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June 13, 2024

VIA ELECTRONIC MAIL (clerkofcouncil@nola.gov)

Clerk of Council
City Hall, Room 1E09
1300 Perdido Street
New Orleans, LA 70112

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 Distributions
Company, CNO Docket UD-24-01
KM File No. 33965-1

Dear Clerk of Council:

Enclosed please find for electronic filing, Delta States Utilities NO, LLC's Procedures for Disclosure of HSPM-CS in the referenced docket. As confirmed with your office, the requisite original and number of hard copies are not mandatory to formalize this filing in the docket.

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

Very truly yours,



Carrie R. Tournillon

CRT:tp
Enclosures

cc: Official Service List UD-24-01 (via electronic mail)

**BEFORE THE
NEW ORLEANS CITY COUNCIL**

**DELTA STATES UTILITIES NO, LLC AND)
ENTERGY NEW ORLEANS, LLC, EX PARTE)**

**DOCKET NO. UD-24-01
June 13, 2024**

**IN RE: APPLICATION FOR AUTHORITY TO)
OPERATE AS LOCAL DISTRIBUTION)
COMPANY AND INCUR INDEBTEDNESS)
AND JOINT APPLICATION FOR APPROVAL)
OF TRANSFER AND ACQUISITION OF)
LOCAL DISTRIBUTION COMPANY ASSETS)
AND RELATED RELIEF.)**

**DELTA STATES UTILITIES NO, LLC’S PROCEDURES FOR DISCLOSURE OF
COMMERCIALLY SENSITIVE INFORMATION DESIGNATED HSPM-CS**

Delta States Utilities NO, LLC (“DSU NO”) hereby makes this filing pursuant to Judge Gulin’s Order dated June 10, 2024, that requires DSU NO and the Alliance for Affordable Energy (“AAE”) to each separately file proposed procedures for disclosure of the discovery materials in a manner that provides adequate confidentiality protection to the discovery materials at issue. Counsel for DSU NO emailed representatives of the AAE on the morning of Tuesday, June 11, 2024, asking if they would like to schedule additional times for in camera review of the documents DSU NO has designated as containing commercially sensitive information; counsel for DSU NO also asked if the AAE representatives have a proposal for procedures for disclosure of the discovery materials in a manner that provides adequate confidentiality protection to the discovery materials at issue. *See* Exhibit 1 attached hereto. **As of the time of filing this response, no representative of the AAE has responded to the counsel for DSU NO’s email.** Thus, DSU NO submits its proposed procedures as follows, and respectfully urges the Tribunal to deny AAE’s motion to compel and motion for supplemental testimony.

Commercially Sensitive Nature of Information Produced in This Proceeding Warrants Additional Protections

The Joint Application filed to initiate this proceeding involves a request by DSU NO to be authorized to operate as a natural gas local distribution company in the City of New Orleans and regulated by the Council of the City of New Orleans (“Council”). DSU NO is not currently a utility regulated by the Council. DSU NO is seeking to become a utility and seeking to acquire the natural gas assets of Entergy New Orleans, LLC “ENO”. Affiliates of DSU NO are also seeking to become natural gas utilities to be regulated by other state commissions and are seeking to acquire natural gas assets of Entergy Louisiana, LLC and CenterPoint Energy Resources Corp. Thus, this proceeding is not the typical utility rate proceeding filed at the Council involving the revenues and expenses of a regulated utility.

Rather, this proceeding involves parties pursuing a business transaction that involves the production of trade secret and highly commercially sensitive data relating to DSU NO, its affiliates, other companies, and other parallel transactions that are not regulated by the Council. This information is largely comprised of trade secrets and other highly sensitive materials the currently unregulated purchaser (DSU NO) has developed through a number of third-party consultants and advisors to analyze the transaction. Any release of this information would be detrimental to DSU NO and its affiliates, as well as the third parties involved in creation of the data. As summarized in DSU NO’s initial Opposition to AAE Motion to Compel, the documents designated as HSPM-CS contain proprietary information and/or trade secrets or were developed from such information. Thus, unlike in other proceedings typically before the Council, such information in this proceeding warrants additional protections under the Protective Order. Copies of such information should not be required to be provided to parties in this proceeding without

their showing a need for the commercially sensitive information or that such information is not commercially sensitive - - which the AAE has not done.

As indicated in DSU NO's initial Opposition pleading, the AAE clearly was able to file direct testimony, and AAE's testimony does not relate to the information designated as HSPM-CS; rather, AAE's direct testimony relates to AAE's desire to remove natural gas from residential and small commercial customers' homes and businesses. Further, AAE has not availed itself of the opportunity to look at information designated HSPM-CS to properly challenge such designation and DSU NO's use of additional protections.

DSU NO respectfully urges the Tribunal to allow DSU NO to continue to designate certain commercially sensitive information as HSPM-CS and to use additional procedures for disclosure of the discovery materials in a manner that provides adequate confidentiality protection to the discovery materials at issue.

Procedures for Disclosure of Commercially Sensitive Information

DSU NO urges the Tribunal to require commercially sensitive information, which DSU NO has designated HSPM-CS, be made accessible to Intervenor parties who have executed the Official Protective Order only through *in camera* review. To the extent an Intervenor disagrees with the HSPM-CS designation of a particular document, that party should be required to first raise the concern with counsel for DSU NO for discussion and potential resolution prior to moving to compel production or otherwise involving the Hearing Officer.

The AAE has not argued or demonstrated that any particular document designated as HSPM-CS is in fact not commercially sensitive or should not be allowed additional protections than those afforded other confidential documents under the Official Protective Order.

The AAE has only requested to review *in camera* four (4) discovery responses of the eleven (11) discovery responses marked HSPM-CS and/or with an HSPM-CS attachment - - even though the AAE representatives were given the opportunity to review all documents designated as HSPM-CS. *See* Exhibit 1 attached hereto. Further, the AAE did not respond to an additional offer to schedule times to *in camera* review of commercially sensitive materials following the Order dated June 10, 2024. *Id.* Thus, it is not even possible the AAE to establish that the documents designated HSPM-CS are not commercially sensitive to warrant additional protections under the Protective Order.

Moreover, the AAE's lack of interest in scheduling times for *in camera* review does not support their "need" for the documents – particularly given the risk to DSU NO of public disclosure of the documents that exists when documents are produced in discovery even if pursuant to the Protective Order. Importantly, DSU NO submits that there would not be adequate recourse against AAE, a non-profit, that would make DSU NO and its affiliate companies whole should commercially sensitive information be leaked.

Thus, DSU NO urges the Tribunal to require, as the procedures for disclosure of commercially sensitive information designated as HSPM-CS by DSU NO in this proceeding, that a party who has executed the Protective Order shall request and schedule *in camera* review of the information designated HSPM-CS, and to the extent a party questions whether a document is truly commercially sensitive, such party should be required to first raise the concern with counsel for DSU NO to potentially resolve the issue prior to filing a motion to compel or otherwise involving the Hearing Officer.

AAE Should Not be Permitted to File Supplemental Direct Testimony or Disrupt Schedule

As DSU NO explained in its initial Opposition pleading, it has been very transparent in its designation of commercially sensitive information. Yet, despite having months of opportunity to raise the issue of HSPM-CS documents and resolve the issue informally, AAE waited until the end of the business day on the due date of their direct testimony filing to file this Motion to claim it has been prejudiced. In effect, AAE is seeking to upset an established schedule and seeking an opportunity to submit two rounds of testimony rather than one. This is not appropriate; AAE had ample time to prepare its direct testimony to which they are entitled in this proceeding.

Moreover, AAE has only requested to review four (4) of the eleven (11) discovery responses that DSU NO has designated as HSPM-CS due to the commercially sensitive information in the responses. AAE's lack of interest in undertaking *in camera* review does not support their having a need for the information or that the AAE has suffered harm from not having received a copy of such information. Further, the AAE's lack of interest in undertaking *in camera* review does not support their claimed need to file supplemental direct testimony, or support upsetting the procedural schedule. AAE has therefore failed to show any reason why they should be given an extraordinary opportunity to submit a second round of testimony or otherwise upset the procedural schedule.

The current procedural schedule allows for a decision by the Council on the proposed transaction in this calendar year. This is very important to DSU NO as it is in the process of standing up a new shared services company and new local distribution company. Delay in a Council's decision will create additional risk for DSU NO and its affiliates, considering they are already making capital investments in order to facilitate a seamless transition for ENO's gas customers. DSU NO respectfully submits that changes to the schedule that would delay a decision

by the Council should not be made without a substantial showing of need or harm, which the AAE has not done.

Thus, DSU NO respectfully requests the Tribunal deny the AAE Motion to Compel and Motion for Supplemental Testimony, and requests the procedures proposed herein for disclosure of commercially sensitive information designated as HSPM-CS by DSU NO be adopted.

Respectfully submitted,



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-and-

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Attorneys for Delta States Utilities NO, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the Official Service List in this matter via electronic mail and/or U.S. Mail, postage properly affixed, this 13th day of June 2024.



Carrie R. Tournillon

Carrie Tournillon

From: Carrie Tournillon
Sent: Tuesday, June 11, 2024 10:08 AM
To: Logan Atkinson Burke
Cc: Jesse George; Karl Rabago
Subject: RE: Reviewing docs in camera
Attachments: Order of 6-10-24 Preliminary Order in HSPM-CS dispute.pdf

Hi Logan,

Please let me know if you, Jesse or Karl would like to schedule any additional times for in camera review. Also, please let me know if you have a proposal for procedures for disclosure of the discovery materials in a manner that provides adequate confidentiality protection to the discovery materials at issue. Thank you,
Carrie

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From: Logan Atkinson Burke <logan@all4energy.org>
Sent: Thursday, June 6, 2024 10:49 AM
To: Carrie Tournillon <carrie.tournillon@keanmiller.com>
Cc: Jesse George <jesse@all4energy.org>; Karl Rabago <rabago@me.com>
Subject: Re: Reviewing docs in camera

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Thanks Carrie. That time still works for me.

Logan Atkinson Burke
Executive Director
she/her
c. 646-942-7149
o. 504-208-9761



"If you want to be a frontline soldier on environmental protection, social justice, or environmental racism, come to Louisiana." --Gary Groesch, Founder of the Alliance for Affordable Energy

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On Jun 5, 2024, at 6:20 PM, Carrie Tournillon <carrie.tournillon@keanmiller.com> wrote:

Hi Logan,

I have spoken with our IT department, and we can have those DRs (w/ Attachments) for you on a computer for in camera review tomorrow. I think that will be easier for you to review than PDFs given the attachments are Excel files.

I will book a conference room for 3:45. Please let me know if that time still works for you. Our reception is on the 36th Fl of 909 Poydras Street. We can validate your parking if you bring your ticket with you.

Thank you,
Carrie

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From: Logan Atkinson Burke <logan@all4energy.org>

Sent: Wednesday, June 5, 2024 1:58 PM

To: Carrie Tournillon <carrie.tournillon@keanmiller.com>; Jesse George <jesse@all4energy.org>; Karl Rabago <rabago@me.com>

Subject: Reviewing docs in camera

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Hi there Carrie,

As requested I would like to review the following DSU responses categorized as HSPM-CS tomorrow afternoon.

CNO-DSU-1-14

CNO-DSU- 4-15

CNO-DSU- 4-16

CNO-DSU -5-1

Thank you,

Logan Atkinson Burke
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c. 646-942-7149
o. 504-208-9761

<image001.png>

"If you want to be a frontline soldier on environmental protection, social justice, or environmental racism, come to Louisiana." --Gary Groesch, Founder of the Alliance for Affordable Energy

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