUR BENEFITS VALUATION?
A.	Yes.

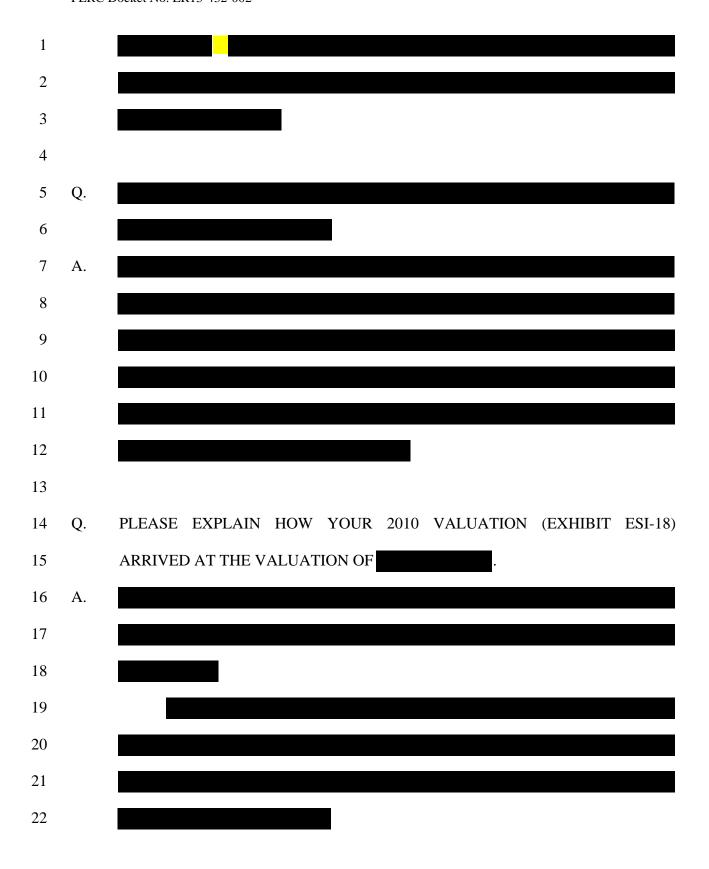
1	Q.	HAVE YOU AGAIN UPDATED YOUR BENEFITS ANALYSIS FOR THE
2		PURPOSE OF THIS PROCEEDING
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4	A	Yes.
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1	Q.	PLEASE	EXPLAIN	HOW	YOUR	2008	VALUATION	(EXHIBIT	ESI-17)
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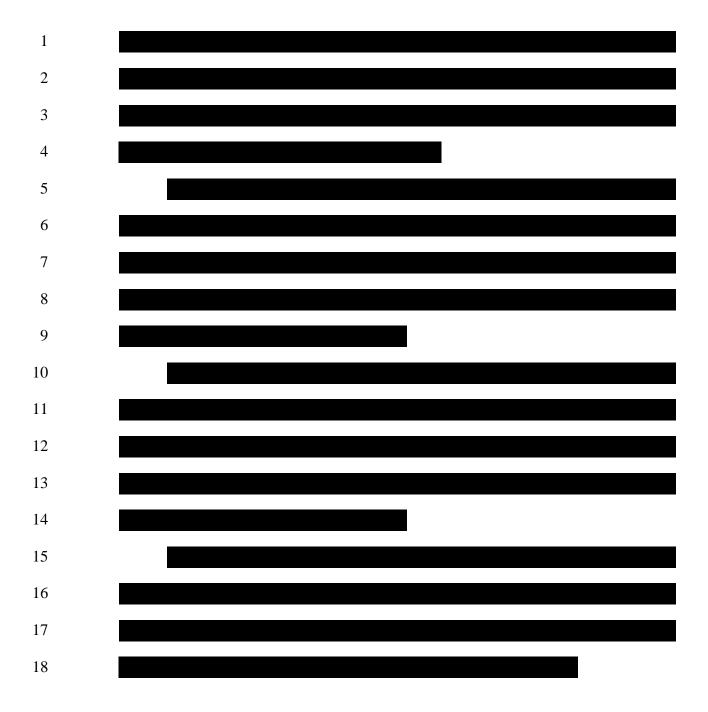
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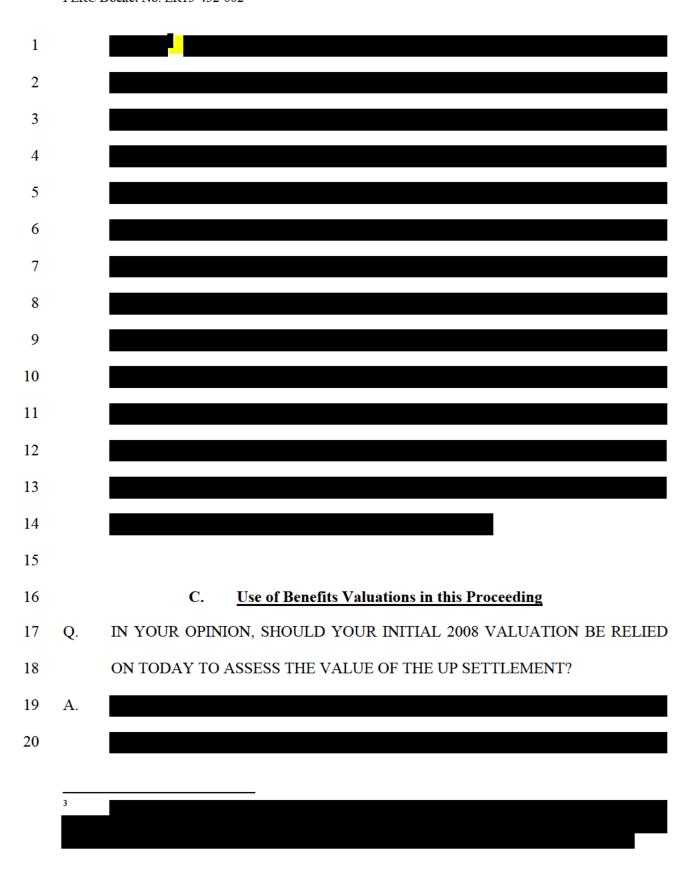
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8	Q.	WHAT PROMPTED YOU TO RECALCULATE THE VALUATION OF THE
9		SETTLEMENT IN 2010?
10	A.	The APSC initially opened Docket No. 05-116-U to consider EAI's actions in
11		responding to UP's service shortfalls. Docket No. 05-116-U was subsequently stayed
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.
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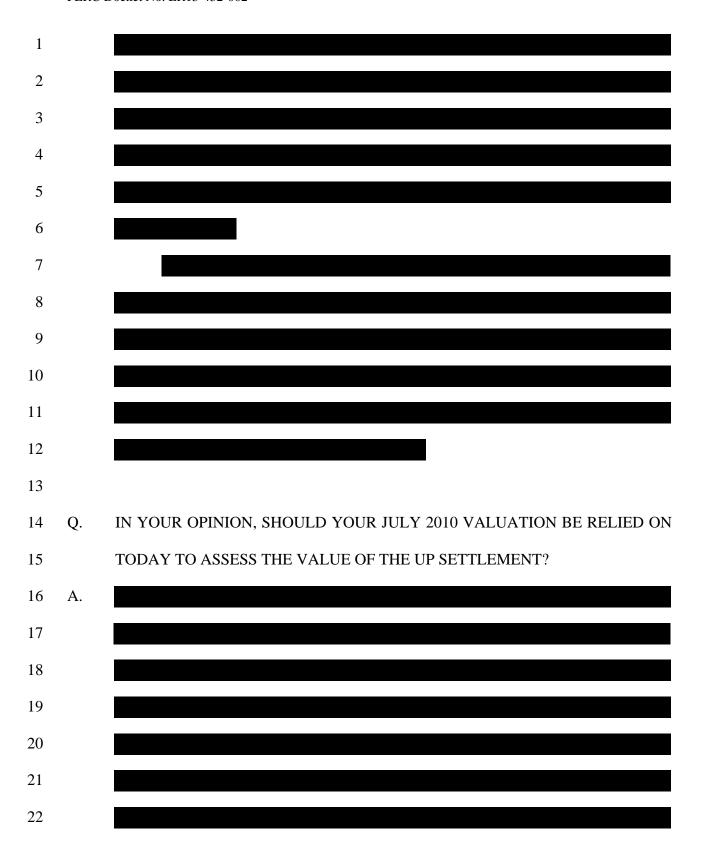


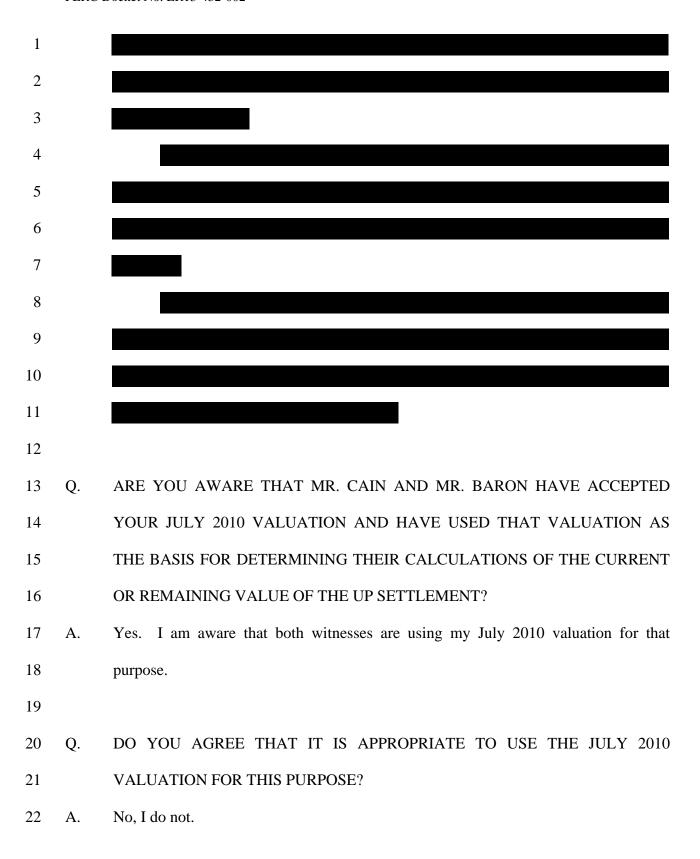
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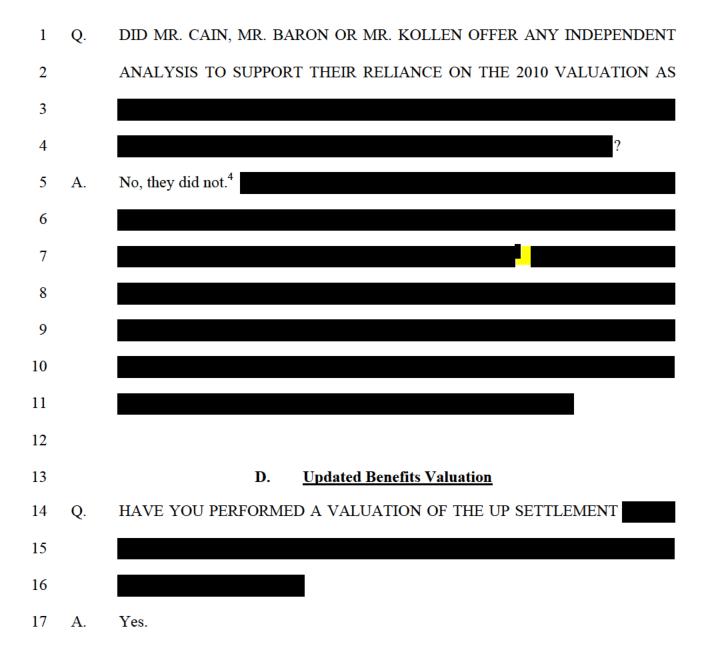
1	Q.	PLEASE EXPLAIN WHY YOUR JULY 2010 BENEFITS ESTIMATE WAS
2		SIGNIFICANTLY THAN YOUR 2008 BENEFITS ESTIMATE.
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17	Q.	
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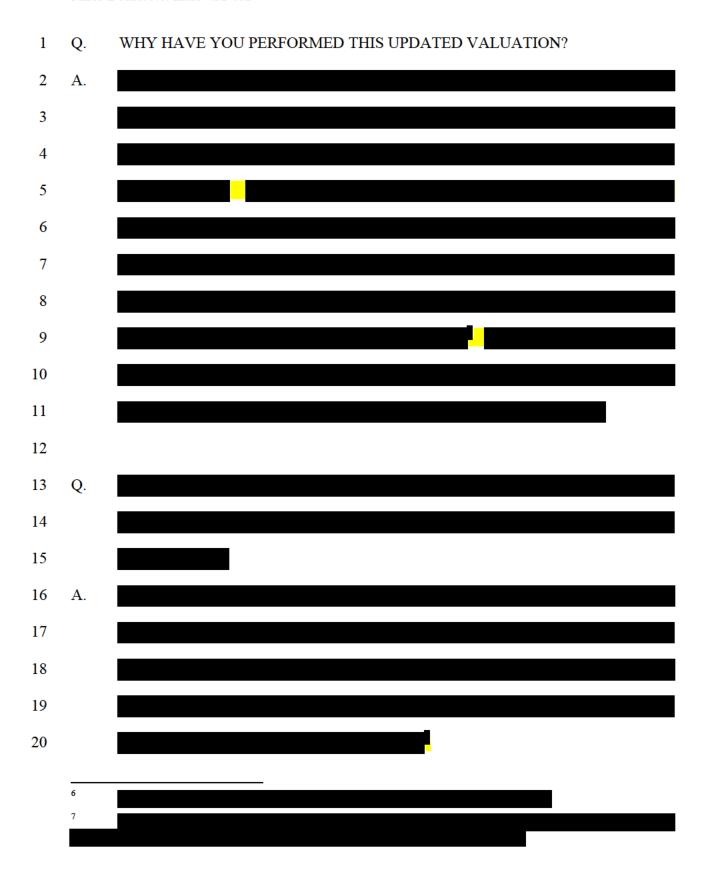


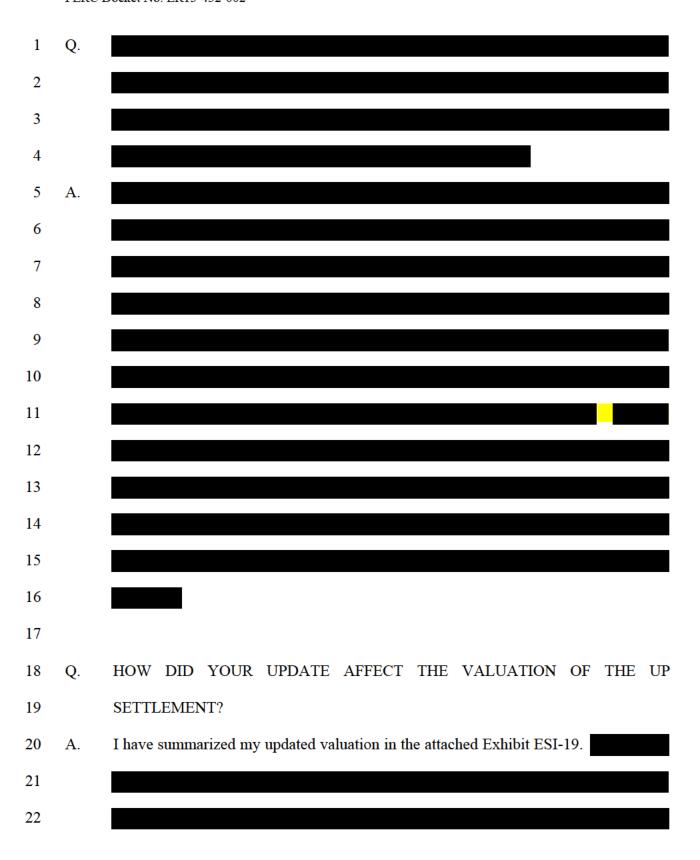
1	Q.	WHY NOT?
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20	Q.	WHEN DID THIS OCCUR?
21	A.	Following my July 2010 valuation.



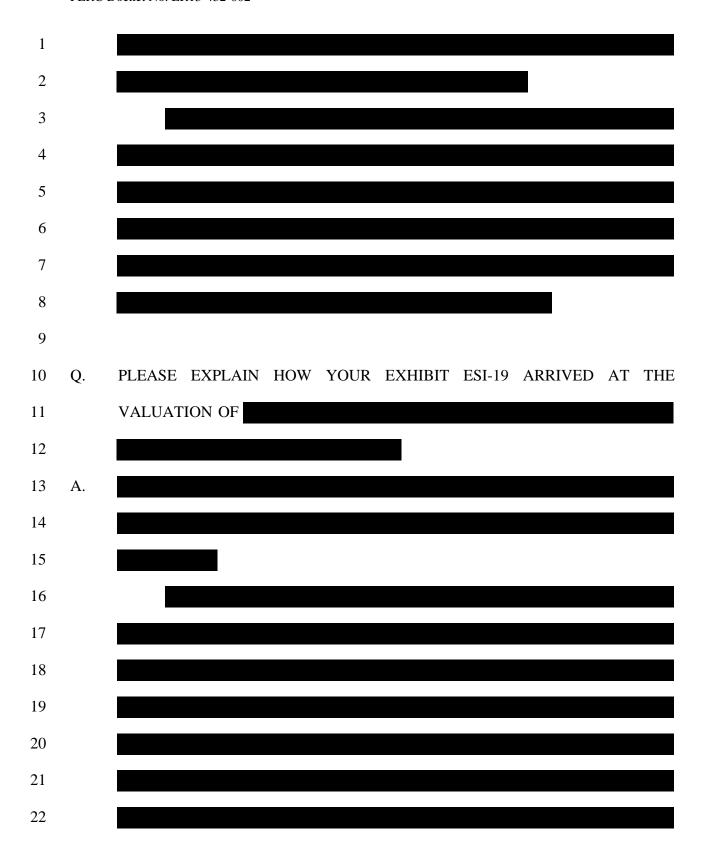
See Baron Deposition at pp. 140-142 and p. 190; Kollen Deposition at pp. 77-78 and pp. 129-130; Cain Deposition at p. 101 (relevant pages of which are attached as Exhibit ESI-20).

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.



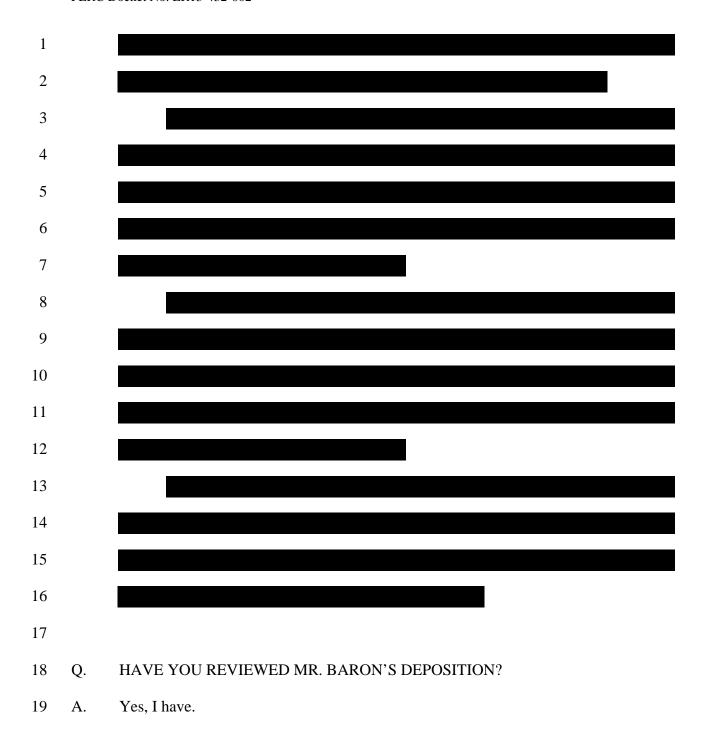


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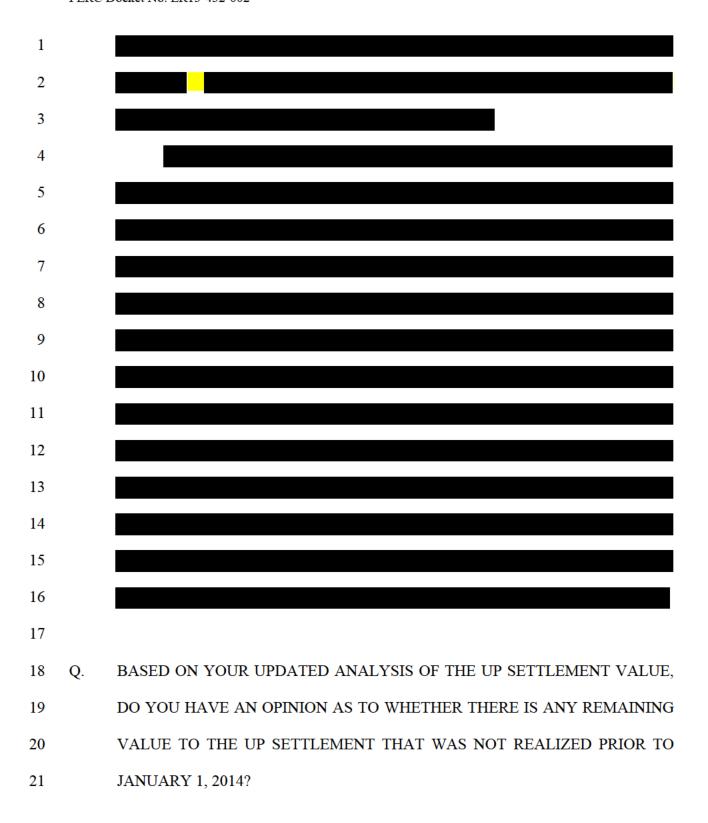
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1	Q.	DOES MR. BARON EXPRESS AN OPINION IN HIS DEPOSITION AS TO
2		WHETHER YOUR 2010 VALUATION IS SUPERIOR TO YOUR 2008
3		VALUATION?
4	A.	Yes, he does. Mr. Baron, at pages 133-136 of his deposition, discusses the two
5		valuations and states that
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9	Q.	YOU PREVIOUSLY DESCRIBED IN DETAIL HOW YOU DEVELOPED YOUR
10		2008 AND 2010 ANALYSES.
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13	A.	
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<sup>8</sup> See Exhibit ESI-20.

1	Q.	
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4	A.	
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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.
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1	A.	Yes.
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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.
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Entergy Services, Inc. Answering Testimony of Thomas D. Crowley FERC Docket No. ER13-432-002

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4	Q.	DOES THIS CONCLUDE YOUR ANSWERING TESTIMONY?
5	A.	Yes.

#### **AFFIDAVIT**

STATE OF VIRGINIA	
CITY	1000
COUNTY OF ALEXAN	UKIH )

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 \_\_\_\_\_ day of June, 2014.

Di 24

Notary Public DIANE R. KAVOUNIS

My Commission Expires: November 30, 2016



ENTERGY SERVICES, INC.	) ) )	DOCKET NO. ER13-432-002
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**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*.

ENTERGY SERVICES, INC.	) ) )	DOCKET NO. ER13-432-002
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#### EXHIBIT ESI-17

### HIGHLY SENSITIVE PROTECTED MATERIAL

ENTERGY SERVICES, INC.	) ) )	DOCKET NO. ER13-432-002
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#### EXHIBIT ESI-18

### HIGHLY SENSITIVE PROTECTED MATERIAL

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### **EXHIBIT ESI-19**

### HIGHLY SENSITIVE PROTECTED MATERIAL

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EXHIBIT ESI-20

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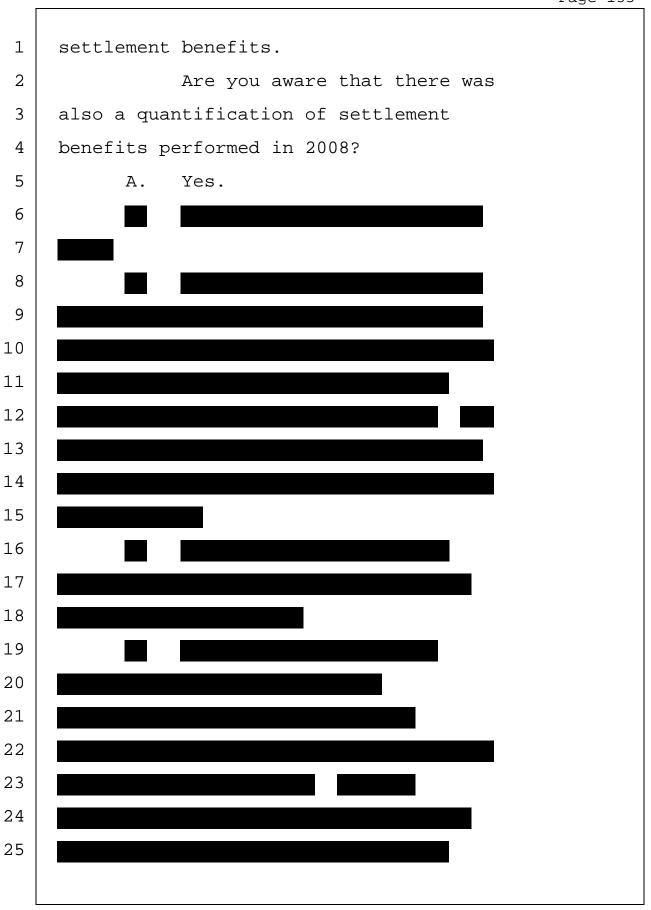


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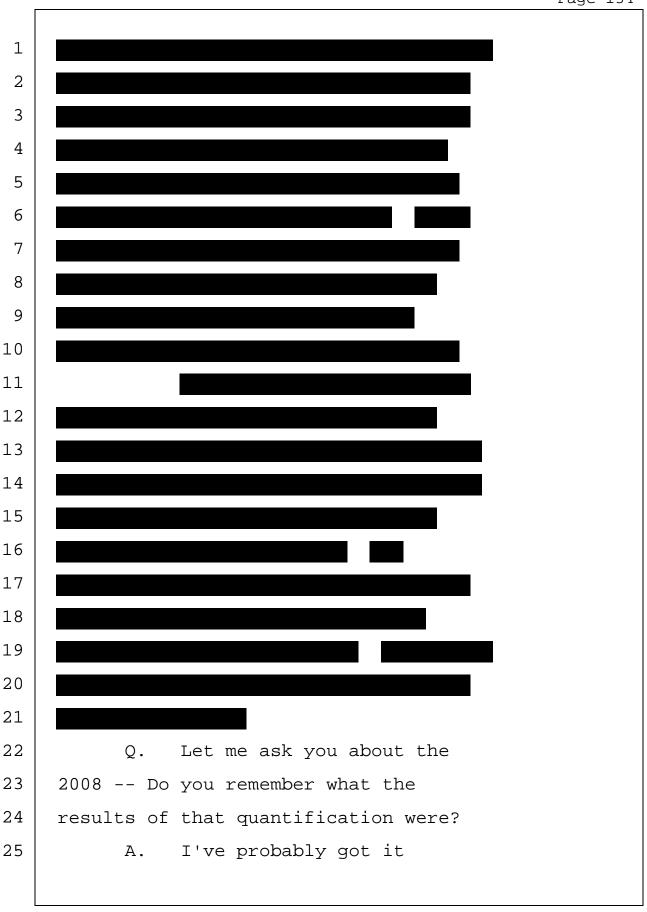


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1	somewheres. I was thinking it was
2	but let me check to make
3	sure it's on the same basis. Oh,
4	actually, I think it's in one of my
5	exhibits because I've got Mr. Crowley's
6	2010 testimony, which is my
7	Exhibit LC-8, and in there, he talks
8	about the change.
9	Q. That's all right. We can
LO	work around this.
L1	Do you know whether
L2	Mr. Crowley used the same methodology
L3	in 2008 and 2010?
L4	A.
L5	
L6	
L7	
L8	
L9	
20	
21	
22	
23	Q. Do you think that one is
24	more reliable than the other?
25	A. I think the I mean, he

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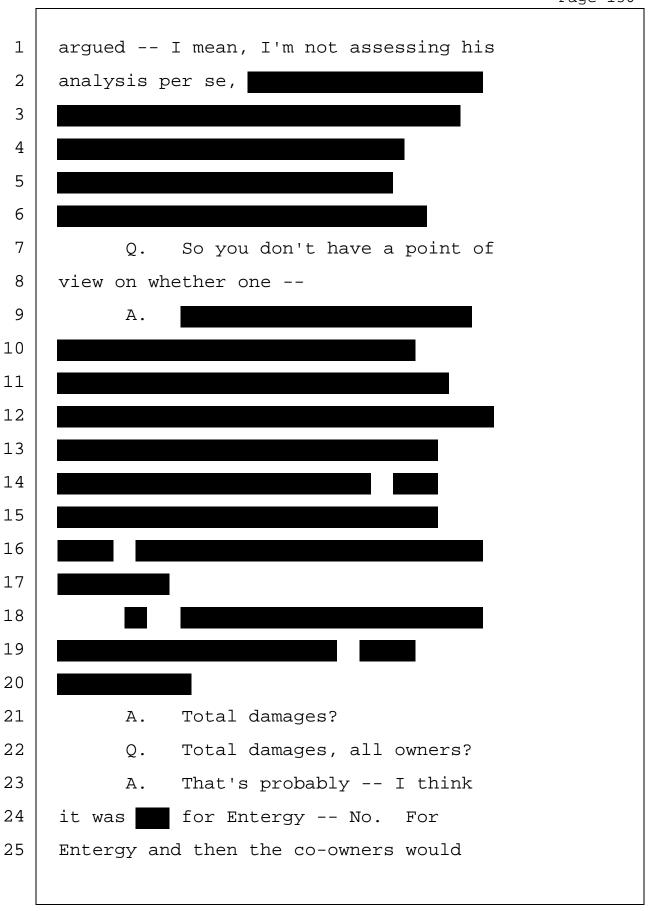


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1 question. 2 Okay. Well, I want to make 3 it clear that when I'm answering these questions, that that's my position. 4 5 Okay. But even looking at Ο. 6 the 2010 Crowley analysis, you would 7 agree that that is an estimate of 8 value? 9 Α. Yes. It's 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 To that point, what analysis Ο. 16 or review have you undertaken to 17 determine that the methods or 18 assumptions used by Crowley were 19 reasonable? 20 I did not do any independent I relied on Entergy's 21 review. 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

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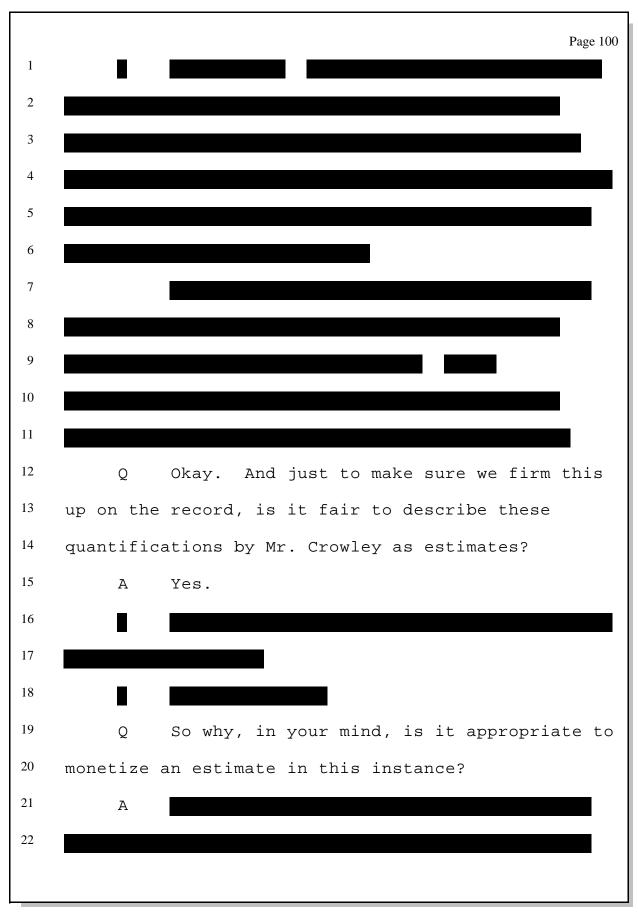
1 challenge Mr. Crowley's methodology or 2 question it? 3 Α. No, and I'm not doing that. 4 I'm accepting it for the purposes of 5 coming up with a reasonable transition 6 measure. 7 You accept it at face value. 0. Is that fair to say? 8 9 Α. I guess. I'm not sure what 10 you mean by accepting at face 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 0. 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 Α. And presented it in sworn 23 testimony to the Arkansas Commission, 24 yes. 25 Q. You've not taken any

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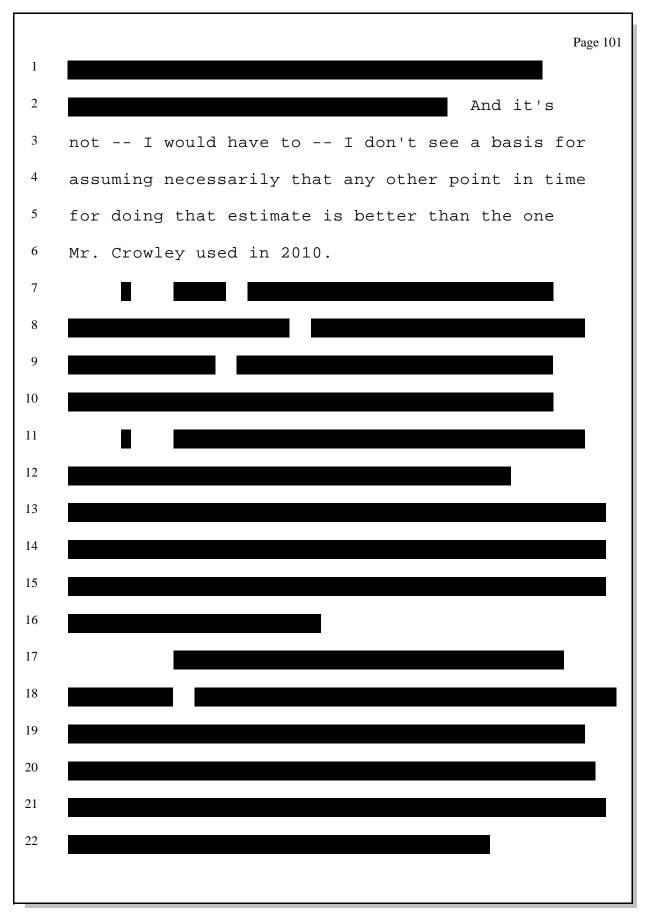
1 independent steps to verify the 2 validity or the accuracy of any of the 3 assumptions of the underlying data? 4 Α. That's correct. 5 6 7 but I'm taking it on -- that 8 9 Mr. Crowley was presenting a reasonable 10 analysis and he would have known that 11 or certainly Entergy would have known 12 that. 13 Do you have any basis to 0. 14 question Mr. Crowley's expertise or 15 ability to undertake that analysis? 16 Α. 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 How did you obtain or become O. 21 aware of the Crowley analysis? 22 Α. 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	
11	
L2	
L3	
14	
L5	A. I did not, no.
L6	MR. BREEDVELD:
L7	Give me just a second here.
L8	I'll pass the witness.
L9	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.

# Collin Cain - May 14, 2014 THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION



#### Collin Cain - May 14, 2014 THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION



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

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- A. I took them 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.
- Q. So you've assumed that all factual allegations in those expert reports were true; correct?
- A. I didn't assume that they
  were true or not true. I simply
  reported them as being the claims and
  the assessments and the conclusions and
  quantifications of Entergy's experts in
  the UP litigation. I did not attempt
  to make an assessment of whether or not
  they were true, accurate, or correct.
- Q. So when you make statements of fact in your testimony, is it correct to say that you are not making those statements to say that, in fact, the statements are true, but instead to state that Entergy and its experts have

1 stated these facts to be true? The latter. I mean, it's 3 true that Entergy's witnesses did state these as factual matters and stated 4 5 their conclusions. I can personally attest to the fact that they filed 6 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 Ο. So what is your 16 understanding of the terms of the 17 settlement agreement? 18 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

that, or can she read it back? 1 MR. STRAIN: 3 Sure. I'll repeat it. 4 EXAMINATION BY MR. STRAIN: 5 Ο. 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. Ιt. 12 assumes a fact not in evidence. 13 THE WITNESS: 14 I don't know. 15 EXAMINATION BY MR. STRAIN: 16 0. 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 That's true. I did not make Α. 25 that assessment. I took them at face

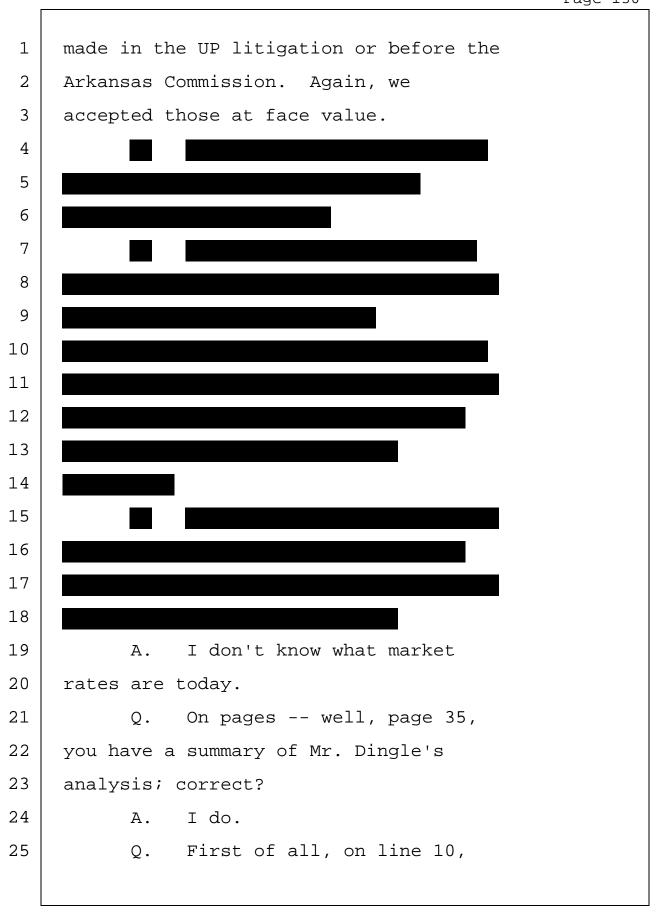
1 They were Entergy's witnesses. value. 2 Entergy paid and sponsored these 3 witnesses for their testimony and I 4 assumed from that that Entergy agreed 5 with that testimony. 6 Have you met Mr. Marwitz? 0. 7 Α. No. 8 Mr. Reistrup? Q. 9 Α. No. 10 Mr. Crowley? Q. 11 Α. No. 12 Mr. Emmert? Q. 13 No, at least not to my Α. 14 recollection. 15 So you've never had a Ο. conversation with them about these 16 17 particular reports, have you? 18 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 You did not question or Ο. 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? I did not personally. 4 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 You did not participate in Ο. 11 any way in the development of these 12 reports or testimonies, did you? 13 No, I did not. Α. 14 Ο. 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 I did not participate No. 19 in those reports. The reports are the 20 work product of the Entergy witnesses 21 and experts. 22 Did you undertake to 0. 23 replicate and confirm the mathematical 24 calculations included in those reports? 25 Α. I did not.

1 manner, I should say. How would you determine the 3 extent of that harm? I simply took at face value 4 Α. 5 what Entergy's witnesses identified as the basis for the harm and then their 6 7 quantification of the harm. So it's kind of a two-step process. You first 8 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. 13 Entergy's experts went through that 14 process and developed expert reports to 15 describe and quantify that harm. 16 Ο. 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 I did not critique or assess Α. 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?

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1	Q. In that paragraph on the
2	full paragraph, second full paragraph
3	on page 34, you use quotation marks
4	
5	
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	
14	
15	
16	
17	
18	
19	
20	
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



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#### **EXHIBIT ESI-21**

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#### EXHIBIT ESI-22

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