

MEMORANDUM

TO: Arkansas Legislative Council
 Litigation Reports Oversight Subcommittee
 Sen. Jim Dotson, Co-Chair
 Rep. DeAnn Vaught, Co-Chair

FROM: Brad Young, Managing Attorney
 Arkansas Department of Finance & Administration

DATE: June 19, 2024

RE: *Entergy Corporation, and its Subsidiaries, System Energy Resources, Inc.; Entergy Global, LLC; and Entergy Power Marketing Holding I, Inc. v. Larry Walther, in his Official Capacity as Director, Department of Finance and Administration of the State of Arkansas*, Case No. 60CV-22-8440, in the Circuit Court of Pulaski County, Arkansas

REQUEST FOR REVIEW AND APPROVAL OF SETTLEMENT BY
 THE LEGISLATIVE COUNCIL OF THE ARKANSAS GENERAL ASSEMBLY
 Ark. Code Ann. § 10-3-312(d)

SETTLEMENT AGREEMENT

Entergy Corporation and its Subsidiaries (“Entergy”) sued the Department opposing a corporation income tax assessment. The Department filed an answer denying all of Entergy’s claims and denying Entergy’s entitlement to any judicial relief.

As a result of the audit, the Department assessed \$19,748,505.00 in additional taxes, \$1,961,098.60 in penalties, and \$9,838,290.42 in interest for the tax period January 1, 2014 through December 31, 2018.

The parties have reached a settlement agreement. A copy of the Settlement Agreement is attached. (The Department has redacted Exhibit A to the agreement in order to protect taxpayer confidentiality). The parties have each agreed to concede disputed audit items. Entergy has agreed to pay tax due in the amount of \$7,864,531.00 on the audit items that it has conceded. The Department has agreed to adjust the audit based on the audit items that it has conceded and to waive the remaining penalty and interest. After audit adjustments, the remaining amount of penalty and interest to be waived will be approximately \$6,300,989.64. If settlement is approved, the litigation will be dismissed per the terms of the settlement agreement.

The parties request that this matter be placed on the Legislative Council’s agenda for review at the earliest possible date.



State of Arkansas
Bureau of
Legislative Research

Marty Garrity, Director
Kevin Anderson, Assistant Director
for Fiscal Services
Tim Carlock, Assistant Director
for Information Technology
Matthew Miller, Assistant Director
for Legal Services
Estella Smith, Assistant Director
for Research Services

State Agency Litigation Notification Form

Dear Agency Director:

Arkansas Code § 10-3-312 requires that any agency or institution that is not represented by the Attorney General shall notify the Director of the Bureau of Legislative Research of pending litigation so that the appropriate legislative committee may "determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter."

In order to submit a report regarding pending litigation pursuant to Arkansas Code § 10-3-312, please complete the following form for each pending lawsuit, along with a cover letter to the Director of the Bureau of Legislative Research, and submit to desikans@blr.arkansas.gov.

DATE REPORTING:	
Agency:	Phone:
E-mail:	Contact:
1. STYLE OF THE CASE BEING LITIGATED	
2. IDENTITY OF THE TRIBUNAL BEFORE WHICH THE MATTER HAS BEEN FILED (COURT)	
3. BRIEF DESCRIPTION OF THE ISSUES INVOLVED	
3A. OTHER DESCRIPTION INFORMATION	
Docket Number	
Date Filed	
Defendant	
Defendant Attorney	
Plaintiff	
Plaintiff Attorney	
4. ANY OTHER RELEVANT INFORMATION	
4A. OTHER RELEVANT INFORMATION	
Case History	
Relief Sought	
Current Status	

A.C.A. § 10-3-312

Current through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission.

- Arkansas Code Annotated
- Title 10 General Assembly
- Chapter 3 Committees
- Subchapter 3-- Legislative Council

10-3-312. NOTIFICATION OF LAWSUITS AFFECTING STATE.

- (a) In order that the General Assembly may take whatever steps it deems necessary concerning lawsuits which may affect the State of Arkansas, its officials, or its financial resources:
 - (1) The Attorney General shall notify the Director of the Bureau of Legislative Research who is the Executive Secretary to the Legislative Council as soon as possible after the Attorney General becomes involved in such litigation;
 - (2) **When any state agency or any entity which receives an appropriation of funds from the General Assembly becomes involved in litigation without representation by the Attorney General, the director or administrative head of the agency shall notify the Director of the Bureau of Legislative Research as soon as possible.**
- (b) The notice given by the Attorney General or by the director or administrative head of a state agency to the Director of the Bureau of Legislative Research shall include the style of the case being litigated, the identity of the tribunal before which the matter has been filed, a brief description of the issues involved, and other information that will enable the Legislative Council or the Joint Budget Committee to determine the action that may be deemed necessary to protect the interests of the General Assembly and the State of Arkansas in that matter.
- (c) Upon receipt of the notice, the Director of the Bureau of Legislative Research shall during the interim between legislative sessions transmit a copy of the notice to the cochair of the Legislative Council and to the cochair of the Joint Budget Committee during legislative sessions in order that those committees may schedule that matter upon their respective agendas at the earliest possible date.
- (d) During the interim between legislative sessions, the Legislative Council shall determine, and during legislative sessions the Joint Budget Committee shall determine, whether the General Assembly has an interest in the litigation and, if so, take whatever action deemed necessary to protect the General Assembly's and the state's interest in that matter.

HISTORY

Acts 1987, No. 798, §§ 1, 2.

Arkansas Code of 1987 Annotated Official Edition
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A.C.A. § 10-3-312 (Lexis Advance through all laws of the 2017 Regular Session and 2017 First Extraordinary Session, including changes and corrections by the Arkansas Code Revision Commission)

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
HON. ALICE S. GRAY - 12TH DIVISION 6TH CIRCUIT

ENTERGY CORPORATION ET AL V LARRY WALTHER

60CV-22-8440

SUMMONS

THE STATE OF ARKANSAS TO DEFENDANT:

LARRY WALTHER
1900 W. 7th Street
Little Rock, AR 72201

A lawsuit has been filed against you. The relief demanded is stated in the attached complaint. Within 30 days after service of this summons on you (not counting the day you received it) - or 60 days if you are incarcerated in any jail, penitentiary, or other correctional facility in Arkansas - you must file with the clerk of this court a written answer to the complaint or a motion under Rule 12 of the Arkansas Rules of Civil Procedure.

The answer or motion must also be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael A. Thompson
200 W. Capitol Ave, Suite 2300
Little Rock, AR 72201

If you fail to respond within the applicable time period, judgment by default may be entered against you for the relief demanded in the complaint.

Additional notices:

- Notice of Right to Consent to Disposition of Case by a State District Court Judge

CLERK OF COURT

Address of Clerks Office

TERRI HOLLINGSWORTH, CIRCUIT CLERK
CIRCUIT COURT OF PULASKI COUNTY
401 W. MARKHAM
LITTLE ROCK, AR 72201

Christy R. McDaniel



CLERK Christy Renee McDaniel, DC

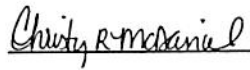
Date: 12/14/2022

**NOTICE OF RIGHT TO CONSENT
TO DISPOSITION OF CASE BY A STATE DISTRICT COURT JUDGE**

In accordance with Administrative Order Number 18, you are hereby notified that upon the consent of all the parties in a case, a State District Court Judge may be authorized to conduct all proceedings, including trial of the case and entry of a final judgment. Copies of appropriate consent forms are available from the Circuit Clerk.

You should be aware that your decision to consent or not to consent to the disposition of your case before a State District Court Judge is entirely voluntary, and by consenting to the reference of this matter to a State District Court Judge, the parties waive their right to a jury trial, and any appeal in the case shall be taken directly to the Arkansas Supreme Court or Court of Appeals as authorized by law.

You should communicate your consent by completing the Form -- CONSENT TO PROCEED BEFORE A STATE DISTRICT COURT JUDGE -- and return to the Circuit Clerk.





Circuit Clerk

Date: 12/14/2022

No. 60CV-22-8440 This summons is for LARRY WALTHER (name of Defendant).

PROOF OF SERVICE

☐ On _____ [date] I personally delivered the summons and complaint to the defendant at _____ [place]; or

☐ After making my purpose to deliver the summons and complaint clear, on _____ [date] I left the summons and complaint in the close proximity of the defendant by _____ [describe how the summons and complaint was left] after he/she refused to receive it when I offered it to him/her; or

☐ On _____ [date] I left the summons and complaint with _____, a member of the defendant's family at least 18 years of age, at _____ [address], a place where the defendant resides; or

☐ On _____ [date] I delivered the summons and complaint to _____ [name of individual], an agent authorized by appointment or by law to receive service of summons on behalf of _____ [name of defendant]; or

☐ On _____ [date] at _____ [address], where the defendant maintains an office or other fixed location for the conduct of business, during normal working hours I left the summons and complaint with

[name and job description]; or

☐ I am the plaintiff or an attorney of record for the plaintiff in a lawsuit, and I served the summons and complaint on the defendant by certified mail, return receipt requested, restricted delivery, as shown by the attached signed return receipt.

☐ I am the plaintiff or attorney of record for the plaintiff in this lawsuit, and I mailed a copy of the summons and complaint by first-class mail to the defendant together with two copies of a notice and acknowledgment and received the attached notice and acknowledgment form within twenty days after the date of mailing.

☐ Other [specify]:

☐ I was unable to execute service because:

My fee is \$ ____.

To be completed if service is by a sheriff or deputy sheriff:

Date: _____ SHERIFF OF _____ COUNTY, ARKANSAS

By: _____
[Signature of server]

[Printed name, title, and badge number]

To be completed if service is by a person other than a sheriff or deputy sheriff:

Date: _____ By: _____
[Signature of server]

[Printed name]

Address: _____

Phone: _____

Subscribed and sworn to before me this date: _____

Notary Public

My commission expires: _____

Additional information regarding service or attempted service:

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION

ENTERGY CORPORATION, and its Subsidiaries,
SYSTEM ENERGY RESOURCES, INC.;
ENTERGY GLOBAL, LLC; and
ENTERGY POWER MARKETING HOLDING I, INC.

PLAINTIFFS

VS.

NO. 60CV-22-_____

LARRY WALTHER, in his official capacity
as DIRECTOR, DEPARTMENT
OF FINANCE AND ADMINISTRATION
OF THE STATE OF ARKANSAS

DEFENDANT

COMPLAINT

Plaintiffs Entergy Corporation, and its subsidiaries, including System Energy Resources, Inc. ("SERI"); Entergy Global, LLC ("EGLLC"); and Entergy Power Marketing Holding I, Inc. ("EPMH1"), for their complaint against defendant Larry Walther, in his official capacity as Director, Department of Finance and Administration of the State of Arkansas (the "Department"):

I. INTRODUCTION

1. This action is brought pursuant to the provisions of the Arkansas Tax Procedure Act, Ark. Code Ann. §§ 26-18-101 *et seq.* and particularly §§ 26-18-405(e) and -406.

2. Entergy Corporation is, and all times mentioned herein was, a corporation formed under the laws of the State of Delaware.

3. SERI is, and at all times mentioned herein was, a corporation formed under the laws of the state of Arkansas. SERI is a subsidiary of Entergy Corporation, and its income was included in one or more of the consolidated Arkansas corporate income tax ("Tax") returns that Entergy Corporation filed for the years at issue in this complaint.

4. EGLLC is, and at all times mentioned herein was, a limited liability company formed under the laws of the state of Arkansas. EGLLC is a subsidiary of Entergy Corporation, and its income was included in one or more of the consolidated Tax returns that Entergy Corporation filed for the years at issue in this complaint.

5. EPMH1 is, and at all times mentioned herein was, a corporation formed under the laws of the state of Delaware. EPMH1 is a subsidiary of Entergy Corporation, and its income was included in one or more of the consolidated Tax returns that Entergy Corporation filed for the years at issue in this complaint.

6. Larry Walther is the Director of the Department of Finance and Administration of the State of Arkansas and is sued in his official capacity.

7. This action is brought pursuant to the provisions of Ark. Code Ann. § 26-18-406, which allow for the judicial appeal of a final decision of an Administrative Law Judge on a final assessment.

II. STATEMENT OF JURISDICTION AND VENUE

8. Jurisdiction and venue for this action are vested in this Court pursuant to Ark. Code Ann. §§ 26-18-406(c), 16-60-101(a)(3)(B), and 16-60-104(3)(A).

9. Plaintiffs have timely filed this complaint pursuant to Ark. Code Ann. § 26-18-406(a)(1)(A) and have exhausted all available and required administrative remedies.

III. STATEMENT OF FACTS

A. GENERAL BACKGROUND

10. SERI, EGLLC, and EPMH1 filed Tax returns for the taxable years 2014 through 2018 (collectively, the “Relevant Period”) as part of a consolidated group of which Entergy Corporation is the parent entity.

11. In 2017, the Department initiated an inspection of Plaintiffs’ 2015 consolidated Tax return and did not seek to make any adjustments.

12. Several years later, in November of 2019, the Department initiated audits of Plaintiffs’ consolidated Tax returns for the 2016, 2017, and 2018 Tax periods.

13. In October of 2021, the Department expanded the scope of the audits to include the 2014 and 2015 Tax periods.

14. Upon completion of the audits, the Department issued Proposed Assessments of Tax for the Relevant Period, which Plaintiffs timely protested.

15. After an administrative hearing on August 12, 2022, the administrative law judge presiding over Plaintiffs’ protests issued five separate orders dated September 12, 2022 (collectively, the “ALJ Decision”), upholding the assessments issued by the Department, with each ALJ Decision relating to one tax year included in the Relevant Period.

16. On October 6, 2022, the Department issued its Notices of Final Assessment for each year in the Relevant Period. These Notices of Final Assessment were received by Plaintiffs on October 17, 2022.

17. Plaintiffs have timely filed this complaint pursuant to Ark. Code Ann. §§ 26-18-406(a)(1)(A) seeking judicial review of the administrative law judge's action in upholding the Department's assessments of Tax, associated interest, and penalties.

B. SERI

18. SERI is a corporation formed under Arkansas law.

19. SERI owns and operates the Grand Gulf Nuclear Station ("GGNS"), a nuclear power plant that produces electricity in Claiborne County, Mississippi.

20. SERI does not engage in business in Arkansas.

21. SERI's sole business is the production of electricity at GGNS, and its only presence is in Mississippi.

22. The title to all electricity produced by SERI at GGNS is transferred to SERI's customers at SERI's GGNS plant site in Mississippi.

23. SERI has no property in Arkansas.

24. SERI has no employees or payroll in Arkansas.

25. SERI makes no sales in Arkansas.

26. SERI's sales to Entergy Arkansas, Inc. ("EAI") at GGNS in Mississippi have consistently been sourced to Mississippi since GGNS became operational in 1985.

27. The Department has previously audited SERI as part of the Entergy Corporation group, including specifically inquiring about the sourcing of SERI's sales.

28. The Department did not seek to adjust the sourcing of SERI's sales to EAI until the audits at issue herein.

C. EGLLC

29. EGLLC is a limited liability company formed under Arkansas law.

30. EGLLC is taxed as a corporation for income tax purposes.

31. EGLLC is an investment company whose primary source of income is interest income.

32. EGLLC was both qualified to conduct business and commercially domiciled in either Louisiana or Texas during the Relevant Period.

33. At no time during the Relevant Period was EGLLC commercially domiciled in Arkansas.

34. At no time during the Relevant Period was EGLLC conducting business in Arkansas.

D. EPMH1

35. EPMH1 is a corporation formed under the laws of the State of Delaware.

36. EPMH1 is an investment company that is subject to state income tax only in Arkansas.

37. In 2011, EPMH1 purchased an 81.44% membership interest in Entergy Nuclear Power Marketing, LLC ("ENPM").

38. EMPH1 financed the purchase with a long-term loan from the seller of the ENPM membership interest.

39. At the time of EPMH1's 2011 purchase, ENPM was a power marketing company that sold power generated at several Entergy nuclear power facilities in the Northeastern United States and was classified as a partnership for federal income tax purposes.

40. EPMH1 purchased its interest in ENPM as a long-term investment in anticipation of an appreciation in the value of ENPM.

41. A restructuring of ENPM in 2016 resulted in EPMH1 owning an 81.44% membership interest in Entergy Power Marketing Properties, LLC ("EPMP") in place of its original investment in ENPM.

42. EPMP is an entity classified as a partnership for federal income tax purposes that is subject to state tax only in Texas.

E. Net operating loss carryover deductions

43. On its returns filed with the Department, Plaintiffs claimed a net operating loss carryover from the 2011 period that was applied as a deduction against Arkansas taxable income for the Relevant Period.

44. In the audit, the Department removed Plaintiffs' net operating loss carryover deduction that applied for the Relevant Period without explanation.

45. The relevant net operating loss carryover schedules (as referenced in paragraphs 46, 47, and 48, below) filed with the Department demonstrate that Plaintiffs had net operating loss carryforwards that were available for use in the Relevant Period.

F. Statute of limitations and Ark. Code Ann. § 26-18-305(b).

46. In 2017, The Department initiated an inspection of Plaintiffs' 2015 Arkansas returns and did not propose any of the adjustments at issue herein.

47. The Department's inspection included a detailed review of Plaintiffs' available net operating loss carryovers resulting in the Department providing net operating loss carryover schedules for 2007 through 2015 to Plaintiffs, ultimately resulting in an agreed resolution.

48. Significantly, the Department confirmed the amount of net operating loss carryovers available to Plaintiffs as of December 31, 2015, and agreed with SERI's zero Arkansas apportionment percentage in the workpapers provided to Plaintiffs in the course of that inspection.

IV. STATEMENT OF CLAIMS

**COUNT I: ABATEMENT OF ASSESSMENTS, PENALTIES, AND INTEREST
AS TO SERI**

49. Pursuant to Ark. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by this reference the allegations of the preceding paragraphs of their complaint as if set forth verbatim in this paragraph.

50. SERI's only business is the manufacturing of electricity in Mississippi that SERI sells at wholesale in Mississippi to EAI and other affiliates.

51. SERI does not sell any electricity to consumers, nor does SERI sell any electricity to customers in Arkansas.

52. Ark. Code Ann. § 26-51-716(a) provides that sales are sourced to Arkansas if "property is delivered or shipped to a purchaser . . . within this state regardless of the f.o.b. point or other conditions of the sale."

53. SERI does not deliver or ship electricity to any purchasers in Arkansas.

54. SERI sells electricity to EAI in Mississippi at GGNS, the power plant where it is manufactured.

55. SERI's sales are properly sourced to Mississippi under Ark. Code Ann. § 26-51-716(a).

56. In addition, Ark. Code Ann. § 26-51-404(b)(7)(A) provides that gross income does not include income from Arkansas domestic corporations when such income is earned at manufacturing locations outside of Arkansas.

57. As an Arkansas domestic corporation earning income from manufacturing and selling electricity in Mississippi, SERI fits squarely within the provisions of Ark. Code Ann. § 26-51-404(b)(7)(A).

58. SERI's Arkansas gross income may not include income earned from the manufacturing and selling of electricity at GGNS in Mississippi under the provisions of Ark. Code Ann. § 26-51-404(b)(7)(A).

59. Although the ALJ found that the facts supported a finding that SERI's sales to EAI should be sourced to Mississippi, it permitted the Department to rely on the alternative apportionment provisions of Ark. Code Ann. § 26-51-718. ALJ Decision at 30-31.

60. Under governing statutes, a taxpayer is required to apportion only its net income. Ark. Code Ann. § 26-51-702. Net income is the adjusted gross income of a taxpayer, less any allowed deductions. Ark. Code Ann. § 26-51-403(a).

61. Under Ark. Code Ann. § 26-51-404(b)(7)(A), SERI's gross income does not include income earned from the manufacturing of electricity at GGNS in Mississippi. Because such income earned from the manufacturing of electricity in Mississippi is excluded from SERI's net income, it is not subject to apportionment, alternative or otherwise.

62. Moreover, Ark. Code Ann. § 26-51-718 provides for "the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income" only if the allocation and apportionment provisions "do not fairly represent the extent of the taxpayer's activity" in Arkansas.

63. The employment of an alternative method to apportion SERI's income is not appropriate in light of the Department's concessions that SERI's sole business is the production of electricity at GGNS and that its only presence is in Mississippi.

64. As an entity that does not conduct business in Arkansas, a zero Arkansas apportionment percentage is proper for SERI under any apportionment methodology and fairly represents the extent of SERI's activity in Arkansas.

65. Sourcing SERI's sales to Mississippi accurately reflects the fact that all of SERI's manufacturing took place in Mississippi and all of SERI's sales took place in Mississippi; therefore, the threshold test for application of an alternative apportionment method has not been met, and the Department may not supplant the statutorily-prescribed method.

66. Further, SERI's history of consistently sourcing sales to Mississippi undermines the Department's arguments, as accepted by the ALJ.

67. Guided both by its specific facts and by properly applying Arkansas income tax statutes and related regulations, SERI apportions its income to Mississippi, the sole location in which it conducts business.

68. Finally, the penalties assessed as to SERI are particularly inappropriate. Under Ark. Code Ann. § 26-18-208(4)(A), penalties may be assessed only for “negligent or intentional disregard of” state tax laws, rules, or regulations.

69. As noted, the ALJ affirmed the assessments as to SERI solely as an alternative apportionment under Ark. Code Ann. § 26-51-718. Under this statute, the taxpayer must petition the Secretary of the Department of Finance and Administration to use an alternative apportionment.

70. SERI made no such petition and, therefore, was not entitled to use the Department’s alternative apportionment. It is absurd for the Department to impose penalties on SERI for failing to use an alternative apportionment when it was barred by the governing statute from doing so.

71. Nor would SERI have had any reason to petition for this alternative apportionment when the Department had accepted SERI’s methodology for over 30 years and through an audit in which the Department specifically inquired about the sourcing of SERI’s sales.

72. The Department should be precluded from imposing penalties on SERI for continuing to follow a methodology that the Department had previously accepted and for failing to apply a methodology that SERI was prohibited from using.

73. All such assessments, penalties, and interest should be abated.

**COUNT II: ABATEMENT OF ASSESSMENTS, PENALTIES, AND
INTEREST AS TO EGLLC**

74. Pursuant to Ark. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by this reference the allegations of the preceding paragraphs of their complaint as if set forth verbatim in this paragraph.

75. On its Arkansas return for the Relevant Period, EGLLC included its interest income in Plaintiffs' Arkansas apportionable income for the Relevant Period, but the interest was not sourced to Arkansas for apportionment purposes.

76. Under audit, and as sanctioned by the ALJ Decision, the Department sourced EGLLC's interest income to Arkansas solely because EGLLC was formed under Arkansas law.

77. The applicable regulation specifically instructs on the sourcing of interest income, such as the interest earned by EGLLC, and does not condone or even contemplate the methodology currently utilized by the Department to source EGLLC's interest income.

78. Specifically, Ark. Corp. Inc. Tax Regs. 2.26-51-715.2 attributes interest income to the location of the income producing activity.

79. The treatment of income from intangibles (*e.g.*, interest) depends on whether the income producing activities associated with income from intangibles ((a) "can be readily identified to any particular income producing activity of the taxpayer" or (b) "cannot readily be attributed to any income producing activity of the taxpayer." *Id.*

80. In the case of ready identification, the regulation requires that the income be included in the denominator of the sales factor, and the numerator if the income producing activity occurs in Arkansas. *Id.*

81. If the income cannot be readily attributed to an income producing activity of the taxpayer, the regulation requires that the income be excluded from both the numerator and denominator of the sales factor. *Id.*

82. In attributing interest income to an income producing activity, the proper analysis is with respect to the income producing activity *of the taxpayer*. *Id.*

83. There is no basis under Ark. Corp. Inc. Tax Regs. 2.26-51-715.2 to use or attribute a borrower's Arkansas presence to source interest earned by a lender.

84. Under a plain reading of the governing regulation, interest earned by EGLLC is not properly sourced to Arkansas whether or not the interest can be readily attributed to any particular income producing activity of EGLLC.

85. If the interest can be readily identified to a particular income producing activity, such that it is included in the sales factor, EGLLC's income producing activity is outside of Arkansas; EGLLC's only connection to Arkansas is its formation under Arkansas law, and it has no business activities in Arkansas.

86. If the interest income cannot be readily identified to a particular income producing activity, the interest is excluded from both the numerator and denominator of EGLLC's sales factor and does not affect EGLLC's Arkansas apportionment at all.

87. The ALJ Decision summarily states that “the relevant business activity at issue is properly sourced within Arkansas.” ALJ Decision at 35.

88. This holding is clearly erroneous, as the only “activity” undertaken by EGLLC in Arkansas is its mere formation under Arkansas law.

89. There is simply no factual basis to support sourcing EGLLC’s interest income to Arkansas.

90. All such assessments, penalties, and interest should be abated.

**COUNT IV: ABATEMENT OF ASSESSMENTS, PENALTIES, AND
INTEREST AS TO EPMH1**

91. Pursuant to Ark. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by this reference the allegations of the preceding paragraphs of their complaint as if set forth verbatim in this paragraph.

92. At issue for EPMH1 is the deductibility of interest expense it incurred in connection with a loan entered into with EGLLC to finance the purchase of a membership interest in ENPM.

93. The interest expense EPMH1 incurred to finance its investment was a cost of doing business with the goal of eventually generating a profit from the appreciation in the value of the investment.

94. Arkansas law expressly provides a deduction for interest paid on business indebtedness in computing a taxpayer’s Tax liability. *See* Ark. Code Ann. §26-51-415.

95. The sole basis for the ALJ’s disallowance of EPMHI’s interest expense disallowance is its reliance on Ark. Code Ann. §26-51-431(c)(2).

96. Ark. Code Ann. §26-51-431(c)(2) provides that a deduction is not permissible for “[i]nterest on indebtedness incurred or continued to purchase or carry obligations the interest on which is *wholly exempt* from the taxes imposed by Arkansas law.” (Emphasis added).

97. As agreed by the parties, the interest expense incurred by EPMHI was incurred in the purchase of an interest in ENPM, an entity classified as a partnership.

98. Ark. Code Ann. § 26-51-431(c)(2) does not deny a deduction for interest incurred in the production of partnership income because partnership income is not wholly exempt under Arkansas law.

99. Categories of income that are classified as “exempt” are listed in §26-51-404(b), which specifies 34 types of income that are explicitly classified as “exempt” from Arkansas tax.

100. Significantly, partnership income is not listed as a category of exempt income in the comprehensive list.

101. Nowhere in Arkansas law is partnership income defined as exempt income.

102. Rather, such income is not exempt from Arkansas tax because it is classified as taxable income. *See* Ark. Code Ann. §26-51-202(a); Ark. Corp. Inc. Tax Regs. §1.26-51-802(b).

103. Because partnership income is not wholly exempt from Arkansas tax, Ark. Code Ann. § 26-51-431(c)(2) does not provide a basis for the disallowance of EPMH1's interest expense.

104. Interest expense was properly deducted by EPMHI and should have been allowed under the provisions of Ark. Code Ann. §26-51-415.

105. All such assessments, penalties, and interest should be abated.

**COUNT V: ABATEMENT OF ASSESSMENTS, PENALTIES, AND INTEREST
AS TO NET OPERATING LOSS DEDUCTIONS**

106. Pursuant to Ark. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by this reference the allegations of the preceding paragraphs of their complaint as if set forth verbatim in this paragraph.

107. Under provisions of Ark Code Ann. § 26-51-427(1)(B), a net operating loss may be carried forward "for a total period of five (5) years next succeeding the year of the net operating loss or until the net operating loss has been exhausted or absorbed by the taxable income of any succeeding year, whichever is earlier."

108. Ark. Code Ann. §26-18-306(a) provides that an assessment cannot be made after the expiration of 3 years from the date the return was required to be filed or the date the return was filed, whichever period expires later.

109. Plaintiffs generated a net operating loss carryover in the 2011 period that the Department failed to deduct from its adjusted calculation of Plaintiffs' Arkansas taxable income for the Relevant Period.

110. The basis for the Department's adjustment to Plaintiff's net operating loss carryover is its assertion that it may adjust SERI's taxable income beginning in

2009 to increase SERI's income for periods that are closed to assessment under the provisions of Ark. Code Ann. §26-18-306(a).

111. The Department is attempting to adjust taxable income in closed years in order to disallow net operating loss carryovers that were both generated and utilized in closed years.

112. The Department essentially seeks to collect tax attributable to years that are closed to assessment in this matter pertaining to the Relevant Period.

113. By disallowing net operating loss carryovers claimed in periods that are not open for assessment, the Department's flawed approach seeks to force the early utilization of net operating loss carryovers that Plaintiffs properly carried into the Relevant Period and to which the Department previously agreed, including in its prior inspection of the 2015 tax year.

114. Because the Department is precluded from making adjustments to closed years, Plaintiffs' carryover of net operating loss carryovers into the Relevant Period cannot be disallowed.

115. All such assessments, penalties, and interest should be abated.

**COUNT VI: ABATEMENT OF ASSESSMENTS, PENALTIES, AND
INTEREST BASED ON STATUTE OF LIMITATIONS
AND ARK. CODE ANN. § 26-18-305(b).**

116. Pursuant to Ark. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by this reference the allegations of the preceding paragraphs of their complaint as if set forth verbatim in this paragraph.

117. Ark. Code Ann. §26-18-306(a) provides that an assessment cannot be made after the expiration of 3 years from the date the return was required to be filed or the date the return was filed, whichever period expires later.

118. The statutory period in which the Department may make an assessment is increased to six years if a taxpayer underreports net taxable income by twenty-five percent or more. Ark. Code Ann. §26-18-306(e).

119. Unnecessary examinations or investigations are not allowed and only one inspection of books and records can be made in one year unless the Department requests additional inspection on written notice. Ark. Code Ann. §26-18-305(b).

120. In 2017, the Department initiated an inspection of Plaintiffs' 2015 Arkansas returns and did not propose any of the adjustments that it now seeks to impose.

121. The Department's inspection included a detailed review of Plaintiffs' available net operating loss carryovers, resulting in the Department providing net operating loss carryover schedules for 2007 through 2015, ultimately resulting in an agreed resolution.

122. Significantly, the Department confirmed the amount of net operating loss carryover available to Plaintiffs as of December 31, 2015 and agreed to SERI's zero Arkansas apportionment percentage in the workpapers provided to Plaintiffs in the course of that inspection.

123. Five years after conducting that inspection, the Department now assesses additional tax based on items that it agreed to in its prior inspection.

124. This new audit violates the restriction of “only one (1) inspection of a taxpayer’s books of account . . . for each taxable year.” Ark. Code Ann. § 26-18-305(b).

125. The Department has no grounds to extend the Arkansas statute of limitations for the 2014, 2015 and 2017 periods to six years under Ark Code Ann. § 26-18-306(e) because the Department has previously examined 2014 and 2015 and issued no proposed adjustments or changes for the Relevant Period.

126. All such assessments, penalties, and interest should be abated.

V. DEMAND FOR RELIEF

127. Pursuant to Ark. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by this reference the allegations of the preceding paragraphs of their complaint as if set forth verbatim in this paragraph.

128. For the reasons stated above, Plaintiffs demand the following relief:

- a. An abatement of all taxes and penalties, and associated interest, assessed against Plaintiffs for tax years 2014–2018;
- b. A reversal of the September 12, 2022 decisions of the administrative law judge;
- c. An award of attorneys’ fees and costs; and
- d. Such other further relief as the Court deems appropriate.

WHEREFORE, plaintiffs Entergy Corporation, and its subsidiaries, including System Energy Resources, Inc.; Entergy Global, LLC; and Entergy Power Marketing Holding I, Inc. pray that the Court enter a final decree granting the relief demand in this complaint; award plaintiffs their attorneys’ fees and costs; and

grant plaintiffs such other and further relief that the Court finds plaintiffs entitled to receive.

Respectfully submitted:

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By /s/ Michael A. Thompson

Michael A. Thompson (2010146)

Alexander T. Jones (2015246)

Attorneys for Plaintiffs

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
TWELFTH DIVISION**

**ENTERGY CORPORATION, AND ITS SUBSIDIARIES,
SYSTEM ENERGY RESOURCES, INC.;
ENTERGY GLOBAL, LLC; AND
ENTERGY POWER MARKETING HOLDING I, INC.**

PLAINTIFFS

vs.

CASE NO.: 60CV-22-8440

**LARRY W. WALTHER, IN HIS OFFICIAL CAPACITY
AS SECRETARY OF THE ARKANSAS
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DEFENDANT

ANSWER

Now comes Larry W. Walther, Secretary of the Arkansas Department of Finance and Administration (“Department”), and files this, his Original Answer:

I. Introduction

1. Paragraph 1 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 1.

2. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.

3. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 3. The Department admits the remainder of the allegations in paragraph 3.

4. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 4. The Department admits the remainder of the allegations in paragraph 4.

5. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 5. The Department admits the remainder of the allegations in paragraph 5.

6. The Department denies the allegations in paragraph 6.

7. Paragraph 7 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 7.

II. Statement of Jurisdiction and Venue

8. The text of the statutes cited in paragraph 8 speaks for itself.

9. Paragraph 9 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 9.

III. Statement of Facts

A. General Background

10. The Department admits the allegations in paragraph 10.

11. The Department denies the allegations in paragraph 11.

12. The Department admits the allegations in paragraph 12.

13. The Department denies the allegations in paragraph 13.

14. The Department admits the allegations in paragraph 14.

15. The Department admits the allegations in paragraph 15.

16. The Department admits the allegations in the first sentence of paragraph 16. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the remainder of paragraph 16.

17. Paragraph 17 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 17.

B. SERI

18. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18.

19. The Department admits the allegations in paragraph 19.

20. The Department denies the allegations in paragraph 20.

21. The Department denies the allegations in paragraph 21.

22. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22.

23. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23.

24. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24.

25. The Department denies the allegations in paragraph 25.

26. The Department denies the allegations in paragraph 26.

27. The Department admits the allegations in paragraph 27.

28. The Department admits the allegations in paragraph 28.

C. EGLLC

29. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29.

30. The Department admits the allegations in paragraph 30.

31. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31.

32. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 32.

33. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 33.

34. The Department denies the allegations in paragraph 34.

D. EPMH1

35. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 35.

36. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 36.

37. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 37.

38. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 38.

39. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39.

40. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40.

41. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41.

42. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 42.

E. Net operating loss carryover deductions

43. The Department admits the allegations in paragraph 43.

44. The Department denies the allegations in paragraph 44.

45. The Department denies the allegations in paragraph 45.

F. Statute of limitations and Ark. Code Ann. § 26-18-305(b)

46. The Department denies the allegations in paragraph 46.

47. The Department denies the allegations in paragraph 47.

48. The Department denies the allegations in paragraph 48.

IV. Statement of Claims

Count I: Abatement of Assessments, Penalties, and Interest as to SERI

49. The Department incorporates its responses to paragraphs 1-48.

50. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50.

51. The Department denies the allegations in paragraph 51.

52. The text of the statute quoted in paragraph 52 speaks for itself.

53. The Department denies the allegations in paragraph 53.

54. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54.

55. Paragraph 55 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 55.

56. The text of the statute cited in paragraph 56 speaks for itself.

57. Paragraph 57 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 57.

58. Paragraph 58 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 58.

59. The text of the hearing officer's administrative decision referenced in paragraph 59 speaks for itself.

60. The text of the statutes cited in paragraph 60 speaks for itself.

61. Paragraph 61 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 61.

62. The text of the statute cited in paragraph 62 speaks for itself.

63. Paragraph 63 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 63.

64. Paragraph 64 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 64.

65. Paragraph 65 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 65.

66. Paragraph 66 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 66.

67. Paragraph 67 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 67.

68. The text of the statute quoted in paragraph 68 speaks for itself.

69. The text of the hearing officer's administrative determination and of the statute cited in paragraph 69 speaks for itself.

70. Paragraph 70 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 70.

71. The Department denies the allegations in paragraph 71.

72. Paragraph 72 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 72.

73. Paragraph 73 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 73.

Count II: Abatement of Assessments, Penalties, and Interest as to EGLLC

74. The Department incorporates its responses to paragraphs 1-73.

75. The Department admits the allegations in paragraph 75.

76. The Department denies the allegations in paragraph 76.

77. Paragraph 77 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 77.

78. The text of the rule cited in paragraph 78 speaks for itself.

79. The text of the rule quoted in paragraph 79 speaks for itself.

80. The text of the rule cited in paragraph 80 speaks for itself.

81. The text of the rule cited in paragraph 81 speaks for itself.

82. The text of the rule cited in paragraph 82 speaks for itself.

83. Paragraph 83 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 83.

84. Paragraph 84 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 84.

85. Paragraph 85 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 85.

86. Paragraph 86 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 86.

87. The text of the hearing officer's administrative decision cited in paragraph 87 speaks for itself.

88. Paragraph 88 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 88.

89. Paragraph 89 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 89.

90. Paragraph 90 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 90.

Count IV [sic]: Abatement of Assessments, Penalties, and Interest as to EPMH1

91. The Department incorporates its responses to paragraphs 1-90.

92. Paragraph 92 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 92.

93. The Department lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 93.

94. The text of the statute cited in paragraph 94 speaks for itself.

95. The text of the hearing officer's administrative decision cited in paragraph 95 speaks for itself.

96. The text of the statute quoted in paragraph 96 speaks for itself.

97. The Department admits the allegations in paragraph 97.

98. The text of the statute cited in paragraph 98 speaks for itself.

99. The text of the statute cited in paragraph 99 speaks for itself.

100. The text of the statute cited in paragraph 100 speaks for itself.

101. The text of "Arkansas law" cited in paragraph 101 speaks for itself.

102. The text of the statute and rule cited in paragraph 102 speaks for itself.

103. Paragraph 103 contains conclusions of law to which no response is required.

However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 103.

104. Paragraph 104 contains conclusions of law to which no response is required.

However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 104.

105. Paragraph 105 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 105.

Count V: Abatement of Assessments, Penalties, and Interest as to Net Operating Loss Deductions

106. The Department incorporates its responses to paragraphs 1-105.

107. The text of the statute quoted in paragraph 107 speaks for itself.

108. The text of the statute cited in paragraph 108 speaks for itself.

109. The Department denies the allegations in paragraph 109.

110. The Department denies the allegations in paragraph 110.

111. The Department denies the allegations in paragraph 111.

112. The Department denies the allegations in paragraph 112.

113. Paragraph 113 contains conclusions of law to which no response is required.

However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 113.

114. Paragraph 114 contains conclusions of law to which no response is required.

However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 114.

115. Paragraph 115 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 115.

Count VI: Abatement of Assessments, Penalties, and Interest Based on Statute of Limitations and Ark. Code Ann. § 26-18-305(b)

116. The Department incorporates its responses to paragraphs 1-115.

117. The text of the statute cited in paragraph 117 speaks for itself.

118. The text of the statute cited in paragraph 118 speaks for itself.

119. The text of the statute cited in paragraph 119 speaks for itself.

120. The Department denies the allegations in paragraph 120.

121. The Department denies the allegations in paragraph 121.

122. The Department denies the allegations in paragraph 122.

123. The Department denies the allegations in paragraph 123.

124. Paragraph 124 contains conclusions of law to which no response is required.

However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 124.

125. Paragraph 125 contains conclusions of law to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 125.

126. Paragraph 126 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 126.

V. Demand for Relief

127. The Department incorporates its responses to paragraphs 1-126.

128. Paragraph 128 contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in paragraph 128.

129. The paragraph that begins with the word “WHEREFORE” contains a request for relief to which no response is required. However, to the extent a response is deemed necessary, the Department denies the allegations in that paragraph..

130. The Department denies each and every material allegation contained in the plaintiffs’ complaint that the Department has not specifically admitted.

131. To the extent any of the headings in the complaint contain allegations that require response, the Department denies the allegations contained in those headings.

VI. Affirmative Defenses

132. The Court should dismiss the plaintiffs’ claim for attorney’s fees pursuant to Rule 12(b)(6) of the Arkansas Rules of Civil Procedure because the complaint fails to allege facts entitling the plaintiffs to attorney’s fees under Ark. Code Ann. § 26-18-406(e) or any other statute.


PRAYER

FOR THESE REASONS, Defendant, Larry W. Walther, Secretary of the Arkansas Department of Finance and Administration, prays that the Court deny the Plaintiffs’ Complaint in all

respects as to the relief plaintiffs have requested against the Department and for all other just and proper relief to which the Department may be entitled.

Respectfully submitted,

Larry W. Walther, in his Official Capacity
as Secretary of the
Arkansas Department of Finance and
Administration
Office of Revenue Legal Counsel
P.O. Box 1272, Room 2380
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CERTIFICATE OF SERVICE

On January 26, 2023, I served a copy of this document on the following person(s) by electronic transmission:

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Attorneys for Plaintiffs


Bradley B. Young

**SETTLEMENT AGREEMENT BY AND BETWEEN
THE ARKANSAS DEPARTMENT OF FINANCE AND
ADMINISTRATION AND ENTERGY CORPORATION**

This Settlement Agreement (“Agreement”) is entered into by and between Jim Hudson, in his official capacity as Secretary of the Department of Finance and Administration of the State of Arkansas (the “Department”) and Entergy Corporation, and its subsidiaries, System Energy Resources, Inc. (“SERI”); Entergy Global, LLC (“EGLLC”); Entergy Power Marketing Holding I, Inc. (“EMPH1”); and all other subsidiaries of Entergy Corporation included on its consolidated Arkansas corporate income tax returns for the subject tax years (collectively, “Entergy”) pursuant to Ark. Code Ann. § 26-18-705. This Agreement shall be effective on the date it is signed by both Parties and has been approved by the Arkansas Legislative Council (the “Effective Date”).

WHEREAS, on December 9, 2022, Entergy filed its Complaint in the Circuit Court of Pulaski County, Arkansas, No. 60CV-22-8440 (the “Lawsuit”), seeking an abatement of assessed corporate income taxes, penalties, and interest and other adjustments for tax years 2014–2018 (the “Relevant Period”) based on (1) the Department’s sourcing of SERI’s sales to Entergy Arkansas, Inc. (“EAI”) at the Grand Gulf Nuclear Station in Mississippi to Arkansas for corporate income tax purposes; (2) the Department’s assessment of tax on the interest income of EGLLC; (3) the Department’s disallowance of EMPH1’s deduction for certain interest expenses; and (4) the Department’s disallowance of certain net operating loss carryovers claimed by Entergy.

WHEREAS, the Department filed an answer in which it denied all of Entergy's claims and causes of action and denied that Entergy was entitled to any of the relief requested;

WHEREAS, Entergy currently has an overpayment of corporate income tax on account with the Department in the amount of \$12,318,523.00 (the "Overpayment");

WHEREAS, the Department and Entergy desire to settle the claims made in the Lawsuit;

WHEREAS, the Department and Entergy agree that the expeditious resolution of this matter is in the best interest of all the parties; and

WHEREAS, the terms of this Agreement are authorized by law, including Ark. Code § 26-18-705(b)(1) of the Arkansas Tax Procedure Act.

NOW, THEREFORE, in consideration of the promises and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Department and Entergy agree as follows:

- (1) The Department will concede the portion of the tax assessments and adjustments for the Relevant Period related to the income earned by SERI;
- (2) The Department will concede the portion of the tax assessments and adjustments for the Relevant Period related to the income earned by EGLLC;

- (3) Entergy will concede the portion of the tax assessments and adjustments for the Relevant Period related to the interest expense deductions reported by EPMH1;
- (4) The parties agree that their concessions as to SERI, EGLLC, and EPMH1 will be applied on a go-forward basis. Specifically, Entergy and the Department agree that for as long as the material facts and law remain the same, for any return filed after the Effective Date, Entergy will file its Arkansas corporate income tax returns in a manner consistent with this Agreement as to the disputed issues relating to SERI, EGLLC, and EPMH1, and the Department will agree to accept those positions in all periods after the Relevant Period. With respect to Entergy's 2019-2021 returns already filed prior to October 1, 2023, the Department will adjust the returns according to the parties' concessions as to SERI, EGLLC, and EPMH1, as reflected in the attached Exhibit A.
- (5) Entergy and the Department agree that the net operating loss carryovers generated prior to the Relevant Period that were disallowed in the assessments and adjustments for the Relevant Period will not be reinstated;
- (6) The Department will waive and release all claims against Entergy for interest and penalties related to the Relevant Period;

- (7) The Agreement will be submitted for approval to the Arkansas Legislative Council. The Department and Entergy agree to work cooperatively and to use their best efforts to secure approval from the Legislative Council. The parties understand and agree that such legislative approval is a condition precedent to the enforceability of this Agreement.
- (8) Entergy and the Department agree that based on this Agreement, the total net tax due for the Relevant Period from Entergy is \$7,864,531.00. Entergy and the Department agree that upon Entergy's filing of the motion to dismiss with prejudice as described by paragraph (9), the Department will apply the Overpayment to satisfy this liability. The remaining amount of the Overpayment (\$4,453,992.00) will be applied as a carryforward that may be claimed as a refund or credit on any corporate income tax return filed by Entergy for any tax period subsequent to the Relevant Period. The Department's records will be amended to reflect the overpayment amount of \$4,453,992.00 available for any corporate income tax period beginning on or after January 1, 2019.
- (9) Within thirty days (30 days) after the Effective Date, Entergy will file a motion to dismiss with prejudice the Lawsuit, with each party bearing that party's own attorneys' fees and costs, and with the Circuit Court requested to retain jurisdiction to resolve any

disputes that might develop related to the meaning, construction, interpretation, or enforcement of the terms and conditions of this Agreement.

- (10) Except as otherwise specifically provided in this Agreement, the Department (a) hereby forever releases, acquits, waives, and discharges Entergy from any and all corporate income tax, interest, penalties, audit costs, attorneys' fees, liabilities, claims, liens, debts, damages, causes of actions, other charges, and other claims or amounts of whatever nature or kind, without limitation, asserted or assessed, known or unknown, which the Department now has or may hereafter acquire on account of or in any way connected, either directly or indirectly, with the Lawsuit or the Relevant Period; (b) acknowledges and agrees that the Department shall not examine or cause to be examined the books and records of Entergy for the Relevant Period; and (c) acknowledges and agrees that the Department shall not propose to assess, actually assess, or otherwise seek to collect, either administratively, judicially or otherwise, any corporate income tax, interest, penalties, audit costs, attorneys' fees, other charges, or other amounts of any kind or nature whatsoever, without limitation, from Entergy for the Relevant Period, any and all of such claims having been fully released herein by the Department.

- (11) Except as otherwise specifically provided in this Agreement, Entergy hereby forever releases, acquits, waives, and discharges the Department and the State of Arkansas from any and all claims related to corporate income tax, including claims for refunds or credits of overpayment of taxes, interest, and penalties, without limitation, asserted, or which could have been asserted, by Entergy for the Relevant Period.
- (12) It is understood and agreed that this is a compromise settlement of all disputed claims; that both parties are agreeing to the terms of the Agreement solely for the purpose of resolving the matter; that this Agreement shall be binding upon and inure to the benefit of all successors and assigns, and all parent, subsidiary, and affiliated corporations, partnerships, and limited liability companies of any and all named parties to this Agreement; that this Agreement contains the entire agreement between the parties; that this Agreement may not be altered, superseded, or otherwise modified except in writing signed by both parties; and that the terms of this Agreement are contractual and are not a mere recital.
- (13) If any provision of the Agreement is held illegal, invalid, or unenforceable in a legal action to enforce its terms or in any other action, all other provisions shall remain in full force and effect. The

illegal, invalid, or unenforceable provision shall be modified to the extent necessary to render the remaining provisions enforceable.

- (14) The Agreement may be executed in multiple counterparts (including execution by facsimile), each of which shall be deemed an original, and all of which together shall constitute one agreement.
- (15) The Agreement shall be deemed to have been drafted in accordance with the statutes and laws of the State of Arkansas. In the event of any disagreement or litigation arising under the Agreement, such disagreement or litigation shall be decided in accordance with the statutes and laws of the State of Arkansas, without regard to conflicts of law principles. Exclusive venue of any such litigation shall be in a court having jurisdiction in Arkansas.
- (16) The parties and their respective attorneys and representatives hereby promise, represent, warrant, and agree that this Agreement constitutes confidential taxpayer information subject to the protections of Ark. Code § 26-18-303. Entergy has authorized the disclosure of this Agreement only as may be required to obtain approval from the Arkansas Legislative Council.
- (17) Through their designated and authorized representatives, Entergy and the Department have read this Agreement; it has been explained to them by counsel; and they fully understand the terms and effect of this Agreement.

READ AND EXECUTED this 2nd day of May, 2024.

Entergy Corporation



By: Steven W. Brady

Title: VP, General Tax Counsel

Jim Hudson
Secretary, Department of Finance
& Administration



By: Jim Hudson

Title: Secretary

Arkansas Department of Finance and
Administration