

**RESOLUTION
R-07-432**

CITY HALL: SEPTEMBER 20, 2007

**BY: COUNCILMEMBERS ~~NEBURA~~, CARTER, HEDGE-MORRELL, AND
WILLARD-LEWIS**

**RESOLUTION AND ORDER
ADOPTING NEW OFFICIAL PROTECTIVE ORDER**

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans (“Charter”), the Council of the City of New Orleans (“Council”) is the governmental body with the power of supervision, regulation and control over public utilities providing service within the City of New Orleans; and

WHEREAS, pursuant to its powers of supervision, regulation and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern rates, terms and conditions of utility service; and

WHEREAS, Entergy New Orleans, Inc. (“ENO” or “the Company”) provides electric service to all of New Orleans except the Fifteenth Ward (“Algiers”) and gas service to all of New Orleans; and

WHEREAS, Entergy Louisiana, LLC (“ELL”) provides electric service to the Algiers section of New Orleans; and

WHEREAS, in conjunction with proceedings before the Council, it is occasionally necessary that confidential or highly sensitive information (“Protected Materials”) be produced or exchanged among the parties; and

WHEREAS, in order to facilitate the production and exchange of Protected Materials, the Council in Resolution R-99-525 (Substitute) adopted an Official Protective Order, which order established the manner in which all Protected Materials were to be handled by parties participating in proceedings before the Council; and

WHEREAS, though the current Official Protective Order has been generally effective, the Council has learned of certain deficiencies in the order, deficiencies that make the discussion or communication of certain information between Councilmembers and our utility Advisors very difficult, if not impossible; and

WHEREAS, the Council feels the current Official Protective Order should otherwise be streamlined to simplify the exchange of information between our Advisors and utilities operating within the City of New Orleans; and


WHEREAS, it is the Council’s desire to adopt a new Official Protective Order; now, therefore

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS
THAT it hereby adopts a new Official Protective Order, which order is attached hereto and identified as "Exhibit A" and is to replace the Official Protective Order adopted by the Council in Resolution R-99-525 (Substitute) on August 19, 1999.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Carter, Fielkow, Head, Hedge-Morrell, Midura, Willard-Lewis - 6
NAYS: 0
ABSENT: 0
RECUSED: Darnell - 1
AND THE RESOLUTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE TRUE AND CORRECT COPY


CLERK OF COUNCIL

ATTACHMENT A
BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS
OFFICIAL PROTECTIVE ORDER

DOCKET NO. UD-_____

This Protective Order shall govern the provision and use of all information deemed confidential by a party responding to discovery requests or other requests for information in proceedings before the City Council. This Official Protective Order is a device to facilitate and expedite the handling of discovery and subsequent procedures in all dockets of the City Council, and in all other matters requiring the exchange of "Protected Materials" as the term is defined herein. This Protective Order is not intended to constitute a final resolution of the merits concerning the confidentiality of any of the Protected Material nor of any objection to the propriety or scope of a discovery request. This Protective Order does not change any burden of proof under applicable law in determining whether any of the Protected Materials or information derived therefrom are entitled to confidential treatment. Notwithstanding anything herein to the contrary, nothing herein shall prevent the Reviewing Representatives of the technical and legal advisors to the City Council from sharing with City Council Members, acting in their capacity as utility regulators, information that may have been obtained or derived from Protective Materials provided that the appropriate protections of this Order are employed to insure that the Protective Materials do not enter the public domain.

1. Any party or person producing or filing a document, including but not limited to records stored or encoded on a computer disk or other similar electronic storage medium, in these proceedings may designate that document or any portion of it as confidential pursuant to this Protective Order by typing or stamping on every page the party desires to designate as Protected Materials of the document "PROTECTED MATERIALS PURSUANT TO THE OFFICIAL PROTECTIVE ORDER OF THE COUNCIL OF THE CITY OF NEW ORLEANS IN DOCKET NO. "UD-_____ " or words of similar import (hereinafter referred to as "Protected Materials").
2. Protected Materials shall not include any information or document contained in the public files of the City Council or any other local, state or federal agency, or any federal or state court (if not subject to a protective order or confidentiality agreement), or any information or document presently in the possession of a reviewing party which has not previously been identified as protected or which becomes public knowledge as a result of publication or disclosure by the party furnishing the information, other than through disclosure in violation of this Protective Order, or information which is in the public domain. Nothing in this Protective Order shall be construed as precluding any participant from objecting to the use of Protected Materials on any legal grounds.

3. A "Reviewing Party" is a party to an applicable Council Docket to the extent that such party receives or is provided access to material pursuant to this Official Protective Order.
4. (a) Except as otherwise provided in this paragraph, a Reviewing Party shall be permitted access to Protected Materials only through its authorized "Reviewing Representatives." "Reviewing Representatives" of a Reviewing Party may include its counsel of record in this proceeding and associated attorneys, paralegals, economists, statisticians, accountants, engineers, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in these proceedings.

(b) The term "Highly Sensitive Protected Materials" is a subset of Protected Materials and refers to material that a responding party claims is of such a highly sensitive nature that making copies of such material or providing access to such material to a party or the employees of the Reviewing Party would expose the responding party, or a person or entity to which the responding party owes a duty to protect the confidentiality of such materials, to an unreasonable risk of harm. Documents, and every page thereof, so classified by a producing party shall bear the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO THE OFFICIAL PROTECTIVE ORDER IN DOCKET NO. "UD-_____."
4. (c) Except as provided for in Paragraph 4 (d) below, no copies shall be made of any "Highly Sensitive Protected Materials" and they shall be made available only for inspection by the Reviewing Representatives of the Reviewing Parties. Reviewing Representatives for the purposes of access to "Highly Sensitive Protected Materials" must be persons who are either (a) counsel for the Reviewing Party or (b) outside consultants for the Reviewing Party working under the direction of the Reviewing Party's consultants, and who are unaffiliated experts (or employees thereof), not directly involved in, or having direct or supervisory responsibilities over, the purchase, sale, or marketing of electricity (including transmission service) at retail or wholesale, the negotiation or development of participation or cost-sharing arrangements for transmission or generation facilities, or other activities or transactions of a type with respect to which the disclosure of Highly Sensitive Protected Materials may present an unreasonable risk of harm.

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.

(d) Notwithstanding the provisions of Paragraph 4 (c), 6, 7 and 15 of this Protective Order, a copy of Highly Sensitive Protected Materials and voluminous materials will be provided, upon request, to the Reviewing Representatives of the technical and legal advisors of the City Council who may retain Protected Materials, including Highly Sensitive Protected Materials, and analyses derived therefrom, in their files for a reasonable period of time (not to exceed five years) following the termination of the applicable docket, or such other matter, of the City Council for the purpose of meeting their professional obligations and responsibilities, with respect to such proceeding(s) and any appeals therefrom, provided that such materials shall not be disclosed to anyone other than in accordance with terms of this Protective Order, and shall be subject to all protections and requirements set forth in this Official Protective Order.

5. Each person who inspects the Protected Materials shall, before such inspection, agree in writing to the following certification, and shall provide a copy of a signed certification in the form of that attached to this Official Protective Order (the "Non-Disclosure Certificate") to counsel for the party asserting confidentiality:

"I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Official Protective Order of the City Council in Council Docket No. UD-_____, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from the Protected Materials, shall not be disclosed to anyone other than in accordance with the Protective Order and shall be used only for the purpose of the proceedings in Council Docket No. UD-_____. Provided, however, if the information contained in the Protected Materials is publicly available, or is obtained from independent sources, the understanding stated herein shall not apply."

Provided, however, with respect to Protective Materials of any utility providing services in the City of New Orleans, the Reviewing Representatives of the technical and legal advisors of the City Council shall only be required to execute one Official Protective Order Non-Disclosure Certificate in favor of said utility, as follows:

"I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Official Protective Order of the City Council in proceedings before

it, and that I have been given a copy of it and have read the Official Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from the Protected Materials, shall not be disclosed to anyone other than in accordance with the Official Protective Order. Provided, however, if the information contained in the Protected Materials is publicly available, or is obtained from independent sources, the understanding stated herein shall not apply."

Thereafter, the said representatives of the Council's legal and technical advisors shall be bound by the provisions of the Council's Official Protective Order in all matters or proceedings involving said utility before the City Council.

Any Reviewing Representative may disclose materials to any other person who is qualified to be a Reviewing Representative, provided that, if the person to whom disclosure is to be made has not executed a Non-Disclosure Certificate and provided the signed certification to counsel for the party asserting confidentiality, that certification shall be executed and provided prior to any disclosure. In the event that any Reviewing Representative to whom such Protected Materials are disclosed ceases to be engaged in this proceeding, access to such materials by such person shall be terminated. Any person who has agreed to the foregoing certification shall continue to be bound by the provisions of this Official Protective Order, even if no longer so engaged. And Reviewing Representatives, other than representatives of the Council's legal and technical advisors, shall not use Protected Materials in a proceeding other than the proceeding in which the Protected Materials were produced.

6. Except for Highly Sensitive Protected Materials that cannot be copied and Protected Materials that are voluminous, the party asserting confidentiality shall provide a Reviewing Party one copy of the Protected Materials. The parties agree to make a good faith effort to limit the number of copies of Protected Materials and agree to distribute copies of Protected Materials only to Reviewing Representatives.
7. (a) Materials that are deemed "voluminous," which may include materials in excess of five hundred (500) pages in length, and Highly Sensitive Protected Materials shall be made available for inspection by Reviewing Representatives at a location in New Orleans, Louisiana specified by the party declaring such materials to be voluminous between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). The Protected Materials may be reviewed only during the "reviewing period," which period shall commence upon the execution of the appropriate Non-Disclosure Certificate, and continue until conclusion of the proceeding(s) in the applicable Council Docket. As used in this paragraph, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law.

(b) Reviewing Representatives may take handwritten notes regarding the information contained in voluminous Protected Materials made available for inspection pursuant to paragraph 7(a), and, after such inspection, may designate materials to be copied. Only one copy of the materials designated shall be reproduced by the party making such materials available for inspection. Reviewing Parties shall make a diligent, good-faith effort to limit the amount of photographic or mechanical copying requested to only that which is essential for purposes of these proceedings. The parties agree to make a good faith effort to limit the number of copies of Protected Materials and agree to distribute copies of Protected Materials only to Reviewing Representatives. Reviewing Representatives may take minimal handwritten notes regarding the information contained in Highly Sensitive Protected Materials, although no copies shall be made of Highly Sensitive Protected Materials and handwritten notes shall not be used to circumvent this protection against duplication of Highly Sensitive Protected Materials.

8. The Protected Materials, as well as the Reviewing Party's notes, memoranda, or other information regarding, or derived from the Protected Materials, are to be treated confidentially by the Reviewing Party and shall not be disclosed or used by the Reviewing Party except as permitted and provided in this Protective Order. Information derived from or describing the Protected Materials shall not be placed in the public or general files of the Reviewing Party except in accordance with provisions of this Protective Order. A Reviewing Party must take all reasonable precautions to ensure that Protected Materials, including handwritten notes and analyses made from Protected Materials, are not viewed or taken by any person other than a Reviewing Representative of the party.
9. (a) If a party tenders for filing any written testimony, exhibit, brief, or other submission that quotes the Protected Materials or discloses the confidential content of Protected Materials, the confidential portion of such testimony, exhibit, brief or other submission shall be filed and served in sealed envelopes or other appropriate containers endorsed to the effect that they are sealed pursuant to this Protective Order. Such documents shall be marked "PROTECTED MATERIALS PURSUANT TO OFFICIAL PROTECTIVE ORDER IN COUNCIL DOCKET NO. "UD-_____ " and shall be filed under seal with the Council's designated Hearing Officer and served under seal to the counsel of record for the Reviewing Parties. If testimony that quotes from Protected Materials or discloses the confidential content of Protected Materials is offered by a Reviewing Representative on behalf of a Reviewing Party in this proceeding, the Reviewing Party shall advise the City Council's designated Hearing Officer of such fact. The City Council may subsequently, on its own motion or on motion of a party, issue a ruling respecting whether or not the inclusion, incorporation, or reference to Protected Materials is such that the written testimony, exhibit, brief, or other submission, or transcript of testimony, should remain under seal.

(b) Any party or person giving testimony in a proceeding(s) before the City Council may designate as Protected Materials that portion of his/her testimony deemed to be confidential materials in accordance with paragraph 1 of the City Council's Official Protective Order by advising the City Council's designated Hearing Officer of such fact.

(c) All Protected Materials filed with the City Council, or any other judicial or administrative body in support of or as part of a motion, other pleading, brief, or other document, shall be filed and served in sealed envelopes or other appropriate containers.

(d) Each party shall have the right to seek changes in the City Council's Official Protective Order, as appropriate, from the City Council, or the courts.

10. A Reviewing Party may release confidential information pursuant to a final order of a local, state, or federal government agency or authority or judicial body requiring the Reviewing Party to produce such confidential information; provided, however, the Reviewing Party agrees that prior to such release it shall promptly notify the party asserting confidentiality, or its counsel of record, of the order and of the intention to comply with the order and allow such party reasonable time, as is practicable and under the disclosing party's control given the facts and circumstances of the release, to contest any release of the confidential information. In addition, should an attempt be made to require the Reviewing Party to disclose such confidential information in a proceeding other than an applicable Docket of the City Council (where a party asserting confidentiality may not be a party), then the Reviewing Party shall promptly inform the party asserting confidentiality of such attempt to require the Reviewing Party to produce confidential information.
11. In the event the City Council, on its own motion or the motion or request of a person not a party to this docket, considers: 1) the disclosure of Protected Material to any person to whom disclosure is not authorized by this Official Protective Order, or 2) a change in the designation of certain information or material, then the parties to the applicable docket of the City Council shall request that the City Council enter an order that the same procedures and time limits set forth in Section 12 below shall control such motion or request, and in any City Council proceeding and order resulting therefrom.
12. During the pendency of the applicable docket at the City Council, in the event that a Reviewing Party wishes to disclose Protected Material to any person to whom disclosure may not be authorized by this Protective Order, or wishes to have changed the designation of certain information or material as protected by alleging, for example, that such information or material has entered the public domain, such Reviewing Party shall first file and serve on all parties written notice of such proposed disclosure or request for change in designation, identifying with particularity each of the Protected Materials with respect to which such a disclosure or change in designation is proposed, the nature of such proposed disclosure or change in designation, and the basis therefor. In the event that the party asserting confidentiality wishes to contest such proposed disclosure or request for change in designation, that party shall file with the Hearing Examiner its objection to such proposal, with supporting sworn affidavits, if any, and a request for a hearing within five working days after receiving such notice of proposed disclosure or request for change in designation. Responses to such an objection, with supporting affidavits, if any, shall be filed by the Reviewing Party within five working days after

receipt of the objection. (Either the party seeking disclosure or the party seeking to prevent disclosure may request that the materials in question be inspected in camera, provided, however, such request shall be made not later than five working days after the filing of an objection to the proposed disclosure or change in designation.) The burden is on the party asserting confidentiality to show that such proposed disclosure or change in designation should not be made. If the Hearing Officer determines that such proposed disclosure or change in designation should be made, the parties shall not disclose any materials affected by the determination until after the expiration of 10 days from the date the Hearing Officer's decision, during which delay a party may file an appeal of the Hearing Officer's decision with the City Council. In the event of a timely filed appeal to the City Council, the proposed disclosure or change in designation shall not then become effective until the City Council's determination is made. No party waives any right to seek additional administrative or judicial remedies concerning such finding of the City Council.

Any party electing to challenge, in courts of this State, a City Council determination allowing disclosure or a change in designation, or denying same, shall have a period of ten (10) days from the date of the City Council's determination in which to file a petition seeking a favorable ruling in the appropriate Louisiana District Court. The effect of an order requiring disclosure or a change in designation shall be stayed pending a decision on a request for a preliminary injunction. Any party challenging a State District Court determination allowing disclosure or a change in designation, or a denial of same, shall have a period of fifteen (15) days from the date of the District Court's ruling to file a petition seeking a favorable ruling from the appropriate appellate court.

13. Nothing in this Official Protective Order shall be construed as precluding a party asserting confidentiality from objecting to the use of Protected Materials on grounds other than confidentiality. Nothing in this Official Protective Order shall be construed as an agreement by any party or the City Council that materials designated as Protected Materials are entitled to confidential treatment.
14. All notices, applications, responses or other correspondence shall be made in a manner that protects the Protected Materials at issue from unauthorized disclosure.
15. Following the conclusion of the applicable City Council proceedings, Reviewing Parties and their Reviewing Representatives, upon request by a party asserting confidentiality, shall return or destroy all copies of the Protected Materials made available by such party. Further, all notes or other documents derived from or revealing the confidential content of such Protected Materials shall, upon request, be redacted to remove permanently any confidential information, including information from which confidential information can be derived. As used in this paragraph, "conclusion of these proceedings" refers to the exhaustion of available appeals, or the running of the time for the making of such appeals, as provided by applicable law.
16. In the event of a breach of the provisions of this Official Protective Order, the party asserting confidentiality will not have an adequate remedy in money or damages, and

accordingly, shall, in addition to any other available legal or equitable remedies, be entitled to an injunction against such breach without any requirement to post bond as a condition of such relief.

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

DOCKET NO. UD-_____

NON-DISCLOSURE CERTIFICATE

I certify my understanding that the Protected Materials are provided to me pursuant to the terms and restrictions of the Protective Order in Council Docket No. UD-_____, and that I have been given a copy of it and have read the Protective Order and agree to be bound by it. I understand that the contents of the Protected Materials, and any notes, memoranda, or any other form of information regarding or derived from the Protected Materials, shall not be disclosed to anyone other than in accordance with the Official Protective Order of the City Council and shall be used only for the purpose of the proceedings in City Council Docket No. UD-_____. Provided, however, if the information contained in the Protected Materials is publicly available or is obtained from independent sources, the understanding stated herein shall not apply.

Date: _____

By: _____

Company: _____

Representing: _____