

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)	

ENTERGY ARKANSAS, LLC’S MOTION TO DISMISS COUNTERCLAIM AND
ANSWER TO COUNTERCLAIM

COMES NOW, the Complainant, Entergy Arkansas, LLC (“EAL” or the “Company”), pursuant to Ark. Code Ann. § 23-3-119, Ark. Code Ann. § 14-200-101(c), applicable Rules of Practice and Procedure (“RPPs”) of the Arkansas Public Service Commission (“APSC” or the “Commission”) including RPP 9.02, and Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(1) and (6)¹, and for its Motion to Dismiss Counterclaim and Answer to Counterclaim, states as follows:

1. Respondents filed their Answer and Counterclaim on July 30, 2021. EAL will address for each paragraph of the Counterclaim reasons to dismiss the claims, and

¹ Commission Rule of Practice and Procedure 3.10 states that: “A Party may seek relief by motion, including motions available under the Ark. R. Civ. P.

provide EAL's answer to such claims in the event that one or more are not dismissed. EAL demonstrates that all claims asserted by Respondents' Counterclaim must be dismissed pursuant to RPP 9.02(a) and to Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6) for failure to state facts upon which relief can be granted. Additionally, the claims in Paragraphs 19 and 23 are subject to dismissal pursuant to Rule 12(b)(1) for lack of Commission jurisdiction, and the claims made in Paragraph 19 are moot and barred by the doctrines of estoppel by agreement and/or estoppel by contract and by failure to exhaust administrative remedies. Furthermore, in Paragraphs 20 and 22 Respondents cite to statutes that have no application to the claims asserted. In support of its Motion to Dismiss and Answer, EAL incorporates by reference its Complaint in this Docket.

2. At the outset of their Counterclaim, Respondents state that: "The City of Maumelle, pursuant to its authority under Ark. Code Ann. § 23-3-119, and pursuant to its Resolution 2021-15, attached as EAL Complaint-Exhibit 3, hereby states the following Counterclaim against Entergy Arkansas, LLC."² However, the authority for the City of Maumelle to file a complaint against EAL pursuant to Ark. Code Ann. § 23-3-119 extends only to a claimed violation of "any order, law, or regulation which the Commission [the APSC] has jurisdiction to administer." See §23-3-119(a)(1). Such standard accords with Commission RPP 9.02(a), in that a complaint:

... shall fully and clearly set out any act or thing done or not done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any Commission order or Rule and the exact relief desired. The complaint shall contain facts and information sufficient to fully apprise the Commission and the respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint.

² Respondents' Counterclaim at 9.

To the extent any claim is not subject to the jurisdiction of the APSC, it should be dismissed pursuant to RPP 9.02(a) and Arkansas Rule of Civil Procedure 12(b)(1).

A. Answer and Motion to Dismiss Paragraph 19 of Respondents' Counterclaim

3. Paragraph 19 states as follows: "EAL has refused to provide information as required by Ark. Code Ann. § 14-200-110, and is currently in violation of that statute, despite the lawful order of the Maumelle City Council to do so. This refusal has deprived the City of Maumelle of any meaningful opportunity to evaluate sufficient information to determine whether it could be required to pay relocation costs under current state law."

4. EAL denies that it has stated a refusal to provide information which the City alleges was requested pursuant to Ark. Code Ann. § 14-200-110, or that EAL is in violation of that statute, or that EAL has deprived the City of Maumelle of any meaningful opportunity to evaluate sufficient information to determine whether it could be required to pay relocation costs under current state law – information which arguably the City should seek to access on its own. Respondents do not provide any factual basis to support that EAL has stated a refusal of an information request, and no court has ruled that EAL is in violation of the statute. The City of Maumelle has been afforded a meaningful opportunity, by EAL initiating this docket, whereby the City may pursue discovery pursuant to APSC rules on the issue of whether the City could be required to pay relocation costs. The City has not yet pursued such discovery, and it cannot be said that EAL has refused or will refuse to provide reasonably requested documents in the forum provided by this Docket.

5. With regard to grounds for dismissal of Paragraph 19, there exists a fatal flaw in Respondents' attempt to invoke the Commission's jurisdiction over the alleged statutory authority of a municipality to demand and obtain information of a public utility pursuant to Ark. Code Ann. § 14-200-110, in that the statute is not one the APSC administers. For that reason, Respondents may not obtain the relief sought in Paragraph 24 of the Counterclaim, i.e., "that the Commission order EAL to comply with the Maumelle City Council's order to provide information concerning its business, pursuant to Ark. Code Ann. § 14-200-110." Pursuant to RPP 9.02(a) and Arkansas Rule of Civil Procedure 12(b)(1), EAL requests dismissal of the claims made in Paragraphs 19 and denial of the relief sought in Paragraph 24 of the Counterclaim as they may pertain to Resolution No. 2021-17 of the Respondent City Council, requesting information from EAL. Notwithstanding, dismissal of the claims in Paragraphs 19 and denial of the relief set forth in Paragraph 24 is without consequence to the City, which reasonably may utilize the Commission's discovery processes as described below.

6. Moreover, the dispute concerning requests for information is moot given the adoption on July 19, 2021 (after EAL filed its Complaint) of Respondent City Council's Resolution No. 2021-18. The Resolution approved an agreement between EAL and the City entitled "Agreement to Facilitate Road Widening in Maumelle, Arkansas," which is attached hereto as EAL Answer Exhibit -1. In it, EAL and the City agreed that, with respect to the issues raised in this Docket: "The Parties will follow the Commission's Rules of Practice and Procedure as they pertain to discovery requests." Thus, Respondents

are estopped by agreement and/or by contract³ from asserting their claims that appear to be tied to Resolution No. 2021-17, and such estoppel provides additional grounds to dismiss the claims in Paragraph 19.

7. Also, before possibly being entitled to seek a judicial decision that EAL must provide information pursuant Resolution No. 2021-17, the City has a duty to exhaust the administrative remedy of pursuing discovery in this Docket. See *Brown v. Towell*, 2021 Ark. 60, 8–9, 619 S.W.3d 17, 21–22 (2021) (“the doctrine of exhaustion of administrative remedies provides that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted”). As stated in Paragraph 11 of EAL’s Complaint, before the City Council adopted Resolution No. 2021-17, EAL communicated to the City that the Company would be filing a complaint before the Commission to address the parties’ dispute regarding Resolution No. 2021-15, and that the APSC’s rules would control the discovery processes to address the City’s information requests. Respondents have not exhausted their administrative remedy, and that provides additional grounds to dismiss the claims in Paragraph 19, which also are unnecessary as the Company has informed and agreed with the City that information requests are appropriately conducted pursuant to the Commission’s discovery rules.

³ See *Black’s Law Dictionary* (11th ed. 2019) (“**estoppel**: 1. A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true; **estoppel by agreement**: Estoppel based on the terms of a contract between the parties expressly or impliedly showing a mutual acceptance of certain facts or assumptions. — also termed estoppel by convention; and **estoppel by contract**: A bar that prevents a person from denying a term, fact, or performance arising from a contract that the person has entered into.” For Arkansas precedent that recognizes the defense of estoppel by agreement or contract, see *Mings v. City of Fort Smith*, 288 Ark. 42, 45, 701 S.W.2d 705, 706-707 (1986) (but finding that the standard was not met for demonstrating that a prior agreement justified the estoppel defense.)

8. Finally, the claims alleged in Paragraph 19 of the Counterclaim are conclusory statements that violate RPP 9.02(a), requiring the claim to “contain facts and information sufficient to fully apprise the Commission and the respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint.” The claims also violate the requirement found in Arkansas Rule of Civil Procedure 8(a)(1), i.e., that a pleading that sets forth a claim for relief “shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief.” The claims did not incorporate by reference relevant factual material addressed by their Answer and EAL’s Complaint, nor did Respondents otherwise insert factual allegations in support of such claims. For example, Paragraph 19 does not allege facts such as: (a) the information requested and the date thereof, (b) the manner by which the information was requested and its relevance to the issue of requiring the City to pay relocation costs under current state law, and (c) the date and manner in which the City alleges that EAL “refused” to provide the requested information.⁴ Thus, the claims must be dismissed pursuant to RPP 9.02(a) and Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6).

B. Answer and Motion to Dismiss Paragraph 20 of Respondents’ Counterclaim

9. Paragraph 20 states: “EAL has violated Ark. Code Ann. § 23-4-103, which requires that all rules of a utility provider be just and reasonable. While it has provided sworn testimony to the APSC that it honors relocation policies for Arkansas municipalities,

⁴ Thus, the claims are subject to dismissal pursuant to Ark. R. Civ. P. 12(b)(6), which provides for dismissal for “failure to state facts upon which relief can be granted.” See, Hole in the Wall NWA, LLC v. City of Bella Vista, 2020 Ark. App. 373, 8, 609 S.W.3d 8, 12–13 (2020), reh’g denied (Oct. 7, 2020)(,, “our rules require fact pleading ...” and “a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief”).

it has ruled that the City of Maumelle is not subject to the same rules as other municipalities.” EAL denies all allegations made in Paragraph 20 of Respondents’ Counterclaim. Moreover, when it refers to sworn testimony, if Respondents have in mind the direct testimony of EAL witness Bernard Neumeier in Docket No. 12-056-U, which did not address issues raised in the dispute between EAL and Respondents, the facts underling that testimony and case also are easily and fatally distinguished from the disputed issues in this docket. Unlike Docket No. 12-056-U, the road widening project in the City of Maumelle is not an Arkansas Highway and Transportation (“AHTD”) project governed by its Utility Accommodation Policy consistent with Arkansas law. EAL’s facilities in the City of Maumelle are not located on an existing state highway right-of-way by permit or unwritten consent of the AHTD, and the costs for relocation at issue herein are eligible for reimbursement by the City of Maumelle.⁵ Moreover, EAL’s facilities at issue in Maumelle pre-date even the existence of the City of Maumelle, and nothing in the City of Maumelle franchise agreement requires EAL to relocate these facilities without reimbursement.

10. Also, Respondents cite no authority that Ark. Code Ann. § 23-4-103 applies to actions taken pursuant a franchise agreement between a municipality and a public utility. EAL submits that such statute has application to actions taken by a public utility with regard to its customers. Further, the claims alleged in Paragraph 20 of the Counterclaim are conclusory statements that violate RPP 9.02(a), requiring the claim to “contain facts and information sufficient to fully apprise the Commission and the

⁵ Should Respondents’ Counterclaim not be dismissed, EAL is prepared to brief such legal issue, and in its Complaint has requested the opportunity for briefing.

respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint.” The claims also violate the requirement found in Arkansas Rule of Civil Procedure 8(a)(1), i.e., that a pleading that sets forth a claim for relief “shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief.” The claims did not incorporate by reference relevant factual material addressed by their Answer and EAL’s Complaint, nor did Respondents otherwise insert factual allegations in support of such claims. For example, even if the statute in question had application, Paragraph 20 does not allege facts and cannot allege facts to support that while EAL “has provided sworn testimony to the APSC that it honors relocation policies for Arkansas municipalities, it has ruled that the City of Maumelle is not subject to the same rules as other municipalities.” Thus, the claims must be dismissed pursuant to RPP 9.02(a) and Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6).

C. Answer and Motion to Dismiss Paragraph 21 of Respondents’ Counterclaim

11. Paragraph 21 states: “EAL has violated Ark. Code Ann. § 23-3-113, which requires that it maintain adequate and efficient facilities to provide for the health, safety, and comfort of its customers without any unjust discrimination or preference. Crystal Hill Road has been left in an unsafe condition, and construction could not proceed due to EAL’s refusal to relocate their facilities from their unsafe locations.” EAL denies all allegations made in Paragraph 21 of Respondents’ Counterclaim, which it submits have no basis in accurate facts. Pleading affirmatively, EAL states that all of its facilities remain in a safe condition and are not impeding current traffic or road use. Further, to the extent that Crystal Hill Road may be in an unsafe condition, pertaining to EAL’s facilities (which situation is not supported by specific factual allegations in Paragraph 21), the fault lies

with the City's pursuing the road widening for city beautification purposes while knowing that reimbursement for relocation of EAL's facilities would be required, and without the City first committing to such reimbursement in order to facilitate the commencement of the work of facility relocation.

12. The claims alleged in Paragraph 21 of the Counterclaim are conclusory statements that violate RPP 9.02(a), requiring the claim to "contain facts and information sufficient to fully apprise the Commission and the respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint." The claims also violate the requirement found in Arkansas Rule of Civil Procedure 8(a)(1), i.e., that a pleading that sets forth a claim for relief "shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief." The claims did not incorporate by reference relevant factual material addressed by their Answer and EAL's Complaint, nor did Respondents otherwise insert factual allegations in support of such claims. For example, Paragraph 21 does not allege facts to support that EAL has failed to maintain adequate and efficient facilities to provide for the health, safety, and comfort of its customers without any unjust discrimination or preference. There are no facts presented or otherwise to support that EAL is failing adequately and efficiently to maintain its facilities in the right-of-way in question, or that the Company's customers are suffering health, safety or comfort problems in the delivery of electricity to them. And no facts are alleged that EAL has discriminated against or shown a preference to any customer. Thus, the claims must be dismissed pursuant to RPP 9.02(a) and Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6).

D. Answer and Motion to Dismiss Paragraph 22 of Respondents' Counterclaim

13. Paragraph 22 states: "While EAL has admitted that other municipalities have been provided relocation services, this has not been extended to Maumelle. Further, EAL has not contested relocation policies in other municipalities before the APSC, even when virtually identical to the ordinance currently pending before the Maumelle City Council. Upon information and belief, this is the first APSC Complaint EAL has filed against any municipality." EAL denies all allegations made in Paragraph 22 of Respondents' Counterclaim. Pleading affirmatively, EAL currently is pursuing the relocations requested by the City, as agreed by the parties in EAL Answer Exhibit - 1, so it is false to allege that EAL is not extending relocation services to the City of Maumelle. Further, while EAL submits generally that it has approached these issues with Maumelle in a manner consistent with how EAL approaches relocation requests from other municipalities, EAL at this time has not determined exhaustively if it ever may have contested or filed complaints against relocation policies of other municipalities before the APSC, or whether other municipalities have in effect a virtually identical franchise ordinance to that currently pending before the Maumelle City Council.⁶ Thus, based on currently known information and belief, EAL denies that the alleged actions or non-actions have been taken or that multiple municipalities have franchise agreements with EAL that are virtually identical to one pending before the Maumelle City Council. Also, EAL notes

⁶ The franchise agreement between the City of Cabot and EAL appears to be similar to the one currently proposed for adoption by the Maumelle City Council, but the Cabot ordinance adopting that agreement was never officially served on EAL. EAL believes that it has not encountered a situation where, like here, EAL has not been able to resolve issues pertaining to requested pole relocations.

that Respondents in Paragraph 22 have not identified municipalities that have currently-effective franchise agreements that are virtually identical to the franchise ordinance currently pending before the Maumelle City Council. Most significantly, EAL affirms that such issues have no legal significance with regard to the disputes in this Docket, which necessitate that the Commission (a) consider the current franchise agreement between the parties hereto in light of case precedent and (b) determine if it is unreasonable for the City of Maumelle to refuse to reimburse EAL for the relocation costs. Simply put, each municipal franchise ordinance must be evaluated on the facts specific to that municipality, such as those in the instant case that support that EAL's facilities at issue predate the incorporation of the City of Maumelle. Further, EAL affirmatively states that it has provided relocation services to several counties and cities with those counties and cities providing reimbursement to EAL including the City of Little Rock, Pulaski County, and the City of Cabot; thus, based on information and belief, any allegation that EAL has treated the City of Maumelle differently than other similarly situated cities or counties is inaccurate.

14. To the extent Respondents are grounding their claim in Ark. Code Ann. § 23-3-114 (concerning the granting of unreasonable preferences), it has no application to the disputes in this Docket and as described above would be an inaccurate characterization even if it did apply. That statute pertains to granting preferences to customers of the utility, and does not pertain to terms of franchise agreements and their interpretation and implementation as between the grantor and grantee of the franchise. As applied more accurately, EAL has raised concerns that Respondents' actions will create impacts to EAL's customers residing outside of Maumelle having to pay the costs

of the City's beautification efforts, which may be said to create an unreasonable preference for customers within Maumelle. Also, the claims alleged in Paragraph 22 are conclusory statements that violate RPP 9.02(a), requiring the claim to "contain facts and information sufficient to fully apprise the Commission and the respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint." The claims also violate the requirement found in Arkansas Rule of Civil Procedure 8(a)(1), i.e., that a pleading that sets forth a claim for relief "shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief." The claims did not incorporate by reference relevant factual material addressed by their Answer and EAL's Complaint, nor did Respondents otherwise insert factual allegations in support of such claims. For example, Paragraph 22 does not allege facts to support that EAL is denying relocation services to the City of Maumelle while providing them to other municipalities. Thus, the claims must be dismissed pursuant to RPP 9.02(a) and Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6).

E. Answer and Motion to Dismiss Paragraph 23 of Respondents' Counterclaim

15. Paragraph 23 states: "EAL has violated Ark. Code Ann. § 23-3-115 and 116 by failing to 'keep, erect, or use due diligence to maintain reasonably adequate facilities to be able to carry out contractual obligations' to the City of Maumelle. EAL has not maintained this equipment in a reasonably safe manner. As such, it is subject to the statutory penalties provided in Ark. Code Ann. § 23-3-116." EAL denies all allegations made in Paragraph 23 of Respondents' Counterclaim. EAL affirmatively states that its facilities have been reasonably maintained and remain in a safe manner.

16. The claims in Paragraph 23 rely in part on Ark. Code Ann. § 23-3-116, which is not administered by the APSC but instead is restricted to judicial review in a court of competent jurisdiction. Also, the claims alleged in Paragraph 23 are conclusory statements that violate RPP 9.02(a), requiring the claim to “contain facts and information sufficient to fully apprise the Commission and the respondent of the facts and issues involved and to enable the respondent to prepare its answer to the complaint.” The claims also violate the requirement found in Arkansas Rule of Civil Procedure 8(a)(1), i.e., that a pleading that sets forth a claim for relief “shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief.” The claims did not incorporate by reference relevant factual material addressed by their Answer and EAL’s Complaint, nor did Respondents otherwise insert factual allegations in support of such claims. For example, Paragraph 23 does not allege facts to support that EAL has failed to “keep, erect, or use due diligence to maintain reasonably adequate facilities to be able to carry out contractual obligations to the City of Maumelle.” or that “EAL has not maintained this equipment in a reasonably safe manner.” Thus, the claims must be dismissed pursuant to RPP 9.02(a) and Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6) and pursuant to Rule 12(b)(1) for lack of Commission jurisdiction under Ark. Code Ann. § 23-3-116.

F. Answer to Paragraph 24 of Respondents’ Counterclaim

17. With respect to paragraph 24 of Respondents’ Counterclaim, while no answer is required to a statement of requested relief, EAL denies that Respondents are entitled to any of the relief requested therein.

18. EAL denies all allegations in the Counterclaim except those specifically admitted herein and further reserves the right to plead further in this matter as may be necessary.

Affirmative Defenses

19. Further pleading affirmatively, EAL has shown above that all claims asserted by Respondents' Counterclaim must be dismissed pursuant to RPP 9.02(a) and to Arkansas Rules of Civil Procedure 8(a)(1) and 12(b)(6) for failure to state facts upon which relief can be granted. Additionally, the claims in Paragraphs 19 and 23 are subject to dismissal pursuant to Rule 12(b)(1) for lack of Commission jurisdiction, and the claims made in Paragraph 19 are moot and barred by the doctrines of estoppel by agreement and by contract, and failure to exhaust administrative remedies. Finally, in Paragraphs 20 and 22, Respondents cite to statutes that have no application to the claims asserted.

WHEREFORE, for the reasons set forth herein, EAL prays that the Commission issue a final order (a) granting the relief requested in Paragraph 14 of EAL's Complaint, (b) denying all relief requested in Respondents' Counterclaim and dismissing it with prejudice, and (c) awarding all other appropriate relief to which EAL may be entitled.

Respectfully submitted,

ENTERGY ARKANSAS, LLC

By /s/ Kimberly K. Bennett

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ATTORNEYS FOR ENTERGY ARKANSAS, LLC

CERTIFICATE OF SERVICE

I, Kimberly K. Bennett, do hereby certify that a copy of the foregoing has been served on all parties of record on this 23rd day of August 2021.

/s/ Kimberly K. Bennett
Kimberly K. Bennett

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)	

EAL ANSWER EXHIBIT – 1

AGREEMENT TO FACILITATE ROAD WIDENING IN MAUMELLE, ARKANSAS

AGREEMENT TO FACILITATE ROAD WIDENING IN MAUMELLE, ARKANSAS

APSC FILED Time: 8/23/2021 3:34:23 PM: Recvd 8/23/2021 3:33:17 PM: Docket 21-082-C-Doc. 6

This Agreement to Facilitate Road Widening in Maumelle, Arkansas (“Agreement”) is made and entered into as of July 20, 2021 between ENTERGY ARKANSAS, LLC, a Texas limited liability company (“EAL”) and the CITY OF MAUMELLE, ARKANSAS, a city of the first class (“City”), collectively the (“Parties”).

WHEREAS, the City is pursuing a project to widen Crystal Hill Road and a portion of Counts Massie Road within the City’s corporate limits, with the scope of the Project that presently is expected to entail relocation and rebuilding of at least 26 electric utility poles with new equipment outside the existing right-of-way into a new right-of-way acquired by the City, refacing of over one mile of associated electricity conductor, and relocation of two 3-phase underground dips (the “Project”);

WHEREAS, the Parties disagree as to whether EAL or the City has the obligation to pay for the costs of the Project;

WHEREAS, a complaint has been submitted by EAL pursuant to Ark. Code Ann. § 14-200-101(c)(1) to the Arkansas Public Service Commission (“APSC” or “Commission”) in Docket No, 21-082-C, seeking an investigation, hearing and a ruling on the validity of Resolution No. 2021-15 passed by the City Council and dated June 21, 2021 and Resolution No. 2021-17 passed by the City Council and dated July 6, 2021;

WHEREAS, such Commission proceeding will be conducted in conformance with the APSC Rules of Practice and Procedure, including as they pertain to discovery requests;

WHEREAS, the Parties desire to have EAL proceed with the identified work that is required by the City’s Project during the pendency of the complaint before the APSC; and

WHEREAS, in consideration for EAL’s willingness to proceed with the Project as addressed herein, the Parties agree to seek resolution of the potential reimbursement to EAL by the City of the costs of the Project as set out and agreed below.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, and based upon the terms, conditions, and provisions set forth herein, the Parties each agree as follows.

1. As recited above, EAL has filed a complaint at the APSC against the City in Docket No. 21-082-C, pursuant to Ark. Code Ann. § 14-200-101(c)(1), to contest Resolution Nos. 2021-15 and 2021-17, which the City may oppose.

2. The Parties will follow the Commission’s Rules of Practice and Procedure as they pertain to discovery requests.

3. Upon approval of this Agreement by the City Council of Maumelle and execution of this Agreement by Mayor Caleb Norris, and upon the line of credit being consummated pursuant to paragraph 4 below, EAL will proceed to perform the work for the Project, beginning with vegetation clearance, that is required by the City's Project during the pendency of the complaint before the APSC.

4. In consideration of EAL's agreement to proceed with performing the work required under the Project as set forth herein, the City agrees to (i) reimburse EAL for the actual costs thereof, which currently are estimated to be \$142,453.60, should the APSC proceeding and any appeal(s) thereof result in a determination that such reimbursement is the City's obligation, and (ii) obtain the line of credit referenced in paragraph 3 above from a bank to guarantee the availability of such funds, which line of credit will be in place and confirmed to EAL at the start of EAL's work for the Project and continue in place until a final decision of the APSC, the conclusion of any appeal(s) related thereto, and the reimbursement by the City of the costs set out above should such reimbursement be required as a result of the APSC proceeding and any judicial review(s).

5. The fully executed resolution of the Maumelle City Council approving this Agreement is attached hereto as Exhibit A.

6. Each Party will pay its own costs and fees associated with the APSC proceeding and any appeal(s) of the Commission's decision.

7. This Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas.

8. If any term or provision of this Agreement shall to any extent be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9. This Agreement contains the complete agreement of the Parties and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. Nothing in this Agreement shall in any way be construed to impose upon either Party any obligations or restrictions not expressly set forth herein. No amendment or modification of this Agreement shall be binding unless in writing and duly executed by both Parties.

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered.

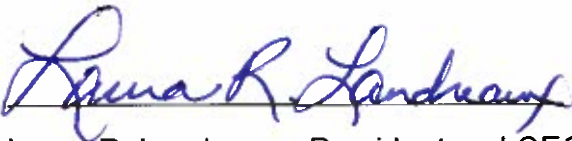
11. The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of EAL and the City, as the case may be, and to undertake the obligations undertaken in this Agreement.


IN WITNESS WHEREOF, the Parties have executed this Agreement pursuant to due authority as of the day and in the year first mentioned above.

APSC FILED Time: 8/23/2021 3:34:23 PM: Recvd 8/23/2021 3:33:17 PM: Docket 21-082-C-Doc. 6

Entergy Arkansas, LLC

City of Maumelle, Arkansas

By: 
Laura R. Landreaux, President and CEO

By: 
Caleb Norris, Mayor

Date: 7/26/21

Date: 7/20/2021

APSC FILED Time: 8/23/2021 3:34:23 PM; Recvd. 8/23/2021 3:33:17 PM; Docket 21-082-C-Doc. 6
**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MAUMELLE,
COUNTY OF PULASKI, STATE OF ARKANSAS**

A RESOLUTION TO BE ENTITLED:

RESOLUTION NO. 2021-18

**APPROVING AN AGREEMENT TO FACILITATE ROAD WIDENING BETWEEN
THE CITY OF MAUMELLE AND ENTERGY ARKANSAS, LLC**

WHEREAS, the City of Maumelle is committed to improving Crystal Hill Road as previously approved by the Council and wishes to maintain this roadway in a safe manner pending completed construction; and

WHEREAS, Entergy Arkansas, LLC has refused to relocate equipment in the City of Maumelle's Right of Way as directed pursuant to Resolution 2021-15 in the absence of security for payment of relocation costs being provided; and

WHEREAS, Entergy Arkansas, LLC has instead filed a complaint against the Mayor and City Council of the City of Maumelle with the Arkansas Public Service Commission, alleging that Resolution 2021-15 and Resolution 2021-17 are unreasonable, unjust, and unlawful, and this action may take a considerable period of time to resolve; and

WHEREAS, the City Council for the City of Maumelle finds that the Agreement with Entergy Arkansas, LLC attached as Exhibit A to this Resolution will best facilitate continued construction while the Complaint before the Arkansas Public Service Commission is pending;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MAUMELLE, ARKANSAS, AS FOLLOWS:

In order to facilitate the continued progress of the Crystal Hill Road improvement project, and ensure a safe path of ingress and egress for the residents in this area, within the City of Maumelle, the City Council hereby authorizes the Mayor, or the Mayor's designee, to enter into an Agreement substantially similar to the agreement attached hereto as Exhibit A.

RESOLVED this 19th day of July, 2021.


Caleb Norris, Mayor

ATTEST:


Tina Timmons, City Clerk/Treasurer

APSC FILED Time: 8/23/2021 3:34:23 PM: Recvd 8/23/2021 3:33:17 PM: Docket 21-082-C-Doc. 6

APPROVED AS TO LEGAL FORM:



Melissa Krebs, City Attorney

SPONSORED BY:
Mayor Norris

	Mosley	Saunders	Mazzoni	Gardner	Williams	Tierney	Shinn	Holt
Yes	✓		✓	✓	✓	✓	✓	✓
No		Absent						

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AGREEMENT TO FACILITATE ROAD WIDENING IN MAUMELLE, ARKANSAS

This Agreement to Facilitate Road Widening in Maumelle, Arkansas ("Agreement") is made and entered into as of July __, 2021 between ENTERGY ARKANSAS, LLC, a Texas limited liability company ("EAL") and the CITY OF MAUMELLE, ARKANSAS, a city of the first class ("City"), collectively the ("Parties").

WHEREAS, the City is pursuing a project to widen Crystal Hill Road and a portion of Counts Massie Road within the City's corporate limits, with the scope of the Project that presently is expected to entail relocation and rebuilding of at least 26 electric utility poles with new equipment outside the existing right-of-way into a new right-of-way acquired by the City, refacing of over one mile of associated electricity conductor, and relocation of two 3-phase underground dips (the "Project");

WHEREAS, the Parties disagree as to whether EAL or the City has the obligation to pay for the costs of the Project;

WHEREAS, a complaint has been submitted by EAL pursuant to Ark. Code Ann. § 14-200-101(c)(1) to the Arkansas Public Service Commission ("APSC" or "Commission") in Docket No. 21-082-C, seeking an investigation, hearing and a ruling on the validity of Resolution No. 2021-15 passed by the City Council and dated June 21, 2021 and Resolution No. 2021-17 passed by the City Council and dated July 6, 2021;

WHEREAS, such Commission proceeding will be conducted in conformance with the APSC Rules of Practice and Procedure, including as they pertain to discovery requests;

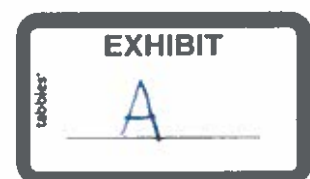
WHEREAS, the Parties desire to have EAL proceed with the identified work that is required by the City's Project during the pendency of the complaint before the APSC; and

WHEREAS, in consideration for EAL's willingness to proceed with the Project as addressed herein, the Parties agree to seek resolution of the potential reimbursement to EAL by the City of the costs of the Project as set out and agreed below.

NOW, THEREFORE, in consideration of the mutual promises made herein and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, and based upon the terms, conditions, and provisions set forth herein, the Parties each agree as follows.

1. As recited above, EAL has filed a complaint at the APSC against the City in Docket No. 21-082-C, pursuant to Ark. Code Ann. § 14-200-101(c)(1), to contest Resolution Nos. 2021-15 and 2021-17, which the City may oppose.

2. The Parties will follow the Commission's Rules of Practice and Procedure as they pertain to discovery requests.



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3. Upon approval of this Agreement by the City Council of Maumelle and execution of this Agreement by Mayor Caleb Norris, and upon the line of credit being consummated pursuant to paragraph 4 below, EAL will proceed to perform the work for the Project, beginning with vegetation clearance, that is required by the City's Project during the pendency of the complaint before the APSC.

4. In consideration of EAL's agreement to proceed with performing the work required under the Project as set forth herein, the City agrees to (i) reimburse EAL for the actual costs thereof, which currently are estimated to be \$142,453.60, should the APSC proceeding and any appeal(s) thereof result in a determination that such reimbursement is the City's obligation, and (ii) obtain the line of credit referenced in paragraph 3 above from a bank to guarantee the availability of such funds, which line of credit will be in place and confirmed to EAL at the start of EAL's work for the Project and continue in place until a final decision of the APSC, the conclusion of any appeal(s) related thereto, and the reimbursement by the City of the costs set out above should such reimbursement be required as a result of the APSC proceeding and any judicial review(s).

5. The fully executed resolution of the Maumelle City Council approving this Agreement is attached hereto as Exhibit A.

6. Each Party will pay its own costs and fees associated with the APSC proceeding and any appeal(s) of the Commission's decision.

7. This Agreement shall be construed and enforced in accordance with the laws of the State of Arkansas.

8. If any term or provision of this Agreement shall to any extent be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

9. This Agreement contains the complete agreement of the Parties and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. Nothing in this Agreement shall in any way be construed to impose upon either Party any obligations or restrictions not expressly set forth herein. No amendment or modification of this Agreement shall be binding unless in writing and duly executed by both Parties.

10. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered.

11. The individuals signing this Agreement personally warrant that they have the right and power to enter into this Agreement on behalf of EAL and the City, as the case may be, and to undertake the obligations undertaken in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement pursuant to due authority as of the day and in the year first mentioned above.

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Entergy Arkansas, LLC

City of Maumelle, Arkansas

By: _____
Laura R. Landreaux, President and CEO

By: _____
Caleb Norris, Mayor

Date: _____

Date: _____

LENDER BANK OZK ("Bank") (Physical address of Bank) (Physical address of Bank) 4846 N HILLS BLVD NORTH LITTLE ROCK, AR 72116 (800) 437-6386	BENEFICIARY: Name ENERGY ARKANSAS, LLC Address: 425 W CAPITOL AVE #27 LITTLE ROCK, AR 72201 Phone #: 800-368-3749 SS#:
CUSTOMER: Name CITY OF MAUMELLE, ARKANSAS Address: 550 EDGEWOOD DR MAUMELLE, AR 72113 Phone #: SS#	Letter of Credit #: 2107041512 Opening Date: 07/23/2021 Expiration Date: 07/23/2022 Letter of Credit Amount: \$143,000.00

STANDBY IRREVOCABLE LETTER OF CREDIT

Lender indicated above ("Lender") hereby establishes at the request and for the account of Customer a Standby Irrevocable Letter of Credit ("Letter of Credit") in favor of Beneficiary for a sum or sums not exceeding the aggregate amount of ONE HUNDRED FORTY-THREE & 00/100 DOLLARS (\$143,000.00). These funds shall be made available to Beneficiary against Lender's receipt from Beneficiary of drafts drawn at sight on Lender at its address indicated above (or such other address that Lender may provide Beneficiary with written notice of in the future) during regular business hours and accompanied by the signed written statements or documents indicated below.

WARNING TO BENEFICIARY: PLEASE EXAMINE THIS LETTER OF CREDIT AT ONCE. IF YOU FEEL UNABLE TO MEET ANY OF ITS REQUIREMENTS, EITHER SINGLY OR TOGETHER, YOU SHOULD CONTACT YOUR CUSTOMER IMMEDIATELY TO SEE IF THE LETTER OF CREDIT CAN BE AMENDED. OTHERWISE, YOU WILL RISK LOSING PAYMENT UNDER THIS LETTER OF CREDIT FOR FAILURE TO COMPLY STRICTLY WITH ITS TERMS AS WRITTEN.

1. DRAFT TERMS AND CONDITIONS

Lender shall honor the drafts submitted by Beneficiary under the following terms and conditions:

Upon Lender's honor of such drafts and payment to the Beneficiary, Lender, once the full amount of credit available under this Letter of Credit has been drawn, shall be fully discharged of its obligations under this Letter of Credit and shall not thereafter be obligated to make any further payments under this Letter of Credit in respect of such demand for payments to Beneficiary or any other person. If a non-conforming demand is made, Lender shall notify Beneficiary of its dishonor on or before the time mentioned in Section 5 below.

Beneficiary shall have no recourse against Lender for any amount paid under this Letter of Credit after Lender honors any draft or other document which complies strictly with this Letter of Credit, and which on its face appears otherwise in order but which is signed, issued, or presented by any party or under the name of any party purporting to act for Beneficiary, purporting to claim through Beneficiary, or posing as Beneficiary. By paying to Beneficiary an amount demanded in accordance with this Letter of Credit, Lender makes no representation as to the correctness of the amount demanded and Lender shall not be liable to Beneficiary or any other person for or in respect to any amount so paid or disbursed for any reason whatsoever, including, without limitation, any nonapplication or misapplication by Beneficiary of the proceeds of such payment. By presenting upon Lender or a confirming bank, Beneficiary certifies that Beneficiary has not and will not present upon the other, unless and until Beneficiary meets with dishonor. Beneficiary promises to return to Lender and confirming bank any funds received by Beneficiary in excess of the Letter of Credit's maximum drawing amount.

2. USE RESTRICTIONS

All drafts must be marked "DRAWN UNDER STANDBY IRREVOCABLE LETTER OF CREDIT NO 2107041512", and the dollar amount requested shall be indicated on the draft. Only Beneficiary or Beneficiary's Transferee (only if transferable) may complete a draft and accompanying statements or documents required by this Letter of Credit and make a draw under this Letter of Credit. This original Letter of Credit must accompany any draft drawn hereunder.

Partial draws are permitted are not permitted under this Letter of Credit. Lender's honor of a partial draw shall correspondingly reduce the amount of credit available under this Letter of Credit. Following a partial draw, Lender shall return this original Letter of Credit to Beneficiary with the partial draw noted thereon; in the alternative, and in its sole discretion, Lender may issue a substitute Letter of Credit to Beneficiary in the amount shown above less any partial draw(s).

3. PERMITTED TRANSFEREES

This Letter of Credit may be transferred by Beneficiary upon providing Lender with prior written notice of the transfer. The Transferee shall be deemed the new Beneficiary of this Letter of Credit and the documents of the Transferee, including drafts required under this Letter of Credit, are to be processed by Lender (or any intermediary) without the original Beneficiary's intervention and without any further responsibility on Lender's part to the original Beneficiary.

The right to draw under this Letter of Credit shall be nontransferable, except for:
A. A transfer (in its entirety, but not in part) by direct operation of law to the original Beneficiary's administrator, executor, bankruptcy trustee, receiver, liquidator, successor, or other representatives at law; and

B. The first immediate transfer (in its entirety, but not in part) by such legal representative to a third party after express approval of a governmental body (judicial, administrative, or executive).

4. TRANSFEREE'S REQUIRED DOCUMENTS: 8/23/2021 3:34:23 PM: Recvd 8/23/2021 3:33:17 PM: Docket 21-082-C-Doc. 6

When the presenter is a permitted Transferee under paragraph 3 above, the documents required for a draw shall include:

- A. All documents required elsewhere in this Letter of Credit, except that such documents must be in the name of either the original Beneficiary or the presenting Transferee permitted by paragraph 3; and
- B. When the presenter is a permitted Transferee under paragraph 3 A or a third party under 3 B a certified copy of the one or more documents which show the presenter's authority to claim through or to act with authority for the original Beneficiary.

5. TIMING OF DISHONOR

Under no circumstances shall Lender be precluded from relying upon any reason for dishonor given in a communication which Beneficiary or the presenter receives within three (3) Banking Days after Lender has received the last document forming part of Beneficiary's presentment (the "Three-Day Period"). Lender shall be entitled to rely upon any such reason without regard to either (i) the timing of any presentment made before the Expiration Date, or (ii) the timing inside the Three-Day Period of any preliminary communication(s) from Lender concerning the dishonor decision itself or any reason for dishonor. For any such reason so given during the Three-Day Period, Lender shall be conclusively deemed to have met the "reasonable time", "without delay", and other timing requirements as the UCP (as hereinafter defined) may impose. The Expiration Date shall not be extended to accommodate a presentment made less than three (3) Banking Days prior to the Expiration Date, and Beneficiary shall not be entitled to submit a draw request or provide Lender with any documents in support of a draw after the Expiration Date hereof. Furthermore, Lender shall not be required to communicate a dishonor decision or its reasons within a time less than the Three-Day Period "Banking Day" shall mean any day on which Lender is regularly open to conduct letter of credit business.

6. COMPLIANCE BURDEN

Under no circumstances shall Lender be held responsible for any impossibility or other difficulty in achieving strict compliance with the requirements of this Letter of Credit precisely as written. Beneficiary understands and acknowledges: (i) that unless and until the present wording of this Letter of Credit is amended with Lender's prior written consent, the burden of complying strictly with such wording remains solely upon Beneficiary, and (ii) that Lender is relying upon the lack of such amendment as constituting Beneficiary's initial and continued approval of such wording.

7. NON-SEVERABILITY

If any aspect of this Letter of Credit is ever declared unenforceable for any reason by any court or governmental body having jurisdiction, Lender's entire engagement under this Letter of Credit shall be deemed null and void, and both Lender and Beneficiary shall be restored to the position each would have occupied with all rights available as though this Letter of Credit had never occurred. This non-severability provision shall override all other provisions in this Letter of Credit, regardless where such provisions appear within the body of the Letter of Credit.

8. CHOICE OF LAW/JURISDICTION

The Uniform Customs and Practices for Documentary Credits, 2007 Revision, ICC Publication No. 600 (hereinafter and hereinafter called the "UCP") shall in all respects be deemed a part hereof as fully as if incorporated herein and shall apply to this Letter of Credit. This Letter of Credit shall be governed by and construed in accordance with the laws of the State of Arkansas, United States of America, except to the extent such laws are inconsistent with the UCP. Lender and Beneficiary consent to the jurisdiction and venue of any court located in the State of Arkansas in the event of any legal proceeding under this Letter of Credit.

9. EXPIRATION

Subject to the provisions of paragraph 5 of this Letter of Credit, Lender hereby agrees with Beneficiary that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Lender on or before the Expiration Date.

Dated: 7/23/2021

LENDER: Bank OZK

BY: 
JEREMY MCALISTER

TITLE: LITTLE ROCK MARKET PRESIDENT

ENDORSEMENT OF DRAFTS DRAWN:

Date	Negotiated By	Amount in Words	Amount in Figures