

**ARKANSAS PUBLIC SERVICE COMMISSION**

IN THE MATTER OF A COMPLAINT BY )  
ENTERGY ARKANSAS, LLC AGAINST CITY ) DOCKET NO. 21-082-C  
OF MAUMELLE; MAYOR CALEB NORRIS IN ) ORDER NO. 2  
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 )

**INTERIM PROTECTIVE ORDER**

On September 16, 2021, Entergy Arkansas, LLC (Company) filed in the above-styled Docket a *Motion for Protective Order of Non-Disclosure* requesting the issuance an order pursuant to Ark. Code Ann. §23-2-316 and Rule 4.04 of the Arkansas Public Service Commission’s (Commission) *Rules of Practice and Procedure* (RPPs). By its Motion, the Company seeks to protect from public disclosure certain Confidential Information to be filed or otherwise provided in this Docket.

The Confidential Information sought to be protected from public disclosure by the Company consists of the following categories of information that it asserts should be protected on an interim basis:

- A. Information or documents related to supply or sales forecasts, demand forecasts, pricing forecasts and similar information, as well as any projections of the capacity or energy costs to the Company’s customers;
- B. Information or documents containing the names of individual customers (or from which individual customers could readily be identified), the terms of individual contracts, individual usage or individual prices, or other individual

material terms associated with EAL's business with those customers or the Company's own forecasts or projections of the capacity or energy costs to its customers;

C. Analyses related to the contracts or agreements between EAL and a counterparty, the supplier, or any affiliate thereof, or other customer;

D. All Computer software, files or other similar information, to the extent that they contain any information or data described above or represent a proprietary product for which disclosure by the Company to a third party is constrained by contract;

E. All current financial and financing information (including, but not limited to balance sheets, financial statements, operating statements, lending facilities and credit lines) prior to its public disclosure, where appropriate, if the disclosure of the information could cause EAL or its suppliers or vendors to suffer damage to its competitive or financial position or cause it to be in violation of any financial or loan agreement covenant, or any state or federal law or regulatory provision;

F. Information or documents reflecting or relating to operating budgets, actual budgets, original budgets, or revised budgets for prospective or projected time periods (not historical), supply or sales forecasts, demand forecasts and similar information including highly sensitive financial forecasts previously submitted under confidentiality agreements or orders to any and all financial ratings services;

G. Information or documents relating to planning and strategic business decisions, marketing or operational plans, benchmarking or other studies, or

presentations; market evaluations and program plans; plans for issuance of securities or other sources of funding and similar documents;

H. Competitively sensitive negotiated contract prices and terms including, but not limited to, contracts containing explicit confidentiality provisions;

I. Documents or other information designated as Confidential or Highly Sensitive Protected Information (HSPI) in other dockets or proceedings;

J. Reports, workpapers, and documents of internal or external auditors, which contain (or to the extent they contain) information concerning controls of the Company, any information described therein, or any other non-public information or which otherwise would reflect the Company's operations in a manner which would reveal competitively sensitive information; and

K. Any information related to Homeland Security concerns or issues or any similar information that is deemed sensitive for reasons of national security or homeland security, including but not limited to, information deemed to be Critical Energy Infrastructure Information by the Federal Energy Regulatory Commission (FERC) or reflecting the location of key facilities, which are critical to the Company's ability to deliver electricity for its customers.

The Company asserts that said Confidential Information, if revealed to the general public, could or would result in material harm to the Company's competitive and financial position. The Company also asserts that public disclosure of said Confidential Information would cause it to suffer unfair business disadvantage and irreparable harm to its business operations. The Company seeks this protective order so that it may maintain intact the confidential nature of this information. The Company specifically

states that it will not claim as confidential any information that has been previously disclosed, except information disclosed pursuant to protective orders, and that has not been maintained as confidential by the Company and its vendors and suppliers. The Company further notes that to date it has identified one discovery response that would be contained in the above-listed categories.

On September 24, 2021, The City of Maumelle; Mayor Caleb Norris, in his official capacity; Maumelle City Directors in their official capacities, Steve Mosley, Ken Saunders, R.J. Mazzoni, Chad Gardner, Terry Williams, Michael Tierney, Doug Shinn, and Jess Holt (collectively referred to as City of Maumelle) filed a Response to the Company's Motion, objecting to the issuance of an interim protective order, arguing that the Company has provided 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." City of Maumelle Response ¶ 2. As to the specific document identified by the Company and sought to be protected by the Motion, the City of Maumelle states, "[t]he 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. *Id.* ¶ 2. The City of Maumelle further states, "[t]he item [the Company] 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.” *Id.* ¶ 7.

The General Staff of the Arkansas Public Service Commission (Staff) filed a Response to the Company’s Motion. In its Response, Staff states that it “does not concede that the information in question is in fact proprietary, nor does the Staff concede that the Company has provided sufficient evidence pursuant to Rule 4.04 of the Commission’s RPPs to show that the information in question is sufficiently proprietary or confidential. Further, Staff does not concede that any material is “HSPT”. However, based on the representation that the information is proprietary, Staff states that it does not object to the Commission entering an interim protective order for the Confidential Information described in the Company’s Motion “if Staff is reserved the right to contest at a future date, upon reasonable notice, the Company’s entitlement to a protective order for all or portions of the information.” Staff Response ¶¶ 10 & 11.

The Company filed a Reply to the City of Maumelle’s Response on September 30, 2021. Notably, it did not respond to the City of Maumelle’s allegation that the specifically identified document sought to be protected from disclosure had already been disclosed by the Company.

The categories of information sought by the Company to be protected are categories of information traditionally treated as confidential and subject to an order of protection by this Commission. In reviewing the specific categories, the undersigned Administrative Law Judge (ALJ) can see nothing out of the ordinary listed that should not be considered confidential should it be sought in discovery. Additionally, in this Complaint Docket, there is no harm in providing protection for the listed categories of

information on the chance that discovery may seek such information. However, if a document containing information from one of the identified categories has been disclosed (as alleged by the City of Maumelle) to an individual or group of individual without first obtaining an order protecting it, the Company has lost the confidential nature of the information and can no longer claim it as confidential.

Ark. Code Ann. § 23-2-316(b) provides as follows:

(b)(1) Whenever the commission determines it to be 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, the commission shall do so.

(2) The commission may take such action in the nature of, but not limited to, issuing protective orders, temporarily or permanently sealing records, or making other appropriate orders to prevent or otherwise limit public disclosure of facts and information.

When considering a request for the entry of a protective order of non-disclosure, the Commission must carefully balance three competing needs, i.e., (1) the Company's need to protect from public disclosure its proprietary facts or trade secrets, (2) the Commission's investigative need to acquire information from the Company in an expeditious and efficient manner, and (3) the public's right of access to information in the possession of the Commission.

The entry of an interim protective order which reserves to the Staff and Interveners the right to contest at a future date the Company's continuing entitlement to the protective order efficiently addresses the first two needs. To protect the public's right of access to the maximum extent possible the undersigned ALJ directs that the Company shall hold to an absolute minimum the amount of information to be protected from public disclosure.

Having considered the Company's Motion, the undersigned finds, orders and directs as follows:

1. Based upon the Company's assertions of confidentiality, the undersigned finds that said Confidential Information should and shall be protected from public disclosure on an interim basis pursuant to Ark. Code Ann. § 23-2-316 and Rule 4.04.
2. To protect the public's right of access to the maximum extent possible, the Company shall hold to an absolute minimum the amount of data to be protected from public disclosure.
3. Access to HSPI information shall be limited to Respondents' and Staff's counsel, witnesses, and experts that are directly working on this Docket.
4. For each specific item of Confidential Information to be filed or submitted in this Docket by the Company, the Company shall affix thereto a written Confidential Information transmittal cover document in the form of Attachment 1 or 1(b).
5. Confidential Information to be provided in paper format shall be reproduced and filed or submitted on distinctive pink paper only. Confidential Information to be provided in digital format shall be reproduced and filed or submitted on a CD that is distinctively red or pink in color.
6. The Commission's standard form "AFFIDAVIT OF NON-DISCLOSURE" (Attachment 2 hereto) shall be executed and filed in

this Docket by all official party representatives to be granted access to said Confidential Information pursuant to this Interim Protective Order.<sup>1</sup>

7. All official parties are hereby granted the right to contest at a future date, upon reasonable notice, the Company's continuing entitlement to protect from public disclosure all or any portions of any Confidential Information filed or submitted pursuant to this Interim Protective Order. Such Confidential Information shall be reviewed by the official parties for the express purpose of ascertaining (1) whether such Confidential Information is consistent with the description provided by the Company in its Motion for a protective order; (2) whether such Confidential Information is consistent with the Confidential Information transmittal cover document, and; (3) whether the scope of this Interim Protective Order has been applied too broadly by the Company. Based upon such review any official party shall promptly file an objection in this Docket if such party determines that any portion of such Confidential Information should be removed from the scope of this Interim Protective Order.
8. Further, if any official party determines that any information that previously has been deemed to be confidential should no longer be

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<sup>1</sup> A digital copy of Attachments 1 and 2 to this Order can be accessed through the Commission's web site at the following internet address: <http://www.apscservices.info/orderattach.asp> . The digital copies can be filled in online and then printed for signature and filing. The standard form Attachments 1 and 2 shall not be modified or amended in any way.

protected from public disclosure due to the passage of time or changed circumstances, such party shall promptly file an appropriate objection in this Docket.

9. In the event of any objection filed pursuant to the terms and conditions of this Interim Protective Order, the burden of proof will rest on the Company.
10. The undersigned will review and examine all confidential information filed or submitted pursuant to this Interim Protective Order and rule upon any objections filed pursuant to the terms and conditions of this Interim Protective Order. Based upon such examination the undersigned will issue an appropriate amended Interim Protective Order if required. Further, after notice to the parties and after any hearing that may be necessary, the undersigned will issue an appropriate Final Protective Order as may be needed. Any party aggrieved by any amended Interim Protective Order or the Final Protective Order issued by the undersigned may petition the Commission for review and rehearing of such Order within thirty (30) days of the issuance of same.
11. Accordingly, the Company's Motion, as conditioned herein, is granted on an interim basis. The Company shall forthwith cause said Confidential Information to be filed and/or otherwise submitted under seal as requested.

Docket No. 21-082-U  
Order No. 2  
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BY ORDER OF THE ADMINISTRATIVE LAW JUDGE PURSUANT TO  
DELEGATION,

This 7<sup>th</sup> day of October, 2021.



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Connie C. Griffin  
Administrative Law Judge



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Mary Loos,  
Secretary of the Commission

I hereby certify that this order, issued by the  
Arkansas Public Service Commission,  
has been served on all parties of record on  
this date by the following method:

U.S. mail with postage prepaid using the  
mailing address of each party as  
indicated in the official docket file, or  
 electronic mail using the email address  
of each party as indicated in the official  
docket file.

Attachment 1 – Non HSPI

(COMPANY NAME)  
ARKANSAS PUBLIC SERVICE COMMISSION  
DOCKET NO. 21-082-U

DATE REQUESTED: MONTH, DAY, YEAR

DATE PROVIDED: MONTH, DAY, YEAR

DATA REQUEST NO.: APSC-###

COMPANY CONTACT:  
NAME  
PHONE, EMAIL

**CONFIDENTIAL INFORMATION COVER SHEET**

<b>Requested Information</b>	<b>Company's Response</b>
1. Document Title	
2. Description of the document containing the Confidential Information	
3. Identification of each item of Confidential Information contained in the document	
4. The applicable category of Confidential Information listed in the IPO under which each item of the Confidential Information falls	
5. A description of why the Confidential Information within the document should be protected including the Company's reasons for claiming that each item of the Confidential Information is consistent with the description provided by the Company in its request for an IPO	
6. Has the Confidential Information been previously disclosed? If so, when and in what context?	
7. What is the period of time that the Confidential Information should remain confidential?	
8. Have both a redacted and non-redacted version of the document containing the Confidential Information been provided?	



**ARKANSAS PUBLIC SERVICE COMMISSION**

IN THE MATTER OF A COMPLAINT )	
BY ENTERGY ARKANSAS, LLC )	DOCKET NO. 21-082-U
AGAINST CITY OF MAUMELLE; )	
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 )	

**AFFIDAVIT OF NON-DISCLOSURE**  
**PURSUANT TO INTERIM PROTECTIVE ORDER NO. 2**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, am immediately and directly working on matters relating to the above referenced docket on behalf of \_\_\_\_\_.

The above referenced Interim Protective Order directs that the confidential information identified therein shall be protected from public disclosure pursuant to the provisions of Ark. Code Ann. § 23-2-316 and Rule 4.04 of the Arkansas Public Service Commission’s *Rules of Practice and Procedure* (Rule 4.04).

In accordance with said Interim Protective Order, I understand, agree and certify as follows:

1. That said confidential information is provided to me by the protected party pursuant to the terms of said Interim Protective Order and the provisions of Rule 4.04; that I have been provided a copy of said Interim Protective Order and Rule 4.04, and that I

have read and understand the provisions of said Interim Protective Order and Rule 4.04; and that I shall fully comply with same; and

2. That said confidential information at all times shall be clearly and distinctly marked as CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER and at all times shall be maintained in a secure manner; and

3. That I shall not disclose said confidential information to any person not immediately and directly involved in the above-referenced docket, nor to any person not entitled to said confidential information by the terms of said Interim Protective Order and Rule 4.04, nor to any person who has not executed the required Affidavit of Non-Disclosure; and

4. That said confidential information shall be used solely for the purpose of pursuing the case at hand, and shall not be used for any other purpose(s) whatsoever, and most especially shall not be used for competitive business purposes; and

5. That improper disclosure of said confidential information by a party or person may result in civil liabilities or sanctions against said party or person; and

6. That I shall neither disclose nor permit to be reviewed or copied said confidential information, and any notes, memoranda, or any other form of information regarding or derived from said confidential information, by any person other than myself or other individuals who are entitled to said confidential information by the terms of said Interim Protective Order and Rule 4.04 and who have also executed the required Affidavit of Non-Disclosure; and

7. That said confidential information shall not lose its confidential status through use in this docket and that I will take all steps reasonably required to protect its confidentiality during such use; and

8. That if I have knowledge that said confidential information has been disclosed, reviewed or copied by any persons other than in the manner authorized by the Interim Protective Order, Rule 4.04, and this Affidavit of Non-Disclosure, I shall promptly notify counsel for the protected party and make every reasonable effort to retrieve such confidential materials and to prevent further disclosure of such information; and

9. That any pleadings or other filings that incorporate, reference, or attach said confidential information shall be filed in two formats: (a) public format with said confidential information appropriately redacted, and (b) non-public under protective seal format; and

10. That neither the filing in this docket of said confidential information, nor the furnishing of said confidential information for review by the parties to this docket shall be considered a waiver of any right to object upon any grounds to the use or introduction into evidence of said confidential information during any proceeding in this docket; and

11. That, I shall return said confidential information to the protected party within thirty (30) days of the conclusion of the above referenced docket and any appeals taken therefrom. Further, I shall destroy any notes, memoranda, or any other form of information regarding or derived from said confidential information within thirty (30) days of the conclusion of said docket and any appeals taken therefrom.

12. That, if the Interim Protective Order identified hereinabove subsequently is amended and/or further Interim or Final Protective Orders are entered in this Docket, I shall be bound by the same terms herein as they relate to any additional Confidential Information which may be protected by such subsequent Protective Orders without the need for the execution of further affidavits of non-disclosure in this Docket.

**AFFIANT CERTIFICATION**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Print name of Affiant

**NOTARY CERTIFICATION**

Subscribed and sworn to by the foregoing Affiant before me, a Notary Public, on this  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Affix Notary Seal: