



Mailing address: 3157 Gentilly Blvd., #145, New Orleans, LA 70122

Physical address: 9801 Lake Forest Blvd., New Orleans, LA 70127

504-272-0956 phone | 504-372-3473 fax | www.dscej.org

December 3, 2018

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

*Re: Resolution R-18-474, Council of City of New Orleans
Independent Investigation of Entergy New Orleans (“ENO”)
Relative to Allegations of the Use of Paid Actors in Council
Public Meetings in Connection with Docket No. UD-16-02 and
Resolution No. R-17-426; Resolution Initiating a Show Cause
Proceeding Regarding Imposition of Sanctions Against ENO
Based upon Report of Independent Investigators Filed with the
Council on October 29, 2018*

Dear Ms. Johnson:

Pursuant to Council Resolution R-18-474, please find enclosed the original and three copies of the *Comment by the Deep South Center for Environmental Justice* in the above-referenced matter. Please file the original and two copies of this document into the record in the above-referenced matter, and return a date-stamped copy to our courier.

As the Clerk of Council’s office was closed on Friday, November 30, 2018, this document is being filed today on Monday, December 3, 2018.

Thank you for your assistance.

Sincerely,

Monique Harden, Attorney
Assistant Director of Law & Policy



Mailing address: 3157 Gentilly Blvd., #145, New Orleans, LA 70122
Physical address: 9801 Lake Forest Blvd., New Orleans, LA 70127
504-272-0956 phone | 504-372-3473 fax | www.dscej.org

Comment by the Deep South Center for Environmental Justice

Regarding Council Resolution 18-474: Show Cause Proceeding on Imposition of Sanctions against Entergy New Orleans Based upon Report of Independent Investigators Filed with the Council on October 29, 2018

The Deep South Center for Environmental Justice (“DSCEJ”) is dedicated to improving the lives of children and families harmed by pollution and vulnerable to climate change in the Gulf Coast Region through research, education, community and student engagement for policy change, as well as health and safety training for workforce development in environmental careers. In carrying out this mission, the DSCEJ has undertaken the work of rigorously researching the proposed Entergy gas plant and educating New Orleanians, particularly the predominantly African American and Vietnamese American residents of New Orleans East who live in close geographic proximity to the gas plant site, on this research. To this end, the DSCEJ notified residents of opportunities to attend and participate in public hearings concerning the proposed gas plant that were convened by the New Orleans City Council.

The DSCEJ was an intervenor in the Council’s proceeding on Entergy’s gas plant application (UD-16-02). In this proceeding, the DSCEJ actively engaged in public hearings and public meetings to present our research and findings on the need for the City Council to take seriously the racially disproportionate pollution burdens that would result from the operation of the proposed gas plant, the impact of groundwater withdrawal for the gas plant accelerating land subsidence that can impair a nearby flood wall, the fact that there was no justification for the gas plant based on capacity need, and the shifting rationale offered by Entergy to support its second application with the claim of a reliability need.

To our shock, we have since learned that Entergy targeted the DSCEJ as part of its “war” strategy. See Michael Stein and Charles Maldonado, *How Entergy Spent \$1.3 Million to Polish Its Image, Script Support and Monitor Opposition to Its New Power Plant*, THE LENS, July 12, 2018 (reporting that documents Entergy turned over to the City Council show that Deep South Center for Environmental Justice was a “target”). See also Sher, Garner, [Entergy New Orleans, LLC Investigation Final Report](#), October 29, 2018 (detailing interviews with Entergy personnel and their internal communications in which Entergy saw itself at “war” with groups opposed to the

proposed gas plant, hereinafter “Investigation Report”). The DSCEJ submits the following comments from the insights gained as an intervenor in the Council proceeding on the proposed Entergy gas plant (UD 16-02) and as a petitioner in two lawsuits challenging the City Council for failure to enforce the Open Meetings Law (Orleans Parish District Court, Case No. 18-3843) and its decision to approve the gas plant in violation of, among other things, the constitutional due process rights of New Orleanians to a fair and open proceeding by a neutral decision-maker (Orleans Parish District Court, Case No. 18-3471).

1. The Council should rescind the decision to approve the Entergy gas plant application in light of Entergy’s misconduct.

The Investigation Report demonstrates that the City Council’s decision to approve Entergy gas plant application was made in a proceeding that was tainted by Entergy’s misconduct in the use of paid actors to pose as concerned residents in support of the proposed gas plant. This report also details the formation and implementation by Entergy to carry out a “war” against New Orleanians who formed their own ideas about the gas plant and expressed them in the Council’s proceeding. Investigation Report, p. 3.

The DSCEJ encourages the City Council to rescind the decision to approve the proposed Entergy gas plant as it was rendered in a proceeding that is tainted by Entergy’s misconduct and decision to go to “war” against New Orleanians. The Council should reconsider the decision in an open and fair proceeding that provides meaningful and effective opportunities for public participation.

Furthermore, the DSCEJ along with organizations and individuals residing in New Orleans have brought forward facts showing additional grounds for rescinding the decision to approve the gas plant. These grounds include facts showing that, in addition to violation of the Open Meetings Law, the Council’s decision was made in violation of constitutional due process rights, is arbitrary and capricious, and contravenes local ordinances. *See* Petitioners’ Reply Brief, *Alliance for Affordable Energy et al v. Council of the City of New Orleans* (CDC 18-3471), attached.

2. Entergy’s misconduct had a disruptive effect on public hearings that interfered with residents exercising their constitutional rights.

The DSCEJ disagrees with the notion put forward in the Investigation Report, p. 50, that “[t]here are no specific Council rules that prohibit the practice” of paying people to attend or speak at a public hearing. This unreasonably narrows the focus and puts a blindspot on the laws governing public meetings and hearings. The Council has a legal responsibility to ensure that its public hearings are fair and open for people to attend, observe, and comment in accordance with the Open Meetings Law and the Louisiana

State Constitution. Entergy paid people to attend, in this case, take up seats to cause people who authentically wanted to exercise their constitutional rights being denied access to the hearing room. Entergy provided orange t-shirts with a pro-gas plant message and paid people to wear them at the public hearings. Additionally, Entergy developed scripts and paid people to speak from them at the public hearings. Each action impermissibly impeded and/or deprived people in exercising their constitutional rights that undergird our democracy. Entergy's misconduct was first reported by Mr. Danil Faust to the Council Utility Committee at the February 21, 2018 public hearing; however, Councilmembers took no action. Investigation Report, p. 25.

3. The proposed financial penalty of \$5 million as set forth in Council Resolution R-18-474 is insufficient for Entergy's misconduct and premature in light of Entergy's ongoing cover-up.

It is clear from interviews with Entergy personnel in the Investigation Report, Entergy has not informed employees of the reasons for the departure of then CEO Charles Rice. Therefore, the company has taken no action to internalize correction of the misconduct. This reinforces the public denials put forward by Entergy concerning its responsibility for the paid actor scandal. The City Council has work to do to force course correction at Entergy as a regulated entity. However, this work is undermined by the proposed penalty set forth in Resolution R-18474.

Publicly accessible reports indicate that Entergy spent approximately \$10 million in charitable donations. Therefore, the proposal in Resolution R-18-474 to impose a \$5 million penalty is clearly insufficient and would not sanction Entergy for its misconduct. Additionally, the resolution sets no terms for the penalty and does not specify the timeline for payment. This would allow Entergy to make payments over an undefined period of time that could last years.

The proposed penalty is also premature as Entergy has refused to turn over some 70 documents to the investigation. Investigation Report, p. 8. This means that Entergy has expanded its misconduct of paying people to show sham support for the gas plant to an ongoing cover-up of its deeds in relation to its use of paid actors and other payments to produce a public display of support to influence the City Council. The Council must first extend and further empower the investigation to obtain all of the documents and end Entergy's ongoing cover-up before establishing an appropriate sanction.

4. The Council should examine the impacts of Entergy's war on New Orleanians and ensure reparations are made.

The Council should conduct a process to examine Entergy's war on New Orleanians in order to ensure reparations are made. Aspects of this war include reports of retaliation against groups that opposed the gas plant. Investigation Report, p. 25. Michael Stein

and Charles Maldonado, *How Entergy Spent \$1.3 Million to Polish Its Image, Script Support and Monitor Opposition to Its New Power Plant*, THE LENS, July 12, 2018.