



November 27, 2017

Via Hand Delivery

Ms. Lora W. Johnson, CMC
Clerk of Council
Room 1E09, City Hall
1300 Perdido Street
New Orleans, LA 70112


Re: *Entergy New Orleans, Inc.'s Application and Supplemental and Amending for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief*
Docket No. UD-16-02

Alliance for Affordable Energy, Deep South Center for Environmental Justice, Inc., 350.Org Louisiana – New Orleans, and Sierra Club's Memorandum in Opposition to Advisors' Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph.D.

Dear Ms. Johnson:

Please find enclosed the original and four (4) copies of the Alliance for Affordable Energy, Deep South Center for Environmental Justice, Inc., 350.Org Louisiana – New Orleans, and Sierra Club's Memorandum in Opposition to Advisors' Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph. D. Please file the enclosed Memorandum and this letter in the record of this proceeding.

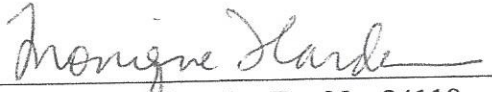
Pursuant to the Order of the Hearing Officer issued on November 17, 2017, a copy of the enclosed Memorandum was served on all recipients in the electronic case distribution list for this docket on November 22, 2017, the deadline for filing a reply to the Advisors' Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph. D. Given that the Clerk of Council's office closed early on the filing deadline and remained closed through November 24 for the Thanksgiving Holiday, the filing of the enclosed Memorandum is made on today, November 27, 2017, the first

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day of the Clerk of Council's office re-opening. A copy of the Memorandum with the Clerk of Council's file stamp will be served today on all recipients in the electronic case distribution list of this docket.

Respectfully submitted on this 27th day of November 2017 by:



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**BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS**

**APPLICATION OF ENTERGY NEW
ORLEANS, INC. FOR APPROVAL TO
CONSTRUCT NEW ORLEANS POWER
STATION AND REQUEST FOR COST
RECOVERY AND TIMELY RELIEF**)
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DOCKET NO. UD-16-02

**ALLIANCE FOR AFFORDABLE ENERGY, DEEP SOUTH CENTER FOR
ENVIRONMENTAL JUSTICE, INC., 350.ORG LOUISIANA – NEW ORLEANS, AND
SIERRA CLUB’S MEMORANDUM IN OPPOSITION TO
ADVISORS’ MOTION TO STRIKE PORTIONS OF SUPPLEMENTAL TESTIMONY
OF BEVERLY WRIGHT, PH.D.**

The Alliance for Affordable Energy, Deep South Center for Environmental Justice, 350.org Louisiana – New Orleans, and Sierra Club (collectively, “The Public Interest Intervenors”) submit this Memorandum in Opposition to Advisors’ Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph.D.

I. Introduction

1. Public Interest Intervenors seek the denial of Entergy New Orleans, Inc.’s (“ENO” or “Entergy”) application to the New Orleans City Council for the construction of the proposed New Orleans Power Station (“NOPS” or “gas plant”) as well as the recovery of cost from ENO customers that is currently estimated from \$210 million to \$232 million.¹ In support of this denial, Public Interest Intervenors have introduced the direct testimonies and supplemental testimonies of Dr. Beverly Wright and seven other experts.²

¹ Entergy New Orleans, Inc., Application and Supplemental and Amending for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief, Docket No. UD-16-02, pp. 1, 4 – 5.

² See Public Interest Intervenors’ Direct and Supplemental Direct Testimonies, filed on Jan. 6, 2017 and Oct. 16, 2017.

2. Dr. Wright's Direct Testimony and Supplemental Testimony each address the issue of fairness in the decision-making process regarding matters related to the proposed Entergy gas plant.³ Dr. Wright is a sociologist who is a noted environmental justice scholar. She was a charter member of the National Environmental Justice Advisory Council, where she co-chaired the Public Participation Committee. This committee addressed environmental decision-making processes to ensure equity. As discussed in Dr. Wright's Direct Testimony, her service on the committee included conducting the research and drafting of The Model Plan for Public Participation to recommend and promote best practices for public participation by communities who bear the greatest risk of adverse environmental consequences of governmental decision-making. Moreover, as the committee co-chair, Dr. Wright convened public sessions to resolve complaints of non-existent, non-transparent, inadequate or unfair processes for public participation that were brought by people across the United States. For more than two decades, Dr. Wright has worked to improve the public participation process in her capacities as environmental justice researcher and policy advisor to governmental agencies, departments, and commissions.⁴

II. Rules of Evidence

3. The Louisiana Code of Evidence establishes four requirements for the admissibility of expert testimony:

1. The expert/s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue

³ See Pre-Filed Direct Testimony of Dr. Beverly Wright, pp. 5 – 10 (analyzing actions resulting in the lack of public input in the process of developing the 2016 Integrated Resource Plan) and pp. 15 – 21 (analyzing the absence of the opportunity for public input on the particular environmental and health impacts of the proposed Entergy gas plant in the decision-making process on Entergy's applications for environmental permits).

See also Supplemental Testimony of Dr. Beverly Wright, pp. 3 – 6 (analyzing the propriety of a prior agreement between the City Council and Entergy to pursue the development of a gas plant in New Orleans on the decision-making process in Docket UD-16-02).

⁴ See Direct Testimony of Dr. Wright, pp. 1 – 4; Exhibit 1 Curriculum Vitae; and Exhibit 2 The Model Plan for Public Participation.

2. The testimony is based on sufficient facts or data;
3. The testimony is the product of reliable principles and methods; and
4. The expert has reliably applied the principles and methods to the facts of the case.

La. C.E. art. 702.

4. In considering challenges to expert testimony, Louisiana courts determine whether the expert is knowledgeable of the subject about which s/he expresses an opinion. *Kanda Construction, LLC v. Gebre*, 15-9307, (La. App. 4 Cir. 7/20/16), 197 So.3d 791, 796. “A combination of specialized training, work experience and practical application of the expert’s knowledge can combine to demonstrate that a person is an expert.” *Id.* (quoting *State v. Gipson*, 98-0177, (La. App. 2 Cir. 6/25/03), 850 So.2d 973, 982).

5. The Louisiana admissibility standard for expert testimony also applies to utility proceedings before the New Orleans City Council.⁵ Additionally, the City Code expressly provides that:

[t]he rules of evidence shall be applied liberally in any proceeding to the end that all needful and proper evidence shall be conveniently, inexpensively and speedily heard while preserving the substantive rights of the parties to the proceeding.⁶

III. Dr. Wright’s Supplemental Testimony Is Based on Her Knowledge and Specialized Work Experience in Improving the Process for Public Participation in Governmental Decision-Making

6. A reading of Dr. Wright’s Supplemental Testimony shows that the Advisors have no basis for their argument that her testimony contains legal interpretations or legal conclusions outside of her expertise and experience.⁷ Dr. Wright’s Supplemental Testimony provides

⁵ City Code of New Orleans, § 158-476.

⁶ *Id.*

⁷ Advisors’ *Memorandum in Support of Advisors’ Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph. D.*, p. 2.

analysis based on her specialized work experience in addressing fairness and equity issues in a wide range of public participation processes for governmental decision-making.⁸ Accordingly, Dr. Wright's testimony is admissible because it is within the scope of her expertise and assists in determining a fact in issue in this docket proceeding: whether the provisions in Resolution R-15-524 setting forth the steps Entergy is to take in pursuing the development of a gas plant undermines the fairness and transparency of this decision-making process on Entergy's application for a proposed gas plant. Dr. Wright's expert analysis of this fact in issue can be summarized as follows:

- Resolution R-15-524 was issued prior to a public proceeding in which a new gas plant in New Orleans could be justified in accordance with the City Council regulations for Integrated Resource Planning, which requires customer demand and energy supply forecasts, modeling, analyses, as well as data reviews by the public.
- There appears to be a separate process outside of the Council regulations, public notice, and utility dockets for the construction of the proposed Entergy gas plant in which a decision was made and presented in Resolution R-15-524 for Entergy to pursue the development of "at least 120 MW of new-build peak generation capacity" in New Orleans with consideration of "Michoud or Paterson" as potential sites.⁹ Resolution R-15-524 is omitted from later Council resolutions (R-16-25 and R-17-100) addressing the 2016 Integrated Resource Plan, which recommends the

⁸ *Supra* n. 4.

⁹ In the response to the DSCEJ's First Set of Requests for Information, the Advisors affirmed that they negotiated with Entergy New Orleans to consider pursuing the development of a new-build peaking plant of nearly the same size, 120 MWs, as the RICE unit, in New Orleans and unanimously recommended that the City Council agree to this development by issuing Resolution R-15-524. *See* Advisors' Response to DSCEJ's First Set of Requests for Information, attached here to as Exhibit A.

development of a new gas plant, and establishing this docket for the Entergy gas plant application.

- The same Advisors who will recommend to the City Council whether or not to approve Entergy's second gas plant application, which proposes the options of either a 226 MW combustion turbine gas plant or a 128 MW RICE unit, have already recommended, in Resolution R-15-524, that ENO "use reasonable diligent efforts to pursue the development of at least 120-MW of new-build peaking generation capacity within the City of New Orleans," which is almost identical to the RICE facility.

There is an apparent conflict in the Advisors' role being both a proponent for the development of a gas plant, dating before the instant docket was opened, and making the recommendation for the Council's decision on the gas plant application as compared to alternatives, like transmission, renewable energy, or demand-side management resources.¹⁰

7. The Advisors do not challenge Dr. Wright's special experience with improving public participation processes for governmental decision-making; nor do they question her knowledge of best practices in public participation. Instead, they claim she is not qualified to quote the plain language of a provision in Resolution R-15-524 and to expound upon it in presenting her opinions on the process afforded in this case and the Advisors' roles in this process.¹¹ On page 4 of her Supplemental Testimony, Dr. Wright quotes the specific provision of Resolution R-15-524 setting forth that Entergy is to pursue the development of a gas plant for peak generation in New Orleans.

¹⁰ In fact, after the filing of Dr. Wright's direct and supplemental testimonies, the Advisors submitted their own testimony recommending that the Council approve the proposed 128-MW RICE unit, as in the public interest. *See, e.g.,* Direct Testimony of Joseph A. Vumbacco at p. 9, UD-16-02, filed Nov. 20, 2017.

¹¹ Advisors' Memorandum in Support of Advisors' Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph. D., p. 3.

The quoted language of the Resolution is plain and does not require any legal interpretation to understand its meaning. In fact, in an apparent effort to contest Dr. Wright's conclusions, the Advisors rely on a non-lawyer, Mr. Joseph A. Vumbacco, to try to explain the resolution language and its implications for this proceeding.¹²

8. The Advisors have not raised any objection to Entergy's explanation of the same provision in Resolution R-15-524, which was presented in response to the First Set of Requests for Information by the Deep South Center for Environmental Justice ("DSCEJ"). Entergy describes this provision as directing the utility company to pursue the development of a gas plant.¹³ DSCEJ requested Entergy to describe how the site selection process was developed to determine a location for the proposed combustion turbine gas power plant. Entergy responded as follows:

In Council Resolution R-15-524, which approves ENO's exit from the Entergy System Agreement, the Council directed ENO "to use diligent efforts to have at least one future generation facility located in the City of New Orleans." That resolution also directed ENO to "fully evaluate Michoud or Paterson, along with any other appropriate site in the City of New Orleans as the potential site for a combustion turbine ("CT") or other peaking unit to be owned by ENO." As stated in the Direct Testimony of Seth E. Cureington, the site selection process identified two potential sites located in Orleans Parish, A.B. Patterson and Michoud. The Company considered factors like fuel supply, transmission, existing infrastructure, and site suitability. Michoud was chosen because it is located closer to three major gas pipelines, it has an existing office building infrastructure as well as available bays in the high-voltage switchyard for interconnection to the transmission system. The Michoud site is also in a better location to support transmission reliability, as it is more strongly connected to the Company's service area and to the DSG load pocket more broadly. Please see Exhibit SEC-5. It should also be noted that if the Company were to locate a unit on land that it does not own and that lacks the infrastructure and benefits referenced in this response and in Exhibit SEC-5, the Company would expect costs to significantly increase, which would ultimately be borne by ENO's customers.¹⁴

¹² Direct Testimony of Joseph A. Vumbacco at pp. 11, UD-16-02, pp. 11–20, filed Nov. 20, 2017. Joseph Vumbacco, P.E., is a mechanical engineer, with a master's degree in business. *See* JAV-2.

¹³ Response of Entergy New Orleans, Inc. to the First Set of Data Requests of Requesting Party: Deep South Center for Environmental Justice, Inc., Question No.: DSCEJ 1-1.

¹⁴ *Id.* (emphasis added).

Entergy New Orleans CEO Charles Rice confirmed this explanation in an October 11, 2017 interview with WWL TV concerning the proposed gas plant. In response to the question, “Why does New Orleans need a new plant?” Mr. Rice explained that, “Well, we’re here because, one, the City Council issued an order asking us to pursue at least 120 mega-watts of peaking generation in the City of New Orleans. . . .”¹⁵

9. The Advisors fail to demonstrate that Dr. Wright’s analysis of the provision in Resolution R-15-524 constitutes a legal interpretation or conclusion. In fact, the Advisors agree with Dr. Wright’s understanding of this provision when they acknowledge that Resolution R-15-524 is “[d]irecting ENO to pursue a potential plant in New Orleans for Council consideration.”¹⁶

10. It must be noted that in the Memorandum of Support of the Advisors’ Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph. D., there are repeated mischaracterizations of the statements made by Dr. Wright in her Supplemental Testimony. *See* Table 1.

¹⁵ WWL-TV, “A New Power Plant Proposed in N.O. East,” Oct. 11, 2017, at 00:13-00:26, available, <http://www.wwltv.com/entertainment/television/programming/morning-show/a-new-power-plant-proposed-in-n-o-east/482464319>.

¹⁶ Advisors’ *Memorandum in Support of Advisors’ Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph. D.*, p. 8.

Table 1.

Advisors' Mischaracterization of the Supplemental Testimony of Beverly Wright, Ph. D.	Supplemental Testimony of Beverly Wright, Ph. D.
<p>"Dr. Wright incorrectly concludes, without factual references, that the language in Resolution No. R-15-524 demonstrates a separate process" (Advisors' Memorandum, p. 3)</p> <p>"The assertion on page 4 of Dr. Wright's Supplemental Testimony that there was a "separate process" (Advisors' Memorandum, p. 12)</p>	<p>The Council's agreement and resolution [Resolution R-15-524] occurred before utility forecasts, analyses, modeling, and data reviews required for the IRP could be completed. Thus, it appears that there was a separate process" (Dr. Wright's Supplemental Testimony, p. 4, lines 16 - 21)</p>
<p>"With respect to Resolution No. R. 17-100 . . . Dr. Wright asserts that the Council 'concludes that a new gas power plant is needed in the City of New Orleans.'" (Advisors' Memorandum, p. 5)</p>	<p>"Furthermore, it is worth noting that the New Orleans City Council Consultants drafted a resolution (Resolution R-16-625) for the City Council to approve the 2015 Integrated Resource Plan ("IRP"), which concludes that a new gas plant is needed in the city of New Orleans. (Dr. Wright's Supplemental Testimony, p. 5, lines 11 - 13). <i>The conclusion that there is a need for a gas plant is in the IRP, not the resolution.</i></p>
<p>"On page 6 of Dr. Wright's Supplemental Testimony, she provides discussion of purported 'conflicting' roles of the Council's Advisors and claims that somehow these roles should be considered a violation of the parties' due process rights." (Advisors' Memorandum, p. 9)</p>	<p>"Their conflicting roles warrant examination of whether this utility docket proceeding assures due process for all parties and the public." (Dr. Wright's Supplemental Testimony, p. 6, lines 18 -19)</p>

11. The Advisors' undertake a lengthy explanation of what they contend to be the legal complexities of a FERC proceeding; however, nowhere in Dr. Wright's testimony is there any discussion or opinion given on the FERC proceeding.¹⁷ This unnecessary foray into the FERC docket cannot obscure the plain meaning of the language, included in the text of R-15-524 itself,

¹⁷ *Id.* at pp. 7 – 9.

that ENO “use reasonable diligent efforts to pursue the development of at least 120-MW of new-build peaking generation capacity within the City of New Orleans.”

12. Similarly, the Advisors offer their interpretation of judicial decisions regarding the role of consultants to utility regulators.¹⁸ Dr. Wright’s testimony does not offer a legal opinion, but only a factual analysis of the apparent conflict that exists and her expert opinion that this conflict does not comport with best practices for public participation in governmental decision-making.

IV. Dr. Wright’s Supplemental Testimony Is Reliable and Helpful

13. The Advisors hope to exclude section IV of Dr. Wright’s Supplemental Testimony by mischaracterizing it (*see* Table 1). They claim that Dr. Wright presents legal opinions that are outside of her area of expertise. But the Advisors simply fail to understand her empirical research and extensive experience in the field, as well as the direct relevance of her testimony to issues that are fundamentally important to this proceeding.

14. For more than two decades, Dr. Wright has applied her expertise as a sociologist and professor of sociology to contribute to the development of a field of interdisciplinary academic research and scholarship on environmental justice that has improved governmental practice and policy pertaining to meaningful and effective public participation in decision-making that impacts our environment. Such public participation has long been viewed by experts, like Dr. Wright, as essential to expanding civic engagement and democratic principles to people of color and poor people, who disproportionately bear the risks of environmental decisions that are made when they have either no input or unequal input.¹⁹

¹⁸ *Id.* at pp. 9 – 12.

¹⁹ Eileen Gauna, *The Environmental Justice Misfit: Public Participation and the Paradigm Paradox*, 17 STAN. ENVTL. L.J. 3 (1998).

15. Section IV of Dr. Wright’s Supplemental Testimony is reliable and helpful to this proceeding, which is to determine whether the proposed Entergy gas plant is in the public interest. The Michoud site that has been selected for the proposed gas plant is in close geographic proximity to neighborhoods in East New Orleans where residents are predominantly African American and Vietnamese American. They would be disproportionately exposed to more than two million pounds of toxic air pollution emitted by the proposed gas plant on an annual basis and disproportionately burdened with the risk of accelerated land sinking or subsidence that can result from the daily withdrawal of one million gallons of groundwater to operate the plant.²⁰ These impacts would be the direct result of authorizing the construction of the Entergy gas plant at the Michoud site and constitute.

16. The Council has taken action to make these impacts part of the public interest determination in this docket proceeding. In Resolution R-16-506, the Council directs Entergy to make a supplemental filing related to “air quality effects of the proposed NOPS” and “groundwater withdrawal and subsidence at its Michoud site and surrounding area.” Moreover, the environmental, health and safety risks of siting a power plant in close proximity to predominantly people of color neighborhoods constitute an environmental justice issue. The U.S. Environmental Protection Agency recognizes the racially disproportionate siting of power plants as an environmental justice issue.²¹ EPA’s research shows that, in the United States, 78

²⁰ The amounts of air pollution and groundwater withdrawals are applicable to the combustion turbine (“CT”) gas plant originally proposed by Entergy. See Application of Entergy New Orleans, Inc. for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief, Direct Testimony of Jonathan C. Long, June 20, 2016 p. 39; and the Louisiana Department of Environmental Quality, Proposed Part 70 Air Operating Permit Renewal & Minor Modification (Permit No. 2140-000014-V5) and Acid Rain Permit Renewal & Modification (Permit No. 2140-00014-IV4) for the Entergy New Orleans Power Station, Air Permit Briefing Sheet, January 2016, pp. 4 - 5, Doc. No. 10454574. In Entergy’s second application to the New Orleans City Council, the proposed CT gas plant is referred to as “Alternative One.”

²¹ U.S. Environmental Protection Agency, *EJ Screening Report for the Clean Power Plan 2015* available at: <https://archive.epa.gov/epa/sites/production/files/2016-04/documents/ejscreencpp.pdf>. See also, Phil McKenna and Marianne Lavelle, *This Is an Emergency: 1 Million African Americans Live Near Oil, Gas Facilities*, INSIDE

percent of power plants in the United States are located in close geographic proximity to predominantly people of color and poor communities.²² According to the EPA, the racially disproportionate siting of power plants increases in Louisiana, where 100 percent of power plants operate near communities, where the populations of people of color and/or poor people are higher than the state averages.²³

17. The body of environmental justice research documents the phenomena of decisions authorizing power plants and other industrial developments when communities bearing the environmental and health risks of these developments have either no input or unequal input in the decision-making process.²⁴ Dr. Wright’s specialized knowledge and work has focused, in part, on improving the decision-making process to ensure meaningful and effective public participation by predominantly people of color and poor communities that are disproportionately targeted for developments that bring significant environmental and health risks. Her Direct Testimony, which is not at all challenged by Advisors, presents the flaws in the processes – from the development of Entergy’s Integrated Resource Plan to its first application for the proposed gas plant – that have denied the meaningful and effective participation by New Orleans residents and, in particular, predominantly African American and Vietnamese American residents of East New Orleans who would have the most adverse risks of living near the proposed Entergy gas plant.²⁵ Similarly, her Supplemental Testimony, specifically section IV, presents the flaw in this

CLIMATE NEWS, Nov. 14, 2017, available at: <https://insideclimatenews.org/news/14112017/african-americans-exposed-oil-gas-wells-refineries-health-risks-naacp-study>

²² *Id.* Statistical Summary: “Study Area Minority and Low Income Percentages,” p. 113.

²³ *Id.* Study Area Data: “State Demographic Summary,” pp. 40 - 41.

²⁴ Robert Bullard, The Quest for Environmental Justice, Human Rights and the Politics of Pollution (Sierra Club Books: 2005).

²⁵ Direct Testimony of Dr. Wright, pp. 5 - 11 and 15 - 21.

proceeding which is to determine whether the proposed Entergy gas plant is in the public interest when much of that determination has been made outside of this proceeding and the Integrated Resource Planning process, as evidenced by Resolution R-15-524, on the need for a “120 MW of new-build peaking generation capacity within the City of New Orleans” with Michoud as one of the potential sites for “a combustion turbine (“CT”) or other peaking unit.”

V. Dr. Wright’s Supplemental Testimony Is Admissible

18. Dr. Wright is an expert on public participation in governmental decision-making. She has specialized knowledge and professional work experience in improving the process for public participation to ensure meaningful and effective input by communities who are disproportionately burdened by environmental, health and safety risks and have either no input or unequal input in the decisions allowing such risks. In this proceeding, she has provided direct testimony and supplemental testimony presenting her expert analysis of the flaws in the public participation process. Advisors’ Motion to Strike section IV of Dr. Wright’s Supplemental Testimony rests on mischaracterizing and misstating her analysis as constituting a legal opinion when it does not.

19. While it is apparent that Advisors disagree with Dr. Wright’s expert opinions, this is not a basis for striking any portion of her Supplemental Testimony. The Advisors have failed to demonstrate that Dr. Wright’s testimony is inadmissible.

VI. Conclusion

20. For the reasons discussed above, Advisors’ motion should be denied for failure to show any legal basis for striking any portion of the Supplemental Testimony of Beverly Wright, Ph. D.

Exhibit A
Advisors' Response to DSCEJ's First Set of Requests for Information

**BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS**

APPLICATION OF ENTERGY NEW)	
ORLEANS, INC. FOR APPROVAL TO)	
CONSTRUCT NEW ORLEANS)	
POWER STATION AND REQUEST)	DOCKET NO. UD-16-02
FOR COST RECOVERY AND)	
TIMELY RELIEF)	

**OBJECTIONS AND RESPONSES OF THE ADVISORS TO THE CITY COUNCIL OF
THE CITY NEW ORLEANS TO DEEP SOUTH CENTER FOR ENVIRONMENTAL
JUSTICE INC.'S FIRST SET OF REQUESTS FOR INFORMATION**

The Advisors to the City Council of New Orleans ("Advisors") object as follows to Deep South Center for Environmental Justice, Inc.'s ("DSCEJ") First Set of Requests for Information ("Requests") propounded in the above-captioned proceeding:

I.

GENERAL OBJECTIONS AND RESERVATION OF RIGHTS

1. Although the Advisors have sought to identify all applicable objections, it may later become apparent as responses are prepared or as documents are obtained that additional objections are appropriate. The Advisors reserve their right to make such objections.
2. The Advisors object to definitions and instructions, if any are included, to the extent that they unilaterally purport to alter the rules of discovery, or purport to modify or supplement the specific Requests set forth thereafter, or are unduly burdensome.
3. With respect to confidential and/or highly sensitive information, if any, that may be responsive to one or more of the Requests and the production of which is not otherwise objectionable, the Advisors will make such information available to appropriate signatories pursuant to the terms of a Protective Order in this proceeding.

4. With respect to documents or information that may be protected by the attorney-client privilege and/or the attorney work product doctrine, if any, that may be responsive to one or more of the Requests, the Advisors object to providing such material and reserve their right to make such objections as they deem necessary to protect such documents or information from disclosure.

5. The provision of a response by the Advisors to a Request should not be construed as a waiver of any claim that the Advisors may have regarding the admissibility of the response in this proceeding or other proceedings, or a waiver of any substantive rights that the Advisors may have.

II.

SPECIFIC OBJECTIONS AND RESPONSES

In addition to the foregoing General Objections, the Advisors have at this time identified the following specific objections and responses:

DSCEJ 1 – 1: Referring to both the *Response of: Entergy New Orleans, Inc. to the First Set of Data Requests of Requesting Party: Deep South Center for Environmental Justice, Inc.*, Docket No. UD-16-02, which states:

In Council Resolution R-15-524, which approves ENO's exit from the Entergy System Agreement, the Council directed ENO "to use diligent efforts to have at least one future generation facility located in the City of New Orleans."

as well as the New Orleans City Council's *Resolution and Order Approving the Proposed Settlement Terminating the Entergy System Agreement in FERC Docket No. ER 14-75*, R-15-524, Nov. 5, 2015, which states:

WHEREAS, ENO will use reasonable diligent efforts to pursue the development of at least 120 MW of new-build peak generation capacity within the City of New Orleans. As part of this commitment, ENO will fully evaluate Michoud or Paterson, along with any other appropriate sites in the City of New Orleans, as the potential site for a combustion turbine

("CT") or other peaking unit to be owned by ENO, or by a third party with an agreed-to PPA to ENO. This evaluation will take into consideration, among other material considerations, the results of the Michoud site analysis that was completed in connection with the Summer 2014 Request for Proposal

- a: Please identify all New Orleans City Council Consultants by name, title, and business affiliation who were involved in negotiating the settlement agreement terminating the Entergy System Agreement that was approved by City Council Resolution R-15-524.
- b: Please identify all New Orleans City Council Consultants by name, title, and business affiliation who recommended the City Council direct ENO "to pursue the development of at least 120 MW of new-build peak generation capacity within the City of New Orleans," as stated in City Council Resolution R-15-524.
- c: Please provide any document, as defined herein, that was either reviewed or prepared by any of the New Orleans City Council Consultants for the purpose of recommending the City Council direct ENO "to pursue the development of at least 120 MW of new-build peak generation capacity within the City of New Orleans," as stated in City Council Resolution R-15-524.

OBJECTION AND RESPONSE TO DSCEJ 1 – 1:

a: The Advisors object to this request as vague, ambiguous, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, the Council's Advisors involved in negotiating the settlement agreement that was unanimously approved by the Council without modification on November 5, 2015 in Resolution R-15-524 were as follows:

Clinton A. Vince, Dentons US LLP
Presley R. Reed, Jr., Dentons US LLP
Emma F. Hand, Dentons US LLP
J. A. "Jay" Beatmann, Jr., Dentons US LLP
Joseph A. Vumbaco, Legend Consulting Group Limited
Joseph W. Rogers, Legend Consulting Group Limited
Walter J. Wilkerson, Wilkerson & Associates, PLC

b: The Advisors object to this request as vague, ambiguous, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objection, the Council's utility Advisors unanimously recommended to the Council that ENO should be directed to "use reasonable diligent efforts to pursue the development of at least 120 MW of new-build peaking generation capacity within the City of New Orleans." Specifically, the following Advisors participated in developing and making this recommendation:

Clinton A. Vince, Dentons US LLP
Presley R. Reed, Jr., Dentons US LLP
Emma F. Hand, Dentons US LLP
J. A. "Jay" Beatmann, Jr., Dentons US LLP
Joseph A. Vumbaco, Legend Consulting Group Limited
Joseph W. Rogers, Legend Consulting Group Limited
Walter J. Wilkerson, Wilkerson & Associates, PLC

c: The Advisors object to this request as vague, ambiguous, overly broad, unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. The Advisors further object that to the extent many such requested documents are publicly available documents filed in various dockets before the Council and Federal Energy Regulatory Commission ("FERC") which are already available to DSCEJ, and requiring the Advisors to produce them is unduly burdensome. The Advisors further object to this request to the extent that it seeks disclosure of information beyond that which is already publicly available, such information is subject to the attorney-client privilege and/or attorney work-product doctrine. The Council's Advisors cannot reasonably be expected to identify every document "reviewed or prepared" by the Advisors for the purpose of making the referenced recommendation, which included documents produced and filed in multiple proceedings over a period of several years at

the FERC and the New Orleans City Council. Subject to and without waiving the foregoing objections, the Advisors reviewed numerous discovery requests, discovery responses, attachments to discovery responses, correspondence, testimony, studies, workpapers and spreadsheets in, including but not limited to, the following docketed proceedings:

EL01-88-000	FERC Docket Re: Entergy System Agreement Rough Cost Equalization
ER14-75	FERC Docket Re: Shortening of System Agreement Termination Notice Provision
UD-07-03	Council System Agreement Docket Re: Withdrawal of Entergy Arkansas, Inc. and Entergy Mississippi, Inc.
UD-13-03	Council Docket to Investigate Prudence of Shortening of System Agreement Termination Notice Provision
UD-15-01	Council Docket Re: Consideration of ENO's Request to Acquire Power Block 1 of the Union Power Station
UD-16-01	Council Docket Re: An Inquiry Into ENO's Utility Operations (Show Cause Proceeding)
UD-11-01	Council Docket RE: Consideration of ENO's Request to Join the Midcontinent Independent System Operator, Inc. ("MISO")
UD-08-02	ENO's 2015 Triennial Integrated Resource Plan
UD-08-03	ENO's 2008 Base Rate Case

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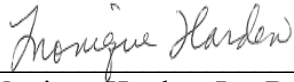
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Respectfully submitted on this 22nd day of November 2017 by:



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Certificate of Service

I, the undersigned counsel, hereby certify that I have on this 22nd day of November 2017 served a copy of the foregoing on all parties on the official service list in the above docket by electronic mail, by facsimile, by hand delivery, and/or by depositing a copy of same with the United States Postal Service, postage prepaid.



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