

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

**EAST TEXAS ELECTRIC  
COOPERATIVE, INC.**

**PLAINTIFF**

**CASE NO. \_\_\_\_\_**

**VS.**

**ENTERGY TEXAS, INC.**

**DEFENDANTS**

**NOTICE OF REMOVAL**

Removing party, Entergy Texas, Inc. (“ETI”), hereby files this Notice of Removal, respectfully showing this Court:

1. Removing party is a defendant in the above-entitled action.
2. Plaintiff filed its Original Petition and the above-entitled action was commenced against the removing party in the District Court of Nacogdoches County, Texas, Cause Number C1228891, and is pending in that court.
3. On February 8, 2013, the registered agent for service for ETI was served with a Citation and Plaintiff’s Original Petition, and this Notice is filed within thirty days of that date and thereby timely.
4. The above-entitled action is removable to federal court as this Court has original jurisdiction over claims contained in Plaintiff’s Original Petition which arises under the Federal Power Act (“FPA”), 16 U.S.C. § 791a *et seq.* See 28 U.S.C. §§ 1331, 1441(a).
5. Under the artful pleading doctrine, a plaintiff cannot “defeat removal by omitting to plead necessary federal questions in a complaint.” *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 22 (1983). “Federal jurisdiction may be found from a complaint if adjudication of a state claim would turn on a federal constitutional or other important federal question, even where only state law issues have been pled.” *Pet Quarters, Inc.*

*v. Depository Trust & Clearing Corp.*, 559 F.3d 772, 779 (8th Cir. 2009). The artful pleading doctrine provides that federal jurisdiction exists where either: (1) federal law creates the cause of action, or (2) the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law. *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 808 (1988).

6. A Federal Energy Regulatory Commission ("FERC") tariff is equivalent to a federal regulation and claimed violations of that tariff, or challenges to the requirements and operations of the tariff, are controlled by federal law. *See, e.g., Indeck Maine Energy, L.L.C. v. ISO New England, Inc.*, 167 F. Supp. 2d 675, 687 (D.Del. 2001); *see also Cahnmann v. Sprint Corp.*, 133 F.3d 484, 489-90 (7<sup>th</sup> Cir. 1998) (telecommunications tariff). Section 825p of the Federal Power Act, 16 U.S.C. § 825p, prescribes that the district courts of the United States have **exclusive jurisdiction** "of all suits in equity and actions at law brought to enforce any liability or duty created by...any rule, regulation, or order" issued under the Act.

7. As alleged in Plaintiff's Original Petition, this lawsuit involves the alleged breach of multiple agreements, including the Agreement for Special Requirements Wholesale Electric Service entered into in 1996; the First Amendment to the Agreement for Special Requirements Wholesale Electric Service entered into in 1998; the Agreement for Partial Requirements Wholesale Electric Service entered into in 2004; and the Amended and Restated Agreement for Partial Requirements Wholesale Electric Service entered into in 2009. Each of these agreements was filed with and approved by the FERC. Plaintiff asserts that ETEC agreed to take and pay monthly for all electric service furnished under the agreements at the rates and on the terms and conditions set forth in the agreements and rate schedule. ETEC alleges that ETI violated the 1996, 1998, 2004 and 2009 agreements and seeks to change the rates agreed to by ETEC and approved by FERC.

8. Plaintiff's Original Petition therefore presents a federal question, and removal of the action to this Court is proper pursuant to 28 U.S.C. § 1441(a).

9. Pursuant to Local Rule CV-81(c), attached are:

- a) Exhibit 1: Identifying information including the name and address of the court from which the case is being removed, a list of all parties, and a complete list of attorneys involved in the removed action.
- b) Exhibit 2: Copies of the State court docket sheet, process, pleadings and orders served on the removing party in the removed action.

WHEREFORE, PREMISES, CONSIDERED, Entergy Texas, Inc. respectfully requests that the parties and the 145th District Court of Nacogdoches County take notice of the removal of this case to the United States District Court for the Eastern District of Texas, Lufkin Division. Entergy Texas, Inc. requests such other and further relief to which it may show itself entitled.

Respectfully submitted,

ENTERGY TEXAS, INC.

By: /s/ Paul A. Scheurich

Paul A. Scheurich, SB #17745470  
Christine S. Shannon, SB #00791666  
Its Attorneys  
P. O. Box 2951  
Beaumont, Texas 77704-2951  
(409) 981-3000  
Fax (409) 981-3016

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record pursuant to the *Texas Rules of Civil Procedure* on this the 8th day of March, 2013.

/s/ Paul A. Scheurich  
Paul A. Scheurich

JS 44 (Rev. 12/12)

### CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

**DEFENDANTS**

(b) County of Residence of First Listed Plaintiff EAST TEXAS ELECTRIC  
(EXCEPT IN U.S. PLAINTIFF CASES) COOPERATIVE, INC.

County of Residence of First Listed Defendant JEFFERSON COUNTY  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)  
**CURTIS (CURT) W. FENLEY, III, FENLEY & BATE, L.L.P.**  
P. O. BOX 450 / 224 E. LUFKIN AVE., LUFKIN, TX 75902  
(936) 634-3346

Attorneys (If Known)  
**PAUL A. SCHEURICH & CHRISTINE S. SHANNON**  
**ENERGY TEXAS, INC.**  
P. O. BOX 2951, BEAUMONT, TX 77704 / (409) 981-3000

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care - Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other  <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act  <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSDI Title XVI <input type="checkbox"/> 865 RSI (405(g))  <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from Another District (specify)
- 6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. §§ 1331, 1441(a)

Brief description of cause:

BREACH OF FERC APPROVED TARIFF

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 8,000,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE  
03/06/2013

SIGNATURE OF ATTORNEY OF RECORD

*Paul A. Scheurich*

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IF P \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION**

**EAST TEXAS ELECTRIC  
COOPERATIVE, INC.**

**PLAINTIFF**

**CASE NO. \_\_\_\_\_**

**VS.**

**ENTERGY TEXAS, INC.**

**DEFENDANTS**

**Local Rule CV-81 Required Information**

1. State Court filing: Cause No. C1228891  
In the District Court of Nacogdoches County, Texas  
101 W Main St, # 120  
Nacogdoches, TX 75961  
Phone: (936) 560-7730
2. Status of State Court filing: Original Petition filed and served on Defendant.  
Discovery Level 3 requested.
3. Jury Trial requested: No
4. Parties to the case: Plaintiff: East Texas Electric Cooperative, Inc.  
Defendant: Entergy Texas, Inc.
5. Attorneys: Plaintiff: Curtis (Curt) W. Fenley, III  
State Bar Number: 06902010  
Fenley & Bate, L.L.P.  
P. O. Box 450  
224 Lufkin Ave.  
Lufkin, Texas 75902-0450  
(936) 634-3346  
Fax: (936) 639-5874  
Email: [cfenley@fenley-bate.com](mailto:cfenley@fenley-bate.com)  
  
Mark Davis  
State Bar Number: 05525050  
Brickfield Burchette Ritts & Stone, PC  
1005 Congress Ave., Suite 400  
Austin, Texas 78701  
(512) 472-1081  
Fax: (512) 472-7473  
Email: [mdavis@bbrsaustin.com](mailto:mdavis@bbrsaustin.com)

Defendant: Paul A. Scheurich  
State Bar Number: 17745470  
Entergy Texas, Inc.  
P. O. Box 2951  
Beaumont, Texas 77701  
(409) 981-3000  
Fax: (409) 981-3016  
Email: [pscheur@entergy.com](mailto:pscheur@entergy.com)

Christine S. Shannon  
State Bar Number: 00791666  
Entergy Texas, Inc.  
P. O. Box 2951  
Beaumont, Texas 77701  
(409) 981-3000  
Fax: (409) 981-3016  
Email: [cshann1@entergy.com](mailto:cshann1@entergy.com)

FILED  
NACOGDOCHES COUNTY  
TEXAS

IN THE DISTRICT OF NACOGDOCHES COUNTY  
2017 DEC 28 PM 3:29

STATE OF TEXAS

DISTRICT CLERK

EAST TEXAS ELECTRIC  
COOPERATIVE, INC. Plaintiff

§  
§  
§  
§  
§  
§

VS.

CAUSE NO. C1228891

ENERGY TEXAS, INC. Defendant

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW EAST TEXAS ELECTRIC COOPERATIVE, INC., Plaintiff in the above-entitled and numbered cause, and files this its Original Petition complaining of Defendant, ENERGY TEXAS, INC., and in support thereof would respectfully show the Court as follows:

I.  
DISCOVERY LEVEL

Plaintiff asserts that discovery should be conducted under Level 3 T.R.C.P.

II.  
PARTIES

Plaintiff, EAST TEXAS ELECTRIC COOPERATIVE, INC. (hereinafter "ETEC"), is a Texas corporation with its principal place of business in Nacogdoches, Nacogdoches County, Texas.

Defendant, ENERGY TEXAS, INC., is a Texas corporation with its principal place of business in Beaumont, Texas. Defendant may be service through its registered agent for process, Paul A. Scherich, 350 Pine Street, Beaumont, Texas 77701.

**III.  
VENUE AND JURISDICTION**

This suit is brought in accordance with the laws of the State of Texas for the recovery of damages to Plaintiff resulting directly and proximately from the Defendant's breach of contract. Specifically, Defendant breached a contract between Plaintiff and Defendant that was performable in Nacogdoches County, Texas. A substantial portion or part of the transaction between Plaintiff and Defendant giving rise to the claim occurred in Nacogdoches County, Texas, Tex. CPRC §15.002(a)(1). Further, the relationship between Plaintiff and Defendant arose under a contract requiring performance to be made in whole or in part in Nacogdoches County, Texas, Tex. CPRC §15.035. This Court has personal jurisdiction over the Defendant because the actions of Defendant were expected and intended to reach Plaintiff in Nacogdoches County, Texas so that the Court may exercise personal jurisdiction over the Defendant, pursuant to Chapter 17 of the Texas Civil Practice and Remedies Code.

**IV.  
BACKGROUND**

1. ETEC's mission is to provide safe, reliable, and affordable wholesale power to its three Generation and Transmission (G&T) members and their respective ten distribution cooperative member organizations, to which ETEC provides load of approximately 1,873MW to serve 320,000 consumers in 46 counties.
2. ETEC owns portions of a number of power plants that satisfies the majority of this load; however, ETEC also purchases smaller amounts of wholesale power through Partial Requirements contracts ("PR Contracts") to meet the remainder of ETEC's power supply needs.
3. On or about September 26, 1996, ETEC entered into an Agreement for Special Requirements Wholesale Electric Service with Entergy Gulf States, Inc., a predecessor of



Defendant. The 1996 Agreement provided for the amendment of an Interchange Agreement dated September 26, 1988 between Plaintiff and Entergy Services, Inc., providing that ETEC agreed to take and pay monthly for all electric service furnished under the agreement at the rates and on the terms and conditions set forth in the agreement and rate schedule.

4. On or about August 21, 1998, ETEC and Entergy Gulf States, Inc., predecessor of Defendant, agreed to the First Amendment to the Agreement for Special Requirements Wholesale Electric Service between Entergy Gulf States, Inc. and ETEC. The First Amendment was filed at the Federal Energy Regulatory Commission ("FERC") on December 11, 1998.

5. On or about January 2001, ETEC was approached by, and began negotiating with, Reliant Energy Renewables Inc. ("Reliant") regarding the addition of a 5MW cogeneration project at the existing Security Landfill. Under the Project proposal, Reliant would generate electric power at the Security Landfill to be purchased by ETEC at the Sam Houston Electric Cooperative, Inc. ("Sam Houston") terminal site for distribution by ETEC. Sam Houston is a distribution cooperative member of one of the three G&Ts served by ETEC.

6. On or about April 25, 2002, ETEC entered into a Power Purchase Agreement with Reliant Energy Renewables Security, LP, continuing the right but not the obligation of ETEC to purchase power from Defendant. The Agreement was amended on or about February 1, 2005.

7. On or about December 10, 2002, Reliant Energy Renewables Security, LP, entered into an Interconnection and Operating Agreement with Sam Houston to permit Reliant Energy Renewables Security, LP to utilize the distribution facilities of Sam Houston to interconnect with the Sam Houston distribution system.

8. The Reliant Security Generation plant ("Reliant Security Plant") went online on or about February 27, 2003. ETEC received and paid for power produced by Reliant and Reliant's

successors in interest, from the initial date of generation to the present. On or about October 20, 2004, Reliant changed the name of its various power generation companies, including Reliant Energy Renewables Security, LP, to Reliant Energy Texas Renewables, LP. On or about July 13, 2005, Reliant sold Reliant Energy Renewables, Inc., including Reliant Energy Texas Renewables, LP, to Viridis Holdings (US), Inc. ("Viridis"). On or about February 22, 2011, Viridis Energy (Texas), LP changed its name to TX LFG Energy, LP, and the name of the general partner Viridis Energy, LLC changed its name to MH Energy, LLC. Today the facility is commonly known as the Montuak Facility.

9. On or about April 1, 2004 ETEC and Entergy Gulf States entered into an Agreement for Partial Requirements Wholesale Electric Service to provide partial supply of bulk power to ETEC for transmission to its members. In recognition of the agreements of ETEC for supply of power from third party sources, the Agreement of April 1, 2004 provides in Article 5, Section 5.1.1 that Entergy Gulf States shall "provide the energy requirements of ETEC not met by deliveries of energy to ETEC from its Baseload Resources and third party purchases."

10. On or about October 29, 2009, ETEC and Entergy Texas, Inc. entered into an Amended and Restated Agreement for Partial Requirements Wholesale Electric Service. Defendant, Entergy Texas, Inc. is the successor to the prior agreements identified above. Pursuant to the agreement Defendant was to sell and deliver and ETEC was to purchase, receive and pay for energy at the Delivery Points.

11. Pursuant to the agreements, Defendant was required to submit bills to ETEC for the power delivered to ETEC as measured at the Delivery Points.

12. Beginning with the initiation of service by Reliant until November 2012, Defendant illegally read and recorded the total amount of energy ETEC purchased from the Reliant Security

Plant meter – a location that was not a Delivery Point as defined by the contracts -- and fraudulently added it to the measurement of ETEC's load at the Security Delivery Point in violation of the 1996, 1998, 2000, 2004 and 2009 agreements.

13. The actions of Defendant result in damage to ETEC in an amount of approximately \$8,000,000.00.

**V.  
BREACH OF CONTRACT**

14. All conditions precedent to the Agreement have been performed or have occurred and Plaintiff is entitled to bring this action against the Defendant as a party to a written contract for goods purchased by Plaintiff. Specifically, Defendant breached the contract by illegally reading, recording, and charging ETEC for the total amount of energy ETEC purchased from the Reliant Security Plant meter – a location that was not a Delivery Point as defined by the contracts -- and added that energy calculation back and onto the amount ETEC was supposed to pay at the Security POD in violation of the 1996, 1998, 2000, 2004 and 2009 agreements. In other words, each month over a period of approximately nine years, Defendant failed to comply with the contract regarding the appropriate Delivery Point and with the intended result that ETEC paid Defendant for an amount of energy that ETEC had already purchased from the Reliant Security Plant. The damage caused to Plaintiff by Defendant's breach under the Agreement exceeds the amount of \$8,000,000.00. Plaintiff has fully performed its obligations under the Agreement. Furthermore, the Defendant has failed and refused to process the requested audit of the work or to provide any justification for its failure to pay the amounts due and owing.

**VI.  
NEGLIGENT BREACH OF CONTRACT**

15. The aforesaid damage to Plaintiff as herein described was a direct and proximate result of the negligent performance of Defendant in that the Defendant failed to exercise that degree of care which would have been exercised by a reasonable and prudent person in the exercise of ordinary care under the same or similar circumstances in reading the appropriate Delivery Point meter. Defendant's acts or negligence constituted a proximate cause of the damages resulting from said purchase of power by the Plaintiff.

**VII.  
UNJUST ENRICHMENT**

16. On or about May 31, 2012, ETEC discovered that Defendant had fraudulently and deceitfully represented to ETEC that Defendant was accurately calculating and providing to ETEC a correct accounting of the metering for the Reliant Security Facility and was utilizing qualified personnel for the meter reading, when, in fact, Defendant was not, and had never been, appropriately reading and calculating the service, failing to utilize best efforts to calculate and make ETEC whole for the power produced and already purchased by ETEC from the Reliant Security Facility. In fact, Defendant was in no manner authorized to perform the calculations for energy at the Reliant Security Facility. Defendant falsely represented that the calculations had been made at the appropriate locations of Delivery Points and that the amounts submitted were properly netted to credit the energy ETEC had already purchased from the Reliant Security Plant.

17. ETEC has repeatedly demanded that Defendant repay ETEC the sum and amount of \$8,000,000.00 ETEC paid to Defendant. However, to date, Defendant has failed and refused to repay any part of that amount. In essence, over the last nine years, ETEC's approximately

320,000 retail ratepayers have unknowingly and unjustly enriched Defendant's shareholders by approximately \$8,000,000.00.

18. As a result of defendant's false representations, and failure to perform the services promised to ETEC, ETEC has suffered severe financial loss in the operation of its business, in that ETEC has paid twice: ETEC has paid for the power generated by the Reliant Security Plant while also paying Defendant for the excess amounts already provided by the Reliant Security Plant. Instead of Defendant properly reading the appropriate meter and crediting ETEC for the power already purchased, Defendant and its shareholders have been unjustly and unfairly enriched in the amount of \$8,000,000.00. ETEC is entitled to restitution and recovery of that sum, in that Defendant failed to perform proper netting to credit ETEC for the power provided, and indeed, failed in performing the services at the proper facility location and Destination Point originally promised by Defendant, yet Defendant refuses to return ETEC's \$8,000,000.00 payment for the services. It would be unconscionable to allow Defendant to retain these funds, in that the contract was paid twice by ETEC, and Defendant did not provide the power reflected by the payments made by ETEC.

19. Requiring Defendant to make restitution of the funds for which Defendant improperly received payment will not result in a material change in the Defendant's position in reliance on the payment, in that Defendant has been properly compensated for the power provided under the Contract.

#### **VIII. DAMAGES**

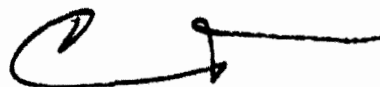
20. As a result of the actions of Defendant as set out above ETEC has suffered damages in an amount of approximately \$8,000,000.00

21. As a result of Defendant's breach of the contracts and actions as set out above, ETEC has been required to seek the services of the undersigned attorneys. ETEC has presented to Defendant written request for payment of ETEC's claim, which Defendant has wholly failed or refused to pay. Therefore, plaintiff seeks reasonable attorney's fees and costs in addition to the amount owed under the contract pursuant to Sections 38.001 et seq. of the Texas Civil Practice and Remedies Code.

WHEREFORE, Plaintiff, **EAST TEXAS ELECTRIC COOPERATIVE, INC.**, prays that Defendant, **ENERGY TEXAS, INC.**, be cited to appear and answer and that upon final trial hereof, Plaintiff have judgment against Defendant for the full amount of damages in the sum of \$8,000,000.00, plus interest from the date of the March 30, 2003 at the legal rate. Further, Plaintiff respectfully requests:

1. an order compelling Defendant to make available at the earliest possible date, and in any event no later than September 28, 2012, a complete and accurate accounting of all meter readings, calculations and amount utilized for calculating the power products from the Sam Houston Electric Cooperative, Inc. Security Pod utilizing the Reliant Security Plant, and all basis for the amounts asserted and amounts paid by Plaintiff to Defendant; and,
  2. judgment against Defendant for the damages sustained by Plaintiff as a result of Defendant's breach and/or conduct as set out above; and,
  3. attorney's fees incurred by Plaintiff necessitated by Defendant's conduct; and,
- together with pre-judgment and post-judgment interest, costs of court, in this behalf expended, and for such other and further relief, both general and special, at law or in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



**CURTIS (CURT) W. FENLEY, III  
FENLEY & BATE, L.L.P.**

P.O. BOX 450  
224 E. LUFKIN AVENUE  
LUFKIN, TEXAS 75902-0450

TPN: (936) 634-3346

FAX: (936) 639-5874

SBN: 06902010

E-mail: [cfenley@fenley-bate.com](mailto:cfenley@fenley-bate.com)

***ATTORNEY FOR PLAINTIFF,  
EAST TEXAS ELECTRIC COOPERATIVE,  
INC.***

**OF COUNSEL:**

Mark Davis

SBN: 05525050

Brickfield Burchette Ritts & Stone, PC

1005 Congress Ave., Suite 400

Austin, Texas 78701

TPN: (512) 472-1081

FAX: (512) 472-7473

E-mail: [mdavis@bbrsaustin.com](mailto:mdavis@bbrsaustin.com)

CASE # C1228891  
CAUSE: CONTR-OTHER CONTRACT  
STYLE: EAST TEXAS ELECTRIC  
COOPERATIVE, INC.

COURT: 145TH DISTRICT COURT

03/01/2013

VS ENTERGY TEXAS, INC.

PLAINTIFF

NAME \_\_\_\_\_

ATTORNEY \_\_\_\_\_

EAST TEXAS ELECTRIC P  
COOPERATIVE, INC.

FENLEY, CURTIS W., III  
ATTORNEY AT LAW  
P. O. BOX 450  
LUFKIN, TX 75902-0450  
936-634-3346

DEFENDANT

NAME \_\_\_\_\_

ATTORNEY \_\_\_\_\_

ENTERGY TEXAS, INC. D

TRANSACTIONS FOR ALL PARTIES

/ / THRU / /

12/28/2012	PLAINTIFF'S ORIGINAL PETITION/JMH		I	9
EAST TEXAS ELECTRI				
12/28/2012	CIVIL WITH CITATION SERVED	320.00-		
EAST TEXAS ELECTRI	CHARGED/SRB			
12/28/2012	CIVIL WITH CITATION SERVED	320.00		
EAST TEXAS ELECTRI	PAID/SRB			
01/18/2013	CERTIFIED MAIL CITATION ISSUED TO ENTERGY TEXAS, I		I	4
EAST TEXAS ELECTRI	NC/JMH			
02/11/2013	CERTIFIED MAIL CITATION TO ENTERGY TEXAS, INC RET'D		I	1
EAST TEXAS ELECTRI	SERVED 2/8/13 BY OLIVIA STEWART/BXR			