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December 14, 2017

**By Hand Delivery**

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

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

Dear Ms. Johnson:

Entergy New Orleans, LLC (“ENO”) hereby submits for your further handling and filing, an original and three copies of ENO’s Memorandum in Opposition to Joint Intervenor’s Motion to Strike the Supplemental Direct Testimony of Jonathan E. Long. Please file an original and two copies into the record in the above referenced matter, and return a date-stamped copy to our courier.

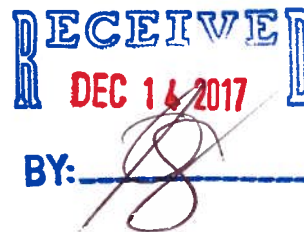
Should you have any questions regarding the above matter, please don’t hesitate to contact me. Thank you for your assistance with this matter.

Sincerely,

Brian L. Guillot

Enclosures

cc: Official Service List (via electronic mail)



DEC 14 1 04

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

**SUPPLEMENTAL AND AMENDING  
APPLICATION OF ENTERGY NEW  
ORLEANS, INC. FOR APPROVAL TO  
CONSTRUCT NEW ORLEANS POWER  
STATION AND REQUEST FOR COST  
RECOVERY AND TIMELY RELIEF**

**DOCKET NO. UD-16-02**

**MEMORANDUM OF ENTERGY NEW ORLEANS, LLC,  
IN OPPOSITION TO JOINT INTERVENORS' MOTION TO STRIKE  
THE SUPPLEMENTAL DIRECT TESTIMONY OF JONATHAN E. LONG**

Three days before the evidentiary hearing in this matter, the Alliance for Affordable Energy, Deep South Center for Environmental Justice, 350-New Orleans, and Sierra Club (collectively, the “Joint Intervenors”) have moved to strike testimony that was filed almost *thirteen months* ago. Apart from this unreasonable delay, the Joint Intervenors’ motion rests on the false premise that Entergy New Orleans, LLC<sup>1</sup> (“ENO” or the “Company”) has put forth Jonathan E. Long as an expert in the fields of “air quality health impacts, groundwater subsidence impacts and flooding issues.”<sup>2</sup> As is clear from Mr. Long’s testimony, his expertise is in developing and constructing power plants, and it is perfectly appropriate for him to engage, work with, and rely on professionals in other disciplines to address issues that arise in the course of developing a generation project. Mr. Long’s November 2016 Supplemental Direct Testimony was filed in direct response to Council Resolution No. R-16-506, and it provides information requested by the New Orleans City Council (“Council”) itself that is probative, relevant, and

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<sup>1</sup> Effective December 1, 2017, Entergy New Orleans, Inc. underwent a Council-approved corporate restructuring to become a limited liability company. Accordingly, the utility formerly operating as Entergy New Orleans, Inc. is now operating as Entergy New Orleans, LLC.

<sup>2</sup> See Mem. in Supp. of Joint Intervenors’ Mot. to Strike, at 4.

helpful to the Council's consideration of ENO's Application in this docket. For these and the other reasons discussed herein, the motion to strike is baseless and should be denied.

## **I. BACKGROUND**

Mr. Long has an educational background in electrical engineering and business administration and over thirty (30) years of experience with the development, construction, and operation of power generation facilities.<sup>3</sup> As the Vice President, Project Management for Entergy Services, Inc. ("ESI"),<sup>4</sup> Mr. Long was responsible for preparing the New Orleans Power Station ("NOPS") project, which included coordinating the project team's activities and securing all permits and contracts necessary to construct NOPS.<sup>5</sup> Consistent with his personal knowledge of and responsibilities for the project, Mr. Long filed Direct Testimony in support of the Company's June 2016 Application for approval to construct NOPS. He provided in that testimony an overview of the project; an explanation of how the project's cost estimate was developed; the project cost estimate and schedule; a description of the project's management approach and the process for selecting the engineering, procurement, and construction contractor; a discussion of project risk mitigation measures; and discussions of compliance with air quality and water quality regulations, expected groundwater usage, and the status of required permits/approvals for NOPS.<sup>6</sup>

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<sup>3</sup> Direct Testimony of Jonathan E. Long at 1.

<sup>4</sup> ESI is an affiliate of the Entergy Operating Companies ("EOCs") and provides engineering, planning, accounting, technical, and regulatory-support services to each of the EOCs. The five current EOCs are Entergy Arkansas, Inc. ("EAI"), Entergy Louisiana, LLC ("ELL"), Entergy Mississippi, Inc. ("EMI"), ENO, and Entergy Texas, Inc. ("ETI").

<sup>5</sup> Direct Testimony of Jonathan E. Long at 1.

<sup>6</sup> *See id.* at 4-42.

On November 3, 2016, the Council issued Resolution No. R-16-506, which required ENO to make a supplemental filing, including supporting testimony, on or before November 18, 2016, related to several issues. Those issues included, among other things, “groundwater withdrawal and subsidence at [ENO’s] Michoud site and surrounding area(s), [and] air quality effects of the proposed NOPS.”<sup>7</sup> Although the Joint Intervenors call ENO to task for not filing within the fifteen days permitted in the Resolution “direct testimonies from experts on air quality, flooding and subsidence,”<sup>8</sup> the Council did not require direct expert testimony in each of those fields. It ordered, instead, a supplemental filing with supporting testimony.<sup>9</sup> The “Technical Report – Evaluation of Groundwater Withdrawal and Air Quality,” prepared for ENO by C-K Associates, LLC and Losonsky & Associates, Inc. to address public concerns regarding subsidence and air quality associated with NOPS, was precisely the sort of supplemental information that the Council had requested.<sup>10</sup> Furthermore, because Mr. Long addressed in his Direct Testimony groundwater usage, permitting requirements associated with air emissions, and selection of emission control technology for NOPS, he was the appropriate witness to present the Report in supplemental testimony and summarize its analyses and conclusions.<sup>11</sup> Throughout his Supplemental Direct Testimony, Mr. Long distinguishes between the conclusions of the Report and his own conclusions and explains how the Report informed his conclusions *as a project*

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<sup>7</sup> Resolution No. R-16-506 at 9.

<sup>8</sup> Mem. in Supp. of Joint Intervenors’ Mot. to Strike, at 5.

<sup>9</sup> See Resolution No. R-16-506 at 9.

<sup>10</sup> See “Technical Report – Evaluation of Groundwater Withdrawal and Air Quality,” (the “C-K Technical Report” or the “Report”), attached as Exhibit JEL-6 to Mr. Long’s Supplemental Direct Testimony, at 1.

<sup>11</sup> See Mr. Long’s Supplemental Direct Testimony at 1. As they expressly note, the Joint Intervenors’ motion to strike does not seek to “disturb” Mr. Long’s Direct Testimony. See Mem. in Supp. of Joint Intervenors’ Mot. to Strike, at 4 n.5.

*developer and manager* that concerns raised in connection with NOPS about groundwater withdrawal, subsidence, and negative health impacts from air emissions are unfounded.<sup>12</sup>

As further required by Resolution No. R-16-506, Mr. Long addresses in his Supplemental Direct Testimony concerns expressed about a potential risk for flooding at the proposed site for NOPS, which site had been described in Mr. Long's Direct Testimony and depicted in Exhibits JEL-1 and JEL-2. In his Supplemental Direct Testimony, Mr. Long describes the efforts of the NOPS project team that he leads to determine the proper elevation required for the project to mitigate the risk of NOPS being impacted by the type of flooding that was experienced during Hurricane Katrina.<sup>13</sup> Mr. Long also provides detailed support for his conclusion – again, *as a project developer and manager* – that locating NOPS at the proposed site will not create any undue risk of flooding, including a discussion of protective measures put in place near the property after Hurricane Katrina.<sup>14</sup> Finally, Mr. Long notes that the Company has taken steps to purchase insurance to help protect ENO's customers from significant financial impacts related to possible flood impacts in Orleans Parish.<sup>15</sup>

## II. LAW AND ARGUMENT

### A. Standards for Admissibility

New Orleans City Code (“Code”) governs the admissibility of evidence in regulatory proceedings before the Council. Section 158-476 of the Code states that:

Any evidence which would be admissible under the general statutes of the state, or under the rules of evidence governing proceedings in matters not involving a

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<sup>12</sup> See, e.g., Mr. Long's Supplemental Direct Testimony at 12–13, 16.

<sup>13</sup> See *id.* at 16-18.

<sup>14</sup> See *id.* at 18–22.

<sup>15</sup> See *id.* at 22.

trial by jury in the courts of the state, shall be admissible before the council or its agents in matters governed by this article. Other evidence may be admitted by the council or its presiding agents if it is at all probative and relevant provided the substantive rights of all parties are protected. The 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.

In applying an identical rule of the Louisiana Public Service Commission, the Supreme Court of Louisiana acknowledged that the rule permits introduction of hearsay in some circumstances and that administrative bodies are “usually not bound by the technical rules of evidence.” *La. Household Goods Carriers v. La. Pub. Serv. Comm’n.*, 1999-3184, p. 9 (La. 6/30/00), 762 So. 2d 1081, 1089. The Court concluded that regulatory bodies have “broad discretion to admit evidence that would not be admissible in a judicial proceeding,” as long as that evidence is probative and relevant, or in other words, competent. *Id.* Competent evidence “must have ‘some degree of reliability and trustworthiness, notwithstanding that the evidence might fall outside the technical rules for admissibility.’” *Id.* (quoting *Chaisson v. Cajun Bag & Supply Co.*, 97-1225 p. 10 (La. 3/4/98), 708 So. 2d 375, 378).

Louisiana Code of Evidence Article 702 governs the admissibility of expert testimony in Louisiana courts and focuses on whether the testimony will be helpful to the trier of fact:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

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

La. Code Evid. art. 702. An expert must be qualified based on one of the factors provided by this rule: “knowledge, skill, experience, training, or education.” *See Godchaux v. Peerless Ins. Co.*, 2013-1083, p. 6 (La. App. 3 Cir. 6/4/14), 104 So. 3d 817, 823. “The use of the word ‘or’ in the article implies that an expert need only have one of these traits to be qualified.” *Id.*

The Louisiana Code of Evidence also makes clear that an expert may rely, in appropriate circumstances, on the conclusions of other professionals that the expert customarily relies on in the course of performing his own work or analysis:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

La. Code Evid. art. 703. The comments to Article 703 note expressly that “[l]anguage in some prior Louisiana cases indicating that expert opinion testimony could not properly be based upon the opinions of other experts is rejected. Instead the question under this Article is whether experts in the particular field, in forming their opinions or inferences, would reasonably rely upon the opinions of others.” *Id.*, Comments (a) (citations omitted). Accordingly, the facts or data underlying the expert witness’s opinion may be “under designated circumstances, facts or data not admissible in evidence (because, for example, their source is inadmissible hearsay), if they are of a kind reasonably relied upon by experts in the particular field in arriving at their opinions or inference.” *Id.*, Comments (d). In short, “[a]n expert may provide testimony based on information obtained from others, and the character of the evidence upon which the expert bases an opinion affects only the weight to be afforded the expert’s conclusion.” *Lafayette City-Parish Consol. Gov’t v. Pers.*, 2012-0307, p. 8 (La. 10/16/12), 100 So. 3d 293, 298. In deciding

whether an expert's testimony may be admitted consistent with Article 703, the court "should accord substantial deference to a qualified expert in the selection of data upon which that expert chooses to base his opinion." *Zimko v. Am. Cyanamid*, 2003-0658, p. 37 (La. App. 4 Cir. 6/8/05), 905 So. 2d 465, 491.

**B. The entirety of Mr. Long's Supplement Direct Testimony is admissible.**

In this case, the Joint Intervenors' motion rests on the incorrect contention that ENO is offering Mr. Long as an expert in fields such as "air quality health impacts, groundwater subsidence impacts and flooding issues." But, as he did in his Direct Testimony, Mr. Long made clear in his deposition that he has expertise and experience relative to NOPS and its environmental issues in the areas of project development and management:

My expertise lies in the development of power generation facilities and the management of projects to engineer, procure and construct those facilities. In all of those projects, we seek to obtain the necessary environmental permits to allow those projects to be constructed and operated, and that's my expertise, is obtaining the permits.<sup>16</sup>

Mr. Long has been equally clear that he relies on information, opinions, and analysis of others in the course of obtaining permits and addressing issues and concerns for a project like NOPS.<sup>17</sup> In the course of discussing the C-K Technical Report in his Supplemental Direct Testimony, Mr.

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<sup>16</sup> See Excerpts of the Deposition of Jonathan Long (12/8/17) (hereinafter, the "Long Dep."), attached to Joint Intervenors' Motion to Strike as Appendix E, at 11, lines 14–22.

<sup>17</sup> See, e.g., Mr. Long's Supplemental Direct Testimony at 2, 17 (discussing consultations with C-K Associates, LLC, Lososky & Associates, Inc., Chicago Bridge & Iron, Inc., and Sargent & Lundy); see also Long Dep. at 11, lines 14–22; 41, lines 22–25; and 42, lines 1–3 (referring to the consultants that ENO uses to obtain environmental permits). Mr. Long discusses at length in his Supplemental Direct Testimony the qualifications of the authors of the C-K Technical Report, noting that the authors from C-K Associates have a combined 102 years of experience in environmental issues and that Dr. George Lososky is a recognized expert in groundwater extraction with a detailed understanding of hydrogeological and geotechnical processes that occur in the greater New Orleans area. See Mr. Long's Supplemental Direct Testimony at 3–4.



Long is very careful to distinguish between his own conclusions and those of the Report. The Joint Intervenors do not contend that Mr. Long's discussion of the Report and its finding is inaccurate in any way, nor do they contend that the Report itself is inadmissible under Section 158-476. It is clear on the face of the challenged testimony that Mr. Long is not presenting himself as an expert in the fields of air emissions, groundwater, and flooding.

Consistent with the requirements of Council Resolution No. R-16-506, Mr. Long provides in his Supplemental Direct Testimony the NOPS project team's response to the concerns raised regarding groundwater withdrawal and air quality effects of NOPS. Not only was it imperative for Mr. Long to provide this information to the Council, but it is well within his undisputed expertise as a project manager to provide and explain the response. Even without the benefit of the liberal construction required under Section 158-476, Mr. Long's Supplemental Direct Testimony is admissible under Articles 702 and 703.

For similar reasons, Mr. Long's opinions in his Supplemental Direct Testimony concerning flooding risk at the NOPS project site are likewise admissible. Indeed, even if Mr. Long did not meet the standard for providing opinion testimony under Article 702, his opinions would still be admissible under Louisiana Code of Evidence article 701. That article allows witnesses to testify in the form of opinions or inferences which are "(1) [r]ationally based on the perception of the witness; and (2) [h]elpful to a clear understanding of his testimony or the determination of a fact in issue." La. Code Evid. art. 701.<sup>18</sup> Mr. Long's Supplemental Direct Testimony regarding flood risk mitigation at the Michoud site discusses the steps taken by the

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<sup>18</sup> Courts applying Article 701 have held that lay opinion testimony is admissible when the witness possess "suitable information, experience and training in the field" that is the subject of the testimony and the witness also possesses "personal knowledge of the facts and circumstances" of the case. *Griffin v. Tenneco Oil Co.*, 625 So. 2d 1090, 1094-95 (La. App. 4 Cir. 1993).

project team *led by Mr. Long* to mitigate the risk of NOPS being impacted by the type of flooding that was experienced during Hurricane Katrina.<sup>19</sup> Clearly, this testimony is rationally based on Mr. Long's perception, and it is helpful to the determination of a fact in issue in this matter, namely, whether NOPS would be unreasonably vulnerable to flooding.

Furthermore, the Joint Intervenors wrongly categorize all of Mr. Long's Supplemental Direct Testimony as opinion. Throughout the section of his testimony on flood risk mitigation, Mr. Long testifies to relevant facts regarding the concrete actions he and his team took to mitigate the risk of flooding.<sup>20</sup> This factual testimony is clearly admissible under Louisiana Code of Evidence articles 402 and 602.

Finally, and briefly, the cases that the Joint Intervenors cite in their memorandum do not support striking Mr. Long's Supplemental Direct Testimony:

- In *Cholakyan v. Mercedes-Benz USA, LLC*, the plaintiff's expert apparently presented as his own independent analysis the conclusions of another expert. 281 F.R.D. 534, 545–546 (C.D. Cal 2012). Here, in stark contrast, Mr. Long explains how the conclusions of other professionals have informed his work in his own fields of expertise, developing and constructing power plants.
- In *JRL Enterprises, Inc. v. Procorp Associates, Inc.*, the court faulted an accounting expert for not showing that a reasonable *accountant* would rely on the figures provided by his client without independent analysis. No. 01-2893, 2003 WL 21284020, at \*8 (E.D. La. June 3, 2003). In this matter, Mr. Long is not seeking to testify as an expert in air emissions, groundwater withdrawal, and flooding, and the Joint Intervenors do not and cannot suggest that Mr. Long was unreasonable in consulting others who are experts in those areas.<sup>21</sup>
- Similarly, *American Key Corp. v. Cole National Corp.*, involved testimony by an economist in an antitrust case that failed to show that his methodology, which included reliance on unverified facts, was reliable. 762 F.2d 1569, 1580 (11th Cir. 1985). In this case, the Joint Intervenors do not dispute that a reasonable

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<sup>19</sup> Mr. Long's Supplemental Direct Testimony at 17.

<sup>20</sup> *See id.* at 16–22.

<sup>21</sup> *See Long Dep.* at 11, lines 14–22; 41, lines 22–25; and 42, lines 1–3.

project developer should rely on other professionals like C-K Associates and Dr. Losonsky.

- Finally, the Joint Intervenors cite to *Lightfoot v. Hartford Fire Insurance Co.*, 07-4833, 2011 WL 39010 (E.D. La. Jan. 4, 2011), but they neglect to further advise that the court granted a motion for reconsideration in that case, overturning the decision and holding that the expert's opinions were admissible under the Federal Rules of Evidence, given that he had provided a reliable basis for his opinions. See *Lightfoot v. Hartford Fire Ins. Co.*, 07-4833, 2011 WL 13208962, at \*2, 4 (E.D. La. Mar. 14, 2011). In this matter, Mr. Long has set forth in detail the bases for his conclusions, including appropriate reliance on subject matter experts to assist in the development of NOPS.

**C. The Joint Intervenors' request to strike portions of the Rebuttal Testimonies of Mr. Charles Long, Dr. Losonsky, and Ms. Higgins should also be denied.**

For the reasons discussed above, there is no reason to strike the Supplemental Direct Testimony of Mr. Long or that of the witnesses who cite to it. Again, Mr. Long's testimony is not limited to opinions and contains factual information and conclusions from project management that other witnesses are entitled to mention in this regulatory proceeding. Moreover, experts such as Dr. George Losonsky and Bliss Higgins have appropriately discussed the C-K Technical Report (attached as Exhibit JEL-6 to Mr. Long's Supplemental Direct Testimony) in their testimonies, and the Joint Intervenors have not even attempted to show that the testimony by those witnesses is inadmissible under Section 158-476 or Articles 702 and 703 of the Louisiana Code of Evidence.

**III. CONCLUSION**

Mr. Long's Supplemental Direct Testimony was filed in full compliance with Council Resolution No. R-16-506. Mr. Long's expertise in the development, construction, and operation of power generation facilities has not and cannot be reasonably questioned, and he addresses in his testimony from a project development and management perspective the steps taken by the

Company to review and address concerns that have been raised during the development of NOPS. Under any interpretation of New Orleans City Code Section 158-476, Mr. Long's Supplemental Direct Testimony is probative, relevant, helpful to the Council's consideration of ENO's Application, and admissible. Mr. Long will be subject to cross-examination on his Supplemental Direct Testimony, and the Joint Intervenors' motion to strike should be denied.

Respectfully submitted:

BY:



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CERTIFICATE OF SERVICE  
CNO Docket No. UD-16-02

I, the undersigned counsel, hereby certify that a copy of the above and foregoing has been served on the persons listed below by facsimile, by hand delivery, by electronic mail, or by depositing a copy of same with the United States Postal Service, postage prepaid, addressed as follows:

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New Orleans, Louisiana, this 14<sup>th</sup> day of December, 2017.

  
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