



November 29, 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 for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief  
Docket No. UD-16-02***

***Motion for Order of Deposition by Videoconference, filed by the Alliance for Affordable Energy, Deep South Center for Environmental Justice, 350 Louisiana – New Orleans and Sierra Club***

Dear Ms. Johnson:

Undersigned counsel make this filing on behalf of the Alliance for Affordable Energy, Deep South Center for Environmental Justice, 350 Louisiana – New Orleans, and Sierra Club (collectively, "Public Interest Intervenor"). Please find the original and three copies of the enclosed Public Interest Intervenor's Motion for Order of Deposition by Videoconference. Please return one date-stamped copy to our courier for our records and file the remaining original and two copies into the docket in this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Robert Wiygul", written over a horizontal line.

Robert Wiygul, La. Bar No. 17411  
Michael Brown, La. Bar No. 35444  
Waltzer Wiygul & Garside LLC  
1000 Behrman Highway  
Gretna, LA 70056

*Counsel for Sierra Club*

Joshua Smith  
Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612

*Counsel for Sierra Club*

/s/Susan Stevens Miller

Susan Stevens Miller  
16-PHV-650  
Earthjustice  
1625 Massachusetts Avenue, NW, Suite 702  
Washington, DC 20036-2212

*Counsel for the Alliance for Affordable Energy and  
350 Louisiana – New Orleans*

/s/Monique Harden

Monique Harden, La. Bar No. 24118  
Deep South Center for Environmental Justice  
3157 Gentilly Blvd., #145  
New Orleans, LA 70122

*Counsel for the Deep South Center for  
Environmental Justice*

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

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

**MOTION FOR ORDER OF DEPOSITION BY VIDEO CONFERENCE**

Pursuant to Section 158-392 of the New Orleans City Code and Louisiana Code of Civil Procedure Art. 1436.1, the Alliance for Affordable Energy, 350 Louisiana – New Orleans, Deep South Center for Environmental Justice, Inc., and Sierra Club (collectively “Public Interest Intervenors”), intervenors in CNO UD-16-02, through undersigned counsel, respectfully move that Advisor witness Philip J. Movish be ordered to participate in a deposition via video conference.

Mr. Movish, a key witness in this docket, is located in Denver, Colorado, as is his consulting firm’s legal counsel. Meanwhile, nearly all parties to this proceeding are based in New Orleans, preparing for other depositions in New Orleans and the evidentiary hearing in New Orleans, with the December 7, close of discovery fast approaching. It would require considerable, and unnecessary, strain on the parties’ resources and limited time to conduct these important depositions in person in Denver. The Advisors and their witness would suffer no possible prejudice by doing a video deposition from Mr. Movish’s home city.

Prior to filing this motion, Public Interest Intervenors sought the consent of Advisors’ counsel to conduct video-conference depositions of Mr. Movish, and two other witnesses, but counsel responded that its witnesses may only be deposed in-person in Denver. *See Exhibit A, Email Correspondence Between Counsel for Public Interest Intervenors and Counsel for Advisors, Nov. 22–28, 2017.* In the interest of resolving this dispute, and conserving the parties’ resources,

Public Interest Intervenors will agree only to depose Mr. Movish, and withdraw their requests to depose other Advisor witnesses.

In support of this Motion, the Public Interest Intervenors state the following facts:

- 1) On November 20, 2017, the Advisors to the City Council of New Orleans (“Advisors”), filed their direct testimony in the above captioned proceeding. The Advisors’ filing included the direct testimony of Mr. Movish. This was the first time Mr. Movish, or any of the other Advisor witnesses, has filed testimony or has been listed as a witness in this case.
- 2) On November 22, 2017, Public Interest Intervenors, through New Orleans counsel for Sierra Club, Michael L. Brown, requested the availability of Mr. Movish, Mr. Rogers, and Mr. Vumbaco for pre-hearing depositions. This request was made to Ms. Emma Hand, Washington, D.C.-based counsel for the Advisors, via email. *See Exhibit A.*
- 3) On November 27, 2017, Ms. Hand informed counsel for the Public Interest Intervenors that Advisor witnesses Movish, Rogers and Vumbaco could be available to be deposed in Denver on November 29<sup>th</sup> (two days later), December 5<sup>th</sup>, or December 6<sup>th</sup>. *See Exhibit A.*
- 4) On November 28, 2017, counsel for the Public Interest Intervenors requested that the depositions of the Advisor witnesses be conducted through video conferencing and suggested a location in Denver for the depositions with video-conference capability. This location is less than half a mile from the location proposed by the counsel for the Advisors. *See Exhibit A.* The reason for this request is that it would be a substantial burden on limited time and resources

for Public Interest Intervenors' counsel, or other parties' counsel, to travel to and from Denver for the depositions on December 5 or 6, all while reviewing Entergy New Orleans' rebuttal testimony, which will be filed November 30, preparing for depositions of Entergy New Orleans' witnesses, also to take place in New Orleans next week, and preparing for the evidentiary hearing, starting December 15.

- 5) On November 28, 2017, counsel for the Advisors, via email, rejected the request for video conference stating "We object to having the deposition performed by teleconference." *See* Exhibit A.

Article 1436.1 of the Louisiana Code of Civil Procedure provides that "If agreed upon by every party to a suit or if ordered by the court, a deposition may be taken by telephone or other **remote** electronic means." La. Code Civ. Proc. art. 1436.1.

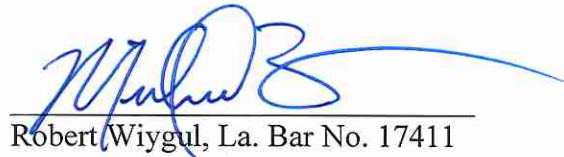
In this instance, there is good cause for Your Honor to grant the instant motion and allow for a videoconference deposition. As Your Honor is no doubt aware, this proceeding is being conducted on a very compressed schedule. Advisors' testimony was filed November 20<sup>th</sup>, discovery ends December 7<sup>th</sup>, and the evidentiary proceedings begin December 15<sup>th</sup>. Nearly all of the parties to this proceeding are in New Orleans and many of the counsel are either in New Orleans or the District of Columbia. The travel time plus the cost of attendance, in conjunction with the compressed time frame, make requiring counsel to appear in Denver to depose one witness, Mr. Movish, an unnecessary burden.

Mr. Movish will not be required to leave the city where his office is located. Moreover, while the Public Interest Intervenors have offered a suitable meeting space less than a half a mile from Advisors' chosen location for the video conferencing, if Advisors

have video conferencing capability at their designated location, a law firm, the deposition can be conducted at that location. The Advisors cannot contend that they will be prejudiced by the use of video conferencing to conduct the deposition. Finally, to require that depositions can *only* be conducted if counsel appears in person, regardless of the circumstances, unnecessarily and inappropriately harms those parties with limited resources and may prevent their full participation in the proceeding.

Finally, the Public Interest Intervenors note that this Motion is time sensitive as the Advisors witnesses are only available on December 5<sup>th</sup> and 6<sup>th</sup>. For this reason, the Public Interest Intervenors respectfully request that Your Honor issue a decision on this Motion by December 1<sup>st</sup>.

Respectfully submitted on this 29th day of November, 2017 by:



Robert Wiygul, La. Bar No. 17411  
Michael Brown, La. Bar No. 35444  
Waltzer Wiygul & Garside LLC  
1000 Behrman Highway  
Gretna, LA 70056

*Counsel for Sierra Club*

Joshua Smith  
Staff Attorney  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612

*Counsel for Sierra Club*

/s/Susan Stevens Miller  
Susan Stevens Miller  
16-PHV-650  
Earthjustice

1625 Massachusetts Avenue, NW, Suite 702  
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*Counsel for the Alliance for Affordable Energy and 350 Louisiana  
– New Orleans*

*/s/Monique Harden*

Monique Harden, La. Bar No. 24118  
Deep South Center for Environmental Justice  
3157 Gentilly Blvd., #145  
New Orleans, LA 70122

*Counsel for the Deep South Center for Environmental Justice*

## EXHIBIT A

**Michael Brown**

---

**From:** Hand, Emma F. <emma.hand@dentons.com>  
**Sent:** Tuesday, November 28, 2017 3:06 PM  
**To:** 'Susan Stevens Miller'; Michael Brown  
**Cc:** Robert Wiygul; Josh Smith; Monique Harden; Vince, Clinton A.; Reed, Jr., Presley R.; Beatmann, Jay; Basile J. Uddo (buddo@earthlink.net); Morrissey, Jennifer A.; Walter J. Wilkerson (wwilkerson@wilkersonplc.com)  
**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Susan,

Thanks for the clarification. We object to having the deposition performed by teleconference. We are happy to make our witnesses available for deposition (by those attending in person) at the previously designated location of the law offices of Legend's general counsel:

Michael J. Dommermuth, Esq.  
Toni Fox, Assistant  
Fairfield & Woods, PC  
1801 California Street, Suite 2600  
Denver, CO 80202

Best,  
Emma



Emma F. Hand

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1900 K Street, NW, Washington, DC 20006

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**From:** Susan Stevens Miller [mailto:smiller@earthjustice.org]  
**Sent:** Tuesday, November 28, 2017 12:34 PM  
**To:** Hand, Emma F.; 'Michael Brown'  
**Cc:** Robert Wiygul; Josh Smith; Monique Harden; Vince, Clinton A.; Reed, Jr., Presley R.; Beatmann, Jay; Basile J. Uddo (buddo@earthlink.net); Morrissey, Jennifer A.; Walter J. Wilkerson (wwilkerson@wilkersonplc.com)  
**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Sorry I wasn't clear, I meant conducting the deposition via video conference.



## EXHIBIT A

---

**From:** Hand, Emma F. [<mailto:emma.hand@dentons.com>]

**Sent:** Tuesday, November 28, 2017 1:32 PM

**To:** Susan Stevens Miller; 'Michael Brown'

**Cc:** Robert Wiygul; Josh Smith; Monique Harden; Vince, Clinton A.; Reed, Jr., Presley R.; Beatmann, Jay; Basile J. Uddo ([buddo@earthlink.net](mailto:buddo@earthlink.net)); Morrissey, Jennifer A.; Walter J. Wilkerson ([wwilkerson@wilkersonplc.com](mailto:wwilkerson@wilkersonplc.com))

**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Hi Susan,

Just one quick clarification -- by "video deposition" did you mean taking a video of the deposition, or did you mean conducting the deposition via video conference? Thanks.

Best,  
Emma

 DENTONS

Emma F. Hand

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**From:** Susan Stevens Miller [<mailto:smiller@earthjustice.org>]

**Sent:** Tuesday, November 28, 2017 11:09 AM

**To:** Hand, Emma F.; 'Michael Brown'

**Cc:** Robert Wiygul; Josh Smith; Monique Harden; Vince, Clinton A.; Reed, Jr., Presley R.; Beatmann, Jay; Basile J. Uddo ([buddo@earthlink.net](mailto:buddo@earthlink.net)); Morrissey, Jennifer A.; Walter J. Wilkerson ([wwilkerson@wilkersonplc.com](mailto:wwilkerson@wilkersonplc.com))

**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Hi Emma:

Thank you for responding so quickly.

We would like to do a video deposition of the three witnesses at Earthjustice's Denver Office. The address is 633 17th Street in Denver, which I believe is less than ½ a mile from Legend's general Counsel's office.

We envision starting at 10 am on the 5<sup>th</sup>, but would reserve the 6<sup>th</sup> in case we are unable to finish in one day. We should be able to let you know by the end of today which witnesses we definitely want to depose.

Please let me know if you have any questions or if this arrangement raises any concerns.

## EXHIBIT A

Susan Stevens Miller  
Earthjustice  
1625 Massachusetts Avenue, NW, Suite 702  
Washington, DC 20036-2212

---

**From:** Hand, Emma F. [<mailto:emma.hand@dentons.com>]  
**Sent:** Monday, November 27, 2017 4:32 PM  
**To:** 'Michael Brown'  
**Cc:** Susan Stevens Miller; Robert Wiygul; Josh Smith; Monique Harden; Vince, Clinton A.; Reed, Jr., Presley R.; Beatmann, Jay; Basile J. Uddo ([buddo@earthlink.net](mailto:buddo@earthlink.net)); Morrissey, Jennifer A.; Walter J. Wilkerson ([wwilkerson@wilkersonplc.com](mailto:wwilkerson@wilkersonplc.com))  
**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Hi Mike,

The Advisor witnesses Movish, Rogers and Vumbaco can be available to be deposed in Denver on 11/29, 12/5, or 12/6 at the law offices of Legend's general counsel:

Michael J. Dommermuth, Esq.  
Toni Fox, Assistant  
Fairfield & Woods, PC  
1801 California Street, Suite 2600  
Denver, CO 80202

Please let us know your preferred dates at your earliest convenience, and for the sake of making sure the appropriate arrangements are made, it would be helpful to know (1) whether you have settled on which witnesses you want to depose; (2) the number of people you plan to have in attendance in person; and (3) how much time should be scheduled (particularly, whether one day suffices or whether two days are needed).

On the topic of a conference call regarding the pre-hearing filings this week is a little jammed up for us and I haven't heard anything from ENO regarding their availability yet, but I could be on any time between 1:30 and 4:30 tomorrow afternoon or most of the day Friday. I could possibly shift a few things around on Thursday as well, if neither of those times works.

Best,  
Emma



Emma F. Hand

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Bio | Website

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**From:** Michael Brown [<mailto:Michael@wwglaw.com>]

**Sent:** Wednesday, November 22, 2017 4:30 PM

**To:** Hand, Emma F.

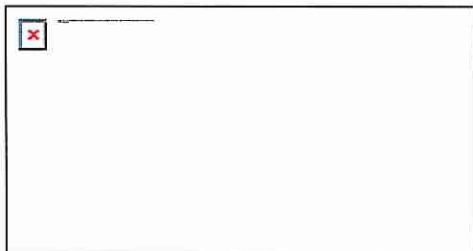
**Cc:** Susan Stevens Miller; Robert Wiygul; Josh Smith; Monique Harden; Vince, Clinton A.; Reed, Jr., Presley R.; Beatmann, Jay; Basile J. Uddo ([buddo@earthlink.net](mailto:buddo@earthlink.net)); Morrissey, Jennifer A.; Walter J. Wilkerson ([wwilkerson@wilkersonplc.com](mailto:wwilkerson@wilkersonplc.com))

**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Hi Emma,

I'm available next week and somewhat flexible on date and time. Please let us know when you would like to speak. To be clear, I do not want to shortcircuit consideration of your motion to strike or any party's opportunity to cross a witness. Our concern is not wasting the ALJ's and parties' limited time unnecessarily in introducing evidence that we can all agree is admissible and authentic and part of the record of this proceeding. Moreover, I could have misunderstood, but I took ALJ Gulin to indicate on our last call that we would not be able to use cross as a vehicle to admit evidence.

Mike



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---

**From:** Hand, Emma F. [<mailto:emma.hand@dentons.com>]

**Sent:** Wednesday, November 22, 2017 3:35 PM

**To:** Michael Brown <[Michael@wwglaw.com](mailto:Michael@wwglaw.com)>

**Cc:** Susan Stevens Miller <[smiller@earthjustice.org](mailto:smiller@earthjustice.org)>; Robert Wiygul <[Robert@wwglaw.com](mailto:Robert@wwglaw.com)>; Josh Smith <[joshua.smith@sierraclub.org](mailto:joshua.smith@sierraclub.org)>; Monique Harden <[MoniqueCovHarden@gmail.com](mailto:MoniqueCovHarden@gmail.com)>; Vince, Clinton A. <[clinton.vince@dentons.com](mailto:clinton.vince@dentons.com)>; Reed, Jr., Presley R. <[presley.reedjr@dentons.com](mailto:presley.reedjr@dentons.com)>; Beatmann, Jay <[jay.beatmann@dentons.com](mailto:jay.beatmann@dentons.com)>; Basile J. Uddo ([buddo@earthlink.net](mailto:buddo@earthlink.net)) <[buddo@earthlink.net](mailto:buddo@earthlink.net)>; Morrissey, Jennifer A. <[jennifer.morrissey@dentons.com](mailto:jennifer.morrissey@dentons.com)>; Walter J. Wilkerson ([wwilkerson@wilkersonplc.com](mailto:wwilkerson@wilkersonplc.com)) <[wwilkerson@wilkersonplc.com](mailto:wwilkerson@wilkersonplc.com)>

**Subject:** RE: ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Hi Michael,

Thanks for your email, I have an inquiry out to Messrs. Movish, Rogers, and Vumbaco and will let you know as soon as I hear back from them regarding their availability.

We are working on a draft joint statement of issues and will be circulating something to the parties for discussion soon. What is your availability next week for a call? We will need to take a more targeted approach to the

## EXHIBIT A

administrative record. As you know, one section of testimony is currently subject to a motion to strike, and testimony and discovery should be authenticated at hearing and admitted to the record in the usual manner, and subject to any potential objections by the various parties. Also, as a general rule, Council resolutions don't go into the record any more than you would enter caselaw into the evidentiary record. Resolutions are legal decisions that can be cited to by the parties without the need to put them into the record. It may be that once we all talk, the parties can agree to stipulate certain testimonies, exhibits and discovery into the record, particularly where no one wants to cross-examine a certain witness and such a stipulation would prevent the need to have that witness fly to New Orleans for the hearing, but we can discuss that when we have a call.

Have a great Thanksgiving!

Best,  
Emma



Emma F. Hand

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**From:** Michael Brown [<mailto:Michael@wwglaw.com>]  
**Sent:** Wednesday, November 22, 2017 3:21 PM  
**To:** Hand, Emma F.  
**Cc:** Susan Stevens Miller; Robert Wiygul; Josh Smith; Monique Harden  
**Subject:** ENO NOPS: Depos of ADV witnesses and Pre-Hearing Filings

Hi Emma,

We'd like to request the availability of Mr. Movish, Mr. Rogers, and Mr. Vumbacco for pre-hearing depositions. We may not need to depose Mr. Vumbacco, but would like to nail down available times in case we decide that is necessary. We are open to doing the depositions either in Denver or New Orleans. One possibility is that we are already holding open December 7 and 8 for depositions of several of ENO's witnesses in New Orleans, and it may make sense to combine those with the Advisors' witnesses.

Please let us know what works for you.

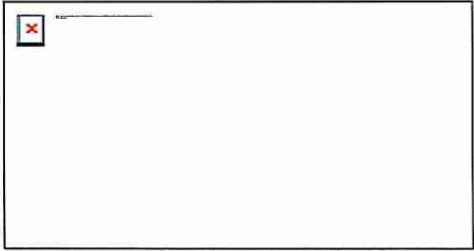
On a second topic, we'd also like to begin discussions on the items that ALJ Gulin has asked us to file prior to the hearing. In particular, I think it would be useful for us all to be on the same page about the administrative record. Our sense is that we should keep this simple and just include all the testimonies, exhibits to testimonies, and discovery responses, as well as pertinent City Council resolutions.

Please let us know if you'd like to set up a time to speak about these issues with ENO and the other intervenors' counsel.

## EXHIBIT A

Happy Thanksgiving

Mike



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