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BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

FILED

IN THE MATTER OF AN INVESTIGATION)
INTO THE SETTLEMENT AGREEMENT)
BETWEEN ENTERGY ARKANSAS, INC.,)
ARKANSAS ELECTRIC COOPERATIVE)
CORPORATION AND THE UNION)
PACIFIC RAILROAD COMPANY IN)
PULASKI COUNTY CIRCUIT COURT)
CASE NO. CV 2006-2711)

DOCKET NO. 08-165-U

DIRECT TESTIMONY

OF

THOMAS D. CROWLEY

PRESIDENT

L. E. PEABODY & ASSOCIATES, INC.

ON BEHALF OF

ENTERGY ARKANSAS, INC.

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JULY 16, 2010

1 **I. INTRODUCTION AND BACKGROUND**

2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

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

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6 Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

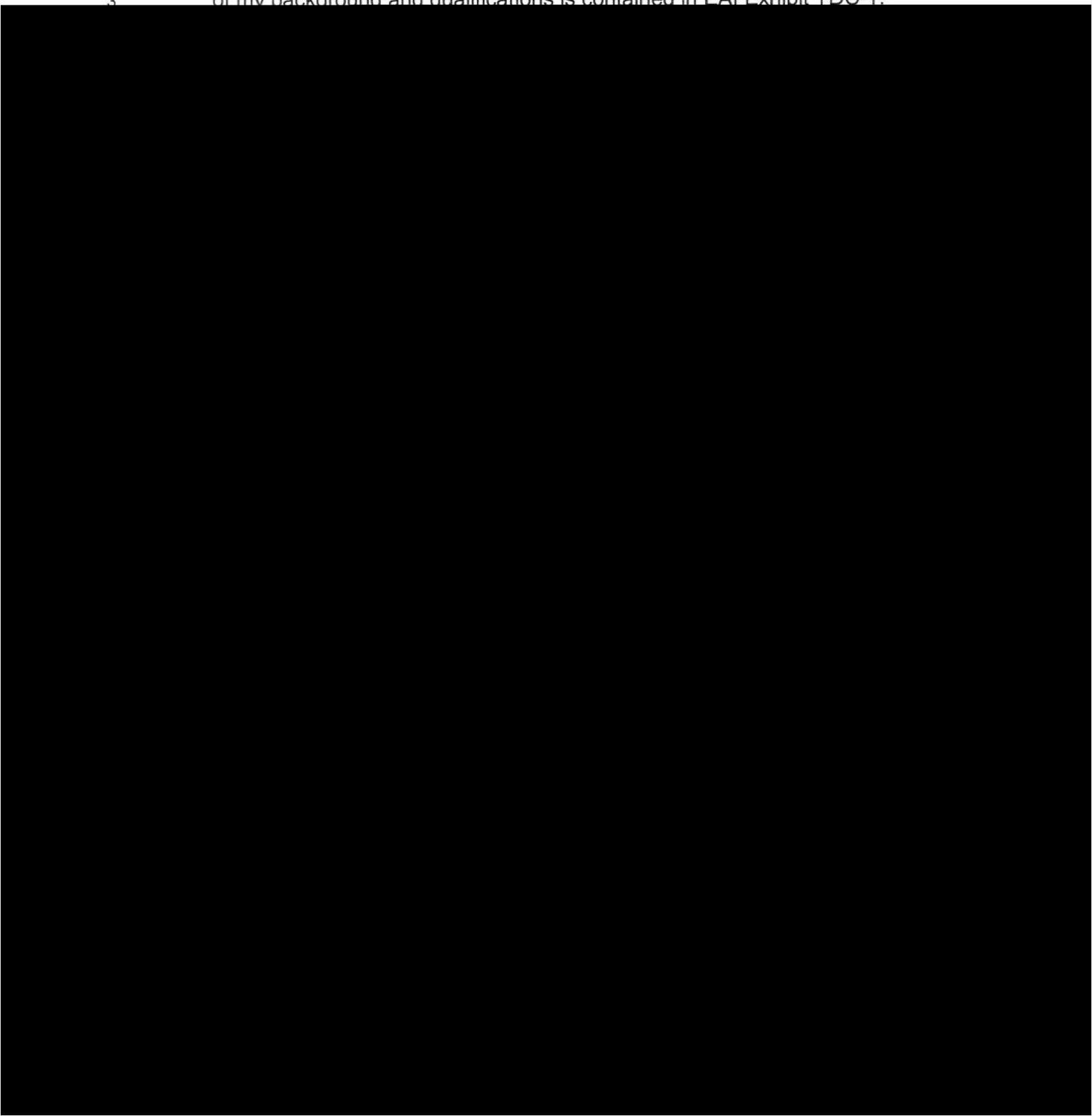
7 A. I am an economist and President of L. E. Peabody & Associates, Inc., an
8 economic consulting firm that specializes in fuel procurement, fuel
9 management and fuel transportation matters.

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11 Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND
12 PROFESSIONAL WORK EXPERIENCE.

13 A. I have over 39 years of experience advising clients, including electric
marketing, companies, on a wide variety of issues, including economic, ma
ve been transportation, fuel supply and fuel management problems. I ha
ents, as involved in the negotiation of over 100 coal transportation agreem
economic, well as provided consultation relating to the administration of ec
course of operational, and logistical aspects of these agreements. In the c
with the performing these duties, I have obtained an intimate familiarity
e BNSF economic and operating aspects of major western railroads, Th
y ("UP") Railway Company ("BNSF") and Union Pacific Railroad Compan
nowledge (collectively the "Railroads"). This familiarity includes detailed kn
y serve, of railroad operations in the principal coal supply regions the

1 including the Southern Powder River Basin ("PRB") coal fields located in
2 Campbell and Converse Counties, Wyoming. A more complete statement
3 of my background and qualifications is contained in EAI Exhibit TDC-1.



1 and Entergy Services, Inc. (“ESI”)¹ reached with the UP in connection with
2 its litigation of service-related disputes in *Entergy Arkansas Inc. and*
3 *Entergy Services, Inc. v. Union Pacific Railroad Company*, Case No.
4 CV2006-2711 (Circuit Court of Pulaski County, Arkansas) (the “Court
5 Case”).

6
7 Q. BEFORE TURNING TO THIS ISSUE, PLEASE EXPLAIN YOUR ROLE IN
8 CONNECTION WITH THE UP LITIGATION.

9 A. I was one of the expert witnesses who provided support to EAI and ESI in
10 that litigation. In that role, I prepared expert reports and provided
11 deposition testimony relating to a variety of issues including calculation of
12 delivery shortfalls, transportation logistics, and coal inventory practices.

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¹ ESI is subsidiary of Entergy Corp. that provides technical and administrative services to all the Entergy Operating Companies. The Entergy Operating Companies are EAI; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

1 II. **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

INST 2 Q. ARE YOU AWARE THAT EAI SETTLED THE COURT CASE AGAINST
3 UP?

4 A. Yes.

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6 Q. ARE YOU FAMILIAR WITH THE TERMS OF THAT SETTLEMENT?

ment 7 A. Yes. I am aware of the terms of the Mutual Release and Settlement

8 Agreement (the "Settlement Agreement"). Generally, EAI settled

9 litigation

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RMS 14 Q. HAVE YOU PREPARED AN ECONOMIC EVALUATION OF THE TERMS
15 OF THE SETTLEMENT AGREEMENT?

16 A. Yes.

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THE 18 Q. CAN YOU SUMMARIZE YOUR CONCLUSIONS RELATING TO
19 ECONOMIC VALUE OF THE SETTLEMENT AGREEMENT?

April 20 A. I determined that the net present value of the total settlement as of
lightly 21 2008 was [REDACTED]. A summary of my analysis is shown in
22 Sensitive EAI Exhibit TDC-2.

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1 Q. CAN YOU SUMMARIZE THE KEY BENEFITS THAT EAI OBTAINED IN
2 THE SETTLEMENT AGREEMENT?

3 A. Yes.

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THE VALUE OF THE

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Q. PLEASE EXPLAIN HOW YOU ASSESSED

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[REDACTED]

Q. PLEASE EXPLAIN HOW YOU ASSESSED THE VALUE OF THE [REDACTED]

[REDACTED]

1 A.

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[REDACTED]

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[REDACTED]

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Q. WITH REGARD TO YOUR THIRD POINT, HOW DID THE

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[REDACTED]

1 Q. IN YOUR OPINION, DID THE SETTLEMENT AGREEMENT
2 ADEQUATELY COMPENSATE EAI FOR ITS LOSSES RELATED TO
3 THE UP SERVICE SHORTFALLS?

4 A.

[REDACTED]

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[REDACTED]

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[REDACTED]

1 utility, the Wisconsin Public Service Corporation ("WPSC"), had an
2 arbitration with UP over the 2005 PRB service disruptions. While the fact
3 of the WPSC arbitration was public through certain documents filed in
4 court to initiate the arbitration, the details of the arbitration were
5 confidential. I am not aware of any other utilities that instituted formal
6 proceedings against UP for its failure to deliver coal during 2005 and
7 2006. Several other utilities that are co-owners in one or more of EAI's
8 coal plants intervened in EAI's litigation with UP (the "Intervenors").²
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10 **IV. SUMMARY AND CONCLUSION**

11 Q. WILL YOU PLEASE SUMMARIZE YOUR DIRECT TESTIMONY?

12 A. Yes. The key points of my testimony are:

- 13 • Based on developments in the marketplace since 2008,

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² The Intervenors were East Texas Electric Cooperative, Inc., Arkansas Electric Cooperative Corporation, Arkansas Cities (Conway Corporation, West Memphis Utilities Commission, and City of Osceola, Arkansas) and City Water & Light Plant of Jonesboro, Arkansas.

- 1 Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?
- 2 A. Yes, it does.

CERTIFICATE OF SERVICE

I, Steven K. Strickland, do hereby certify that a copy of the foregoing has been served upon all parties of record this 16th day of July 2010.

A handwritten signature in black ink, appearing to read "Steven K. Strickland", written over a horizontal line.

Steven K. Strickland

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EAI EXHIBIT TDC-1

STATEMENT OF BACKGROUND AND QUALIFICATIONS

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, and 760 E. Pusch View Lane, Suite 150, Tucson, Arizona 85737, and 21 Founders Way, Queensbury, New York 12804.

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.

~~Member of the American Economic Association, the Transportation Research Board, 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 coal. As a result of my extensive economic consulting practice since 1971 and my participating 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, railroad capacity, railroad traffic prioritization and the structure and operation of the various contracts and tariffs that historically have governed the movement of coal by rail.

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 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 commater 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, and in particular unit train coal movements from coal mines 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 coal and numerous other commodities handled by rail.

STATEMENT OF QUALIFICATIONS

I have frequently been called upon to develop and coordinate economic and operational studies relative to the acquisition of coal and the rail transportation of coal on behalf of electric utility companies. 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 coal 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,

STATEMENT OF QUALIFICATIONS

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 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 negotiations, maximum rate principles, 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

STATEMENT OF QUALIFICATIONS

involved in negotiating transportation contracts on behalf of coal shippers. Specifically, I have advised utilities concerning coal transportation rates based on market conditions and carrier competition, movement specific service commitments, specific cost-based rate 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

n League, North America Freight Car Association, the Fertilizer
Coal Traffic League. In addition, I have assisted numerous
major industries and major railroad companies in solving various
problems.

Industrial Transportatio
Institute and Western
government agencies, m
transportation-related pr

STATEMENT OF QUALIFICATIONS

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 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.

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DOCKET NO. 08-165-U

EAI EXHIBIT TDC-2

EVALUATION OF SETTLEMENT AGREEMENT BETWEEN
ENTERGY AND UP

THIS EXHIBIT CONTAINS HIGHLY SENSITIVE PROTECTED INFORMATION
~~PROVIDED PURSUANT TO THE INTERIM PROTECTIVE ORDER NO. 3 IN~~
APSC DOCKET 08-165-U.