

**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

MEMORANDUM and ORDER

Procedural Posture

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 asserted that they, and other intervenors in this docket, have been prejudiced by the practice of Delta States Utilities NO, LLC (“DSU”) and Entergy New Orleans, LLC (“ENO”)² to designate certain discovery materials “as “HSPM-CS”, a level of restriction above the “HSPM” designation, which “has no basis in the New Orleans City Council’s (“the

¹ “HSPM-CS materials” is a designation used by DSU to refer to Highly Sensitive Protected Materials (“HSPM”) that it deems “Highly Sensitive *Commercial Information*” or HSPM that is “commercially sensitive” and is 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).

² Actually, it appears that, to date, only DSU has designated some discovery materials as HSPM-CS.

Council”) Resolution and Order Adopting New Official 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.

By Order of June 3, 2024, the Hearing Officer observed that Council Resolution and Order Adopting New Official Protective Order, R-07-432, September 20, 2007 (Attachment A), 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 said parties limit access to only “Reviewing Representatives” in accordance with Attachment A, *supra*, at paragraph 4(a), at p. 2. The Hearing Officer further noted that Attachment A, *supra*, provides that a party asserting confidentiality 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).

In that same Order of June 3, 2024, the Hearing Officer urged the parties to reach a resolution of the instant dispute without the need for further involvement by the Hearing Officer, but also established a briefing schedule for the filing of Responses in opposition to the Alliance’s Motion and for Replies to the Responses. Responses in Opposition to the Motion were duly filed

by DSU and ENO and the Alliance duly filed a Reply to said Opposition Responses. Despite discussions, the parties failed to reach a resolution of their discovery dispute.

Discussion and Order

Attachment A, *supra*, provides in pertinent part:

If the party asserting confidentiality believes that further protections should be afforded with respect to the manner in which, or the Reviewing Representatives to which, such materials are disclosed, such materials shall be made available for inspection by counsel for the Reviewing Party only, pending a determination of the manner in which, and the Reviewing Representatives to which, such materials will be disclosed pursuant to this Protective Order, which determination shall be made on a case by case basis, depending on the level of protection that may be necessary to protect the responding party, and any other person or entity to which the responding party owes a duty to protect the confidentiality of such materials, from any unreasonable risk of harm that may result from disclosure of such information. In the event that the parties are unable to agree on the manner in which, and the Reviewing Representatives to which, such materials will be disclosed, the party asserting confidentiality reserves its right to seek from the City Council, and from the courts as may be necessary, an order providing the level of protection for the Highly Sensitive Protected Materials that the party asserting confidentiality believes is required.

Attachment A, *supra*, paragraph 4(c)

While the syntax of this paragraph may necessitate more than one reading, the thrust is clear enough. If DSU believes that protections, beyond those afforded under the provisions protecting Highly Sensitive Protected Materials (HSPM), are necessary due to an unreasonable risk of harm, DSU is required to request such further protection from the Hearing Officer. Based upon its actions and unambiguous statements in their Opposition brief, DSU plainly seeks such further protection and the Hearing Officer infers the request has been made. The Hearing Officer continues to maintain that the parties should be able to resolve this dispute without any further involvement of the Hearing Officer, and without an actual *in camera* review before the Hearing Officer or a designate, and the parties are strongly urged to continue discussions to that end.

Accordingly, the parties hereto shall continue discussions directed toward establishing a procedure for disclosure of the discovery materials in a manner that provides adequate confidentiality protection to the discovery materials at issue. In the event no agreement is attained, then in that event, *by June 13, 2024*, DSU and the Alliance shall separately file a statement setting forth their proposed procedures. Proposals by the Advisors and any other party are also welcome. After June 13, 2024, the Hearing Officer shall issue a further ruling respecting this matter. For now, the current procedural schedule remains in effect.

Moreover, during the pendency of a determination by the Hearing Officer, DSU shall allow *inspection* (but *not* a provision of copies) of the contested materials by counsel of record for the Alliance. DSU must also continue to provide copies to the Counsel Advisors of *all* HSPM in accordance with paragraph 4(d) of Attachment A, *supra*.

So ORDERED, this 10rd day of June, 2024.



Jeffrey S. Gulin
Hearing Officer