

IN THE CHANCERY COURT OF HINDS COUNTY, MISSISSIPPI  
FIRST JUDICIAL DISTRICT

**FILED**  
SEP 19 2008

EDDIE JEAN CARR, CHANCERY CLERK

BY \_\_\_\_\_ D.C.

STATE OF MISSISSIPPI, EX REL  
JIM HOOD, ATTORNEY GENERAL

PETITIONER

vs.

CAUSE NO. 62008-1540  
71

ENTERGY CORPORATION;  
ENTERGY MISSISSIPPI, INC.; and  
ENTERGY SERVICES, INC.

RESPONDENTS

**PETITION TO ENFORCE SUBPOENA**

COMES NOW the Petitioner, the State of Mississippi, by and through Jim Hood, Attorney General for the State of Mississippi, and files this petition pursuant to the provisions of Section 75-24-1, *et seq.*, Mississippi Code of 1972, as amended, commonly referred to as the "Mississippi Consumer Protection Act", to compel obedience of an investigative demand, and in support thereof, states the following, to-wit:

1. The Petitioner, Jim Hood, is the duly elected and acting Attorney General of the State of Mississippi, bringing this action pursuant to the provisions of Section 75-24-17, in his official capacity as Attorney General of the State of Mississippi.

2. The Respondent, Entergy Corporation, is a Mississippi corporation with its principal place of business located at 308 East Pearl Street; Jackson, Mississippi 39201. Its registered agent for service of process is CT Corporation System; 645 Lakeland East Drive; Suite 1; Flowood, Mississippi 39232.

3. The Respondent, Entergy Mississippi, Inc., is a Mississippi corporation with its principal place of business located at 308 East Pearl Street; Jackson, MS 39201-3408. Its

**EXHIBIT**  
"A"  
\_\_\_\_\_

registered agent for service of process is James W. Snider, Jr.; 308 East Pearl Street; Jackson, Mississippi 39215-1640.

4. The Respondent, Entergy Services, Inc., is a foreign corporation, incorporated in the State of Delaware. Its principal place of business is located at 639 Loyola Avenue; New Orleans, Louisiana 70113. Its registered agent for service of process is James W. Snider, Jr.; 308 East Pearl Street; P.O. Box 1640; Jackson, MS 39215-1640.

5. Pursuant to Article 6, Section 159, of the Mississippi Constitution of 1890, and the provisions of Section 75-24-17 of the Mississippi Code of 1972, as amended, venue is proper in the Chancery Court of Hinds County, Mississippi, First Judicial District because one or more of the Respondents has its principal place of business in that district.

#### RESPONDENTS' COURSE OF CONDUCT

6. Pursuant to Miss. Code Ann. Section 75-24-1, et seq., hereafter referred to as the "Mississippi Consumer Protection Act", the Attorney General is charged with the duty of investigating "unfair and deceptive trade practices" and is authorized to bring actions to protect the public from such unlawful activity. To assist in such investigations, the Attorney General is empowered to issue subpoenas and subpoenas duces tecum which are commonly referred to as "Civil Investigative Demands (CID)". Miss. Code Section 75-24-27(1)(a).

7. The Respondent, Entergy Mississippi, Inc. (EMI) is one of six Entergy Operating Companies, which are electric public utilities that are wholly-owned by their parent company, Respondent, Entergy Corporation (Entergy). Entergy operates through its six Operating Companies in four states: Texas, Arkansas, Louisiana and Mississippi. The assets of EMI located in Mississippi are part of an integrated, highly centralized electric system operated and

controlled by Entergy from its dispatch center in The Woodlands, Texas. The Respondent, Entergy Services, Inc. (ESI), is a service affiliate that physically controls the output of EMI's generating units located in Mississippi. ESI, which is wholly-owned by Entergy also provides extensive engineering, accounting, legal, planning and other services to EMI.

8. Entergy has been found to have violated laws in Louisiana and is facing a class action suit in Texas for conduct which the Attorney General has reason to believe is also occurring in Mississippi. Specifically, EMI's sister utility companies, Entergy Louisiana, LLC (ELL) and Entergy New Orleans, Inc. (ENO) have been charged with overcharging their customers in Louisiana and have refunded tens of millions of dollars to their customers either through settlement agreements or in accordance with rulings issued against them in Louisiana.

9. In *Linda Delany, et al. v. Entergy Louisiana, Inc, and Entergy Corporation*, Entergy faced both an administrative proceeding (No. U-23356) and a class action lawsuit (CA No. 98-9211). Entergy settled both actions concurrently and agreed to refund Louisiana ratepayers \$72 million, make other payments of \$3.5 million, and provide other relief.

10. In *Gordon v. Council of New Orleans, 2005-1381 (La.App. 4 Cir. 2/25/08) 977 So.2d 212*, the City Council ordered Entergy New Orleans to refund \$11.3 million, which the state appellate court increased to \$34 million. In *Jenkins v. Entergy Corporation, 187 S.W.3d 785 (Ct. App. Texas 2006)*, Entergy is subject to a class action lawsuit, which the court found was not preempted, alleging that Entergy entities harmed consumers by devising an improper pricing scheme to sell and deliver higher-priced electrical power to customers while rejecting less expensive energy options.

11. In light of the collaborative method in which Entergy subsidiaries operate and the significant increases in ultimate costs to Mississippi ratepayers, the Attorney General has reason to believe that much of the same conduct underlying the refunds by ELL and ENO in Louisiana has been and is being employed by EMI and its affiliates in Mississippi.

#### THE SUBPOENAS AT ISSUE

12. Pursuant to the Mississippi Consumer Protection Act, “whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice prohibited by [the Act], and that proceedings would be in the public interest, he may bring an action in the name of the state against such person to restrain . . . the use of such method, act or practice.” Miss Code Ann. Section 75-24-9. Thus, the Attorney General is charged with the duty of protecting the public from unfair and deceptive trade practices.

13. Additionally, Section 75-24-27(1)(a) of the Act provides that “to accomplish the objectives and to carry out the duties prescribed in this Chapter, the Attorney General, or his designee, in addition to the powers conferred by this chapter, may issue subpoenas and subpoenas duces tecum.”

14. In accordance with the aforementioned duty and authority, on the 18<sup>th</sup> day of August, 2008, the Attorney General issued and served a subpoena to each of the Respondents herein. Said subpoenas are attached hereto as Exhibits A through C.

15. The subpoenas were returnable on September 19, 2008; however, the Respondents have indicated that they will not comply with the subpoenas.

16. Instead, the Respondents filed suit in federal court, asking the federal court to review Entergy’s objections to the subpoenas. However, Code Section 75-24-17 provides that

the legality of these state subpoenas must be determined by this state Court. The Petitioner will be filing a motion to dismiss that federal action, pointing out that jurisdiction is proper before this Court. The Respondents should, and must, raise their objections to these state subpoenas before this Court.

17. The information sought pursuant to the subject subpoenas is not only relevant to the Attorney General's investigation, but is vital to the Attorney General's determination of whether the Respondents are violating the laws of this State in the same or similar manner as they were found to have violated the laws of Louisiana.

18. Specifically, the information sought by the Attorney General, is relevant to the following conduct of the Respondents, which the Attorney General has become aware of in the course of the subject investigation:

*(a) Power-For-Profits Shell Game*

19. The Attorney General has reason to believe that Entergy buys some electricity from outside power producers cheaper than any of the Entergy Operating Companies can produce it. However, instead of providing this "bargain" power to subsidiaries such as EMI, Entergy, through ESI, resells it to outside utilities for a profit. Further, through certain manipulations, Entergy requires EMI to purchase power from the other Entergy Operating Companies, via the Entergy System Pool, at a cost (which is passed through dollar-for-dollar to Mississippi consumers) that is significantly higher than EMI could obtain on the open market. In this way, Entergy ensures a "home" for the expensive power generated by the antiquated generating units on its four-state system.

*(b) Improper Subsidies by EMI Customers*

20. The Attorney General also has reason to believe that EMI has purchased excessively-priced power produced by its unregulated affiliate Entergy Power Inc. ("EPI") from its plants in Arkansas that was too expensive for EPI to sell on the wholesale market. Essentially, Entergy, through ESI, forced EMI and its customers to serve as the captive "buyer of last resort" for the high-priced EPI power and thereby has one sister (EMI, through Mississippi customers) provide a subsidy for another sister, Arkansas EPI. Both ELL and ENO have refunded millions of dollars to their customers resulting from their purchases, through the Entergy System Pool, of this excessively-priced EPI power. This deliberate machination was designed to force Mississippi customers of EMI to subsidize the ability of EPI to compete in the wholesale power market.

*(c) Accounting Manipulations*

21. Further, the Attorney General has reason to believe that Entergy employs shrewd and deceptive accounting practices whereby it charges EMI (and other affiliates) each's proportionate share of the costs Entergy has paid for outside power imported to its system but then fails to properly credit these affiliates with their portion of the revenues Entergy receives upon eventually selling the remaining part of this power to outsiders. This results in ratepayers being charged, through pass-through fuel adjustment charges, with purchased power amounts well in excess of the "actual cost" of the purchased power – in violation of the laws of the Mississippi Public Service Commission.

*(d) Illegal Adders to Fuel Adjustment Charges  
Passed Straight through to Consumers*

22. The Attorney General has reason to believe that EMI improperly includes in its fuel adjustment charges, passed through to customers, which can include capital investment, fixed and non-fuel amounts, which EMI has been charged by its affiliates, like affiliate's costs for compliance with environmental laws and regulations. The Louisiana Public Service Commission Staff required Entergy Louisiana to remove many of these type of costs from its fuel adjustment clause. The Attorney General has reason to believe that in Mississippi these charges have never been removed and their inclusion in EMI's fuel adjustment clause violates the consumer protection statutes. Sec. 75-24-1, *et seq.* Miss. Code (1972)

*(e) Deceptive Practices Resulting from  
Foreclosure of Transmission Access*

23. The Federal Energy Regulatory Commission ("FERC"), through its Order No. 888 issued in 1996, directed every entity owning bulk transmission facilities to open up those facilities to third parties. FERC regulates the price of transmission and services provided under Entergy's wholesale tariff, known as the "OATT".

24. However, FERC does not have authority to regulate anti-competitive conduct arising from activity *outside of the scope* of the OATT. For example, FERC does not have subject matter jurisdiction over Entergy's under-investment in its bulk transmission system, which under-investment has been part of a well-designed scheme to prevent the transmission system from being capable of transmitting both Entergy's and non-affiliated third parties' power thereby driving up the cost of power to EMI's Mississippi customers, in violation of the consumer protection statutes. Sec. 75-24-1, *et seq.* Miss. Code (1972).

**COMPULSORY PROCESS IS WARRANTED**

25. Pursuant to Miss. Code Ann. Section 75-24-17, "if any person knowingly and willfully . . . fails or refuses to obey a subpoena or investigative demand issued by the Attorney General, the Attorney General, may, after notice, apply to the chancery or county court of the county in which such person resides or has his principal place of business, or if the person be absent or a nonresident of the State of Mississippi, of such court of the county in which the state capitol is located, and, after hearing thereon, request an order" to compel compliance. Pursuant to Section 75-24-17, Respondents should be ordered to fully comply with the subpoenas.

26. In a similar action to enforce compliance with a subpoena issued by the Attorney General, the Chancery Court of Lee County, Mississippi, held:

[T]he Court adopts the procedure followed in other jurisdictions as outlined in Wilson, 916 P.2d at 1351: "Before a court will enforce a CID, the Attorney General must make a sworn showing of the basic elements required for compulsory process. [Citations omitted.] The affidavit (or testimony) would need to establish the following: (1) the Attorney General is conducting an investigation to determine whether the . . . Act has been or is being violated; (2) the information sought is relevant to the investigation; and (3) there is reasonable cause to believe that the recipient of the CID possesses the information. If the Attorney General makes the necessary showing, the person challenging the CID bears the burden of establishing some impropriety in the CID, such as the absence of a proper purpose for the CID, the privileged nature of the information sought, or the unreasonable burden imposed by the CID. [Citations omitted.] The challenge should be supported by a sworn showing. Wilson, 916 P.2d at 1351.

27. First, the Attorney General is conducting an investigation into whether Entergy's conduct or practices are unfair and/or deceptive trade practices in violation of the Mississippi Consumer Protection Act. The Attorney General has not made any determination as to the merits

of a future enforcement action, if any. Instead, the Attorney General is performing his duty to investigate suspected violations of Mississippi law.<sup>1</sup>

28. Second, the information sought by the Attorney General is relevant to the subject investigation. The information requested in the subpoenas goes to the conduct described above, as well as other potential violations of the Mississippi Consumer Protection Act.

29. Third, the Attorney General has a reasonable belief that the Respondents are in possession of the requested information, as the Respondents provided almost identical information in the aforementioned actions in Louisiana.

30. Despite the clear relevancy and availability of the information requested, the Respondents have objected to the subpoenas and failed to comply.

31. In short, the Attorney General has met his burden by establishing that (1) he is conducting an investigation into the practices described above, which give him reason to believe that Respondents may be violating the Mississippi Consumer Protection Act; (2) the information sought from the Respondents is relevant to this investigation; and (3) there can be no dispute that the Respondents are in possession of the information sought by the Attorney General, as they have produced such in actions initiated in Louisiana.

32. The issuance of the subject subpoenas is within the statutory authority of the Attorney General's Office as authorized by Miss. Code Ann. Section 75-24-27(1)(a). Not only are the subpoenas reasonably specific, they are relevant to the matters under investigation based upon the conduct and business activities of the Respondents as outlined above. Furthermore, the

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<sup>1</sup>Indeed, a violation of other provisions of State law, such as Section 77-1-43 could constitute unfair and/or deceptive trade practices.

Respondents cannot, in good faith, claim that production of the requested documents would be unduly burdensome as such has been previously provided for the State of Louisiana. For these reasons, the Petitioner is entitled to an order compelling Respondents to fully comply with the subpoenas issued on August 18, 2008.

33. In support of the foregoing, Petitioner submits the Affidavit of Sondra S. McLemore, Special Assistant Attorney General attached hereto as Exhibit D.

**CLAIM FOR RELIEF**

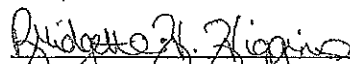
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that the Court grant the following relief:

1. A decree ordering the Respondents to fully comply with the subpoenas issued on August 18, 2008.
2. Such other relief as may be required for the enforcement of the subject subpoenas as this Honorable Court deems just and proper.

DATED, this, the 19<sup>th</sup> day of September, 2008.

RESPECTFULLY SUBMITTED,  
STATE OF MISSISSIPPI, ex rel  
JIM HOOD, ATTORNEY GENERAL

By:

  
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