

BEFORE THE  
ARKANSAS PUBLIC SERVICE COMMISSION

ENTERGY ARKANSAS, LLC,	)	
Complainant	)	
	)	
v	)	DOCKET NO. 21-082-C
	)	
CITY OF MAUMELLE, ARKANSAS;	)	
MAYOR CALEB NORRIS IN HIS	)	
OFFICIAL CAPACITY; MAUMELLE CITY	)	
COUNCIL AND ITS MEMBERS IN THEIR	)	
OFFICIAL CAPACITIES: STEVE	)	
MOSLEY, KEN SAUNDERS, R.J.	)	
MAZZONI, CHAD GARDNER, TERRY	)	
WILLIAMS, MICHAEL TIERNEY, DOUG	)	
SHINN, AND JESS HOLT	)	
Respondents and Counterclaimants	)	

RESPONSE TO MOTION FOR PROTECTIVE ORDER  
OF NON-DISCLOSURE

Comes the City of Maumelle, Arkansas; Mayor Caleb Norris in his Official Capacity; Maumelle City Council and its named members in their official capacities (hereinafter referred to as “the City of Maumelle” or “Respondents”) herein, by and through its City Attorney, Melissa Krebs, and for its Response to Motion for Protective Order of Non-Disclosure filed in this matter by Entergy Arkansas, LLC (hereinafter referred to as “EAL”), states as follows:

1. EAL has filed a Motion for Protective Order of Non-Disclosure pursuant to Ark. Code Ann. § 23-2-316 and APSC RPP 4.04. This statute and rule state narrow circumstances when such an order may be appropriate and require the commission to

make a factual determination that withholding such facts from the public is “necessary in the interest of the public, or as to proprietary facts or trade secrets, in the interest of the utility to withhold such facts and information from the public,” in order to issue such an order. Ark. Code Ann. § 23-2-316 (b)(1), *Bryant v. Arkansas Pub. Serv. Comm.*, 45 Ark. App. 56, 63-64, 871 S.W.2d 414, 417-418.

2. Although the Motion at issue here references only one discovery response to date that it alleges may contain confidential information, it then provides a laundry list of types of protected information that could conceivably be provided at some point in the future. These allegations are not relevant to the Commission’s required analysis of whether the current information for which an order of protection is sought is entitled to such protection. The item in dispute is a compilation of information related to payments by multiple municipalities in the State of Arkansas. The same information is contained in reports and analysis related to those municipalities and is subject to request via the Arkansas Freedom of Information Act as public records. Ark. Code Ann. § 25-19-105(a)(1)(A). Further, these types of financial agreements must be approved by a municipality’s legislative body in public meetings. Ark. Code Ann. § 25-19-106. While EAL states that it expects future responses that should be protected, any such finding is premature at this point, with no such items having been identified. The present case concerns EAL’s complaint to the commission that the City of Maumelle should not have the right to require a utility to move structures and facilities in its dedicated right-of-way when required for a public transportation improvement project. Any information concerning the municipality at issue or other municipalities and their treatment is

information that should be subject to public disclosure and scrutiny. As stated in the Freedom of Information Act itself, "It is vital in a democratic society that public business be performed in an open and public manner so that the electors shall be advised of the performance of public officials and of the decisions that are reached in public activity and in making public policy." Ark. Code Ann. § 25-19-102. EAL has already distributed this item to the City Council members and Mayor of the City of Maumelle. The citizens of Maumelle have a right to know and understand the information their officials consider in reaching decisions.

3. EAL argues that making this information public will fail to protect its customers' information and require it to violate contractual duties and obligations. No such contract is identified. Any customer at issue is a municipality subject to the FOIA, and its records regarding utility agreements are already subject to public review. Accordingly, this is not a valid argument for an Order of Protection of Non-Disclosure.

4. EAL identifies the full list of types of information that may be protected by an Order of Protection in paragraph 4; however, none of these types of items have been identified in this case. For example, no supply or sales forecasts have been requested or are anticipated related to the issues in this case. No proprietary computer systems are expected to be at issue, no financial statements, credit lines, demand forecasts, or marketing evaluations are at issue in this case. To the extent any negotiated contract terms are at issue, they are with municipalities and accordingly already subject to public review.

5. Paragraph 5 alleges that the Protected Information includes or might include trade secrets or information pertaining to competitive or financial matters. EAL has identified no such information or how such information would relate to a case involving facilities relocation required by a municipality, a political subdivision of the State of Arkansas. Again, all information requested is subject to FOIA and further should have already been disclosed in response to Maumelle's resolution requesting this information as provided by Arkansas law. EAL has simply refused to follow state statutes regarding provision of utility business records to a municipality.

6. Paragraph 6 requests HSPI status for unspecified information, again repeating all of the same categories that may be protected, without stating how any of these categories apply to information in the present case. The commission cannot make the required factual finding for information that is unspecified and does not relate to any of the protected categories listed. This section also references the Affidavit of J. David Palmer that was attached as Exhibit A to the Motion. This exhibit also fails to provide any specific information about information that should be the subject of an order of protection. His affidavit, like the Motion itself, only lists the categories of information that may be subject to such an order. There is insufficient information for a factual finding that the information should not be subject to public disclosure.

7. Paragraph 7 indicates that EAL will not claim as confidential any information previously disclosed. The item EAL has claimed as confidential was disclosed with a cover sheet indicating they would seek an order of protection, but it has

already been disclosed to all of the council members for the City of Maumelle, as well as the Mayor.

8. Paragraph 8 sets out requested restrictions and filing requirements for the parties and notably states, “Protected information shall not include any information or document contained in the public files of the Commission, the FERC or any other federal or state agency. Protected information also shall not include documents or information, which at the time of or prior to disclosure in these proceedings is or was public knowledge....” While not a State agency, all of the municipalities in question are state entities. The information identified as potentially requiring confidentiality is information available in the records of municipal entities in the state of Arkansas. Accordingly, these records are not eligible to be labeled as protected information. EAL has merely taken the public information and placed it in a different format. The information in the document is still public, regardless of what type of table it may have been placed in.

Paragraph 8 contains the remainder of the highly burdensome requirements for using information subject to an order of protection, none of which are necessary in this case, and simply create a further burden for a small municipality seeking to regulate use of its own right-of-way.

9. Paragraph 10 recites that the Commission has the historical goal of maximizing information available to the public. The request at issue is not an appropriate use of the Commission’s power to issue Protective Orders of Non-Disclosure. It is a request to exclude the public from an analysis of past payments by

municipalities when that information is available by public request and in other public formats. For this reason, this Motion should be denied.

WHEREFORE, for the reasons stated above, the City of Maumelle prays that the Commission enter an order denying EAL's Motion for Protective Order of Non-Disclosure, and for all other appropriate relief to which the City of Maumelle may be entitled.

Respectfully Submitted,

The City of Maumelle, Arkansas,  
Mayor Caleb Norris, and  
The members of the Maumelle City Council  
In their official capacities

By: /s/ Melissa C. Krebs  
Melissa C. Krebs, Ark. Bar. No. 98129  
City Attorney, Maumelle  
550 Edgewood Drive  
Maumelle, Arkansas 72113  
Phone (501) 851-2500  
Fax (501) 851-6738  
melissakrebs@maumelle.org

CERTIFICATE OF SERVICE

This is to certify that I, Melissa C. Krebs, on this 24th day of September, 2021, have served all registered parties' representatives by electronically filing the foregoing pleading with the APSC's electronic filing system.

/s/ Melissa C. Krebs  
Melissa C. Krebs