

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

**IN RE: JOINT APPLICATION OF DELTA
STATES UTILITIES NO, LLC AND ENTERGY
NEW ORLEANS, LLC AUTHORIZING DELTA
STATES UTILITIES NO, LLC TO OPERATE AS A
JURISDICTIONAL NATURAL GAS LOCAL
DISTRIBUTION COMPANY**

)
)
)
)
)
)

DOCKET NO. UD-24-01

ORDER

On May 31, 2024, the Alliance for Affordable Energy (“the Alliance”) moved to compel production of “HSPM-CS Materials”¹ and for “Leave to File Supplemental Direct Testimony” in the above captioned docket.

The Alliance asserts that they, and other intervenors in this docket, have been “prejudiced by the practice of designating certain discovery materials as “HSPM-CS”, a level of restriction above the Highly Sensitive Protected Materials (“HSPM”) designation which has no basis in the New Orleans City Council’s (“the Council”) Resolution and Order Adopting New Official

¹ The Alliance presumably refers to information which, on a few occasions, have been designated by Entergy New Orleans, LLC (“ENO”) and Delta States Utilities, LLC (“DSU”) as “Highly Sensitive *Commercial Information*” and apparently provided *only* to the Council Advisors (“Advisors”). *See, e.g.*, DSU response to Advisors’ data requests 3-16 and 3-21 (“The HSPM-CS attachments to 3-16 and 3-21 will be sent by separate email *only* to the Council Advisors, as these attachments contain highly sensitive protected information *that is commercially sensitive.*” *Id.* emphasis added).

Protective Order, R-07-432...” Motion of May 31, 2024 at p. 1. The Alliance further states, and requests relief, as follows:

[T]he Alliance moves to compel ENO and DSU to produce to all parties any and all HSPM-CS materials produced thus far in this docket no later than Friday, June 7, 2024. The Alliance agrees to remain bound by the existing confidentiality requirements as to all such HSPM-CS materials produced. The Alliance further moves for leave to file supplemental direct testimony no later than Friday, June 14.

Id. at 2.

The Hearing Officer has carefully reviewed Council Resolution and Order Adopting New Official Protective Order, R-07-432, September 20, 2007 (Attachment A), along with the totality of data responses from ENO and DSU. The Hearing Officer agrees that the Protective Order, *supra*, makes no mention of the “Highly Sensitive *Commercial Information*” designation, nor any similar designation that sanctions disclosure of such materials to *only* the Advisors, irrespective of whether other parties have executed a confidentiality agreement and limit access to only “Reviewing Representatives” in accordance with Attachment A, *supra*, at paragraph 4(a), at p. 2. Of course, it is possible that ENO and DSU are relying upon other Council resolutions, a supplemental confidentiality agreement executed in this Docket, or other authority to which the Hearing Officer is not privy.

Accordingly, as time is of the essence, the Hearing Officer establishes the following briefing schedule:

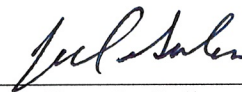
ENO and DSU shall file a Response to the Motion by June 5, 2024,

The Alliance, or any other party, may file a Reply to the Response by June 7, 2024.

In the event the Motion is granted the Hearing Officer may grant leave to the Alliance to file supplemental direct testimony, and if deemed necessary, modify the procedural schedule in accordance with Resolution R-24-49, adopted on February 1, 2024, by the Council of the City of New Orleans, Ordering paragraph 2, at p. 5.

However, the Hearing Officer is cognizant that Council Resolution R-07-432 (Attachment A) provides that a party asserting confidentiality (in this case, ENO and DSU), may seek “further protections” regarding certain materials, and pending a determination of whether additional protections shall be afforded, shall make such materials available for inspection *only to counsel for a “Reviewing Party.”* See Attachment A, *supra*, paragraph 4(c), at p. 2 (emphasis added). Accordingly, to avoid disruption of the existing procedural schedule, and because this matter appears quite amenable to amicable resolution, the Parties are strongly encouraged to promptly reach a resolution of this dispute without any further involvement of the Hearing Officer.

So ORDERED, this 3rd day of June, 2024.



Jeffrey S. Gulin
Hearing Officer