

November 16, 2017

BY HAND DELIVERY

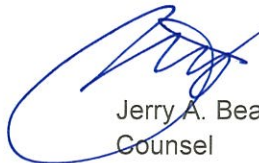
Ms. Lora W. Johnson
Clerk of Council
Council of the City of New Orleans
City Hall, Room IE09
1300 Perdido Street
New Orleans, LA 70112

Re: *Application of Entergy New Orleans Inc. for Approval to Construct New Orleans Power Station and Request for Cost Reovery and Timely Relief, Docket No. UD-16-02*

Dear Ms. Johnson:

Enclosed please find an original and four (4) copies of an *Advisors' Motion to Strike Portions of Supplemental Testimony of Beverly Wright, Ph.D. and Memorandum in Support* which we are requesting be filed on behalf of the Council's Utility Advisors. Please file the attached *Motion, Memorandum in Support*, and this letter in the record of this proceeding in accordance with your normal procedure.

Sincerely,



Jerry A. Beatmann, Jr.
Counsel

JAB/dpm
Enclosures

cc: Official Service List

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

APPLICATION OF ENTERGY NEW)	
ORLEANS, INC. FOR APPROVAL TO)	
CONSTRUCT NEW ORLEANS)	
POWER STATION AND REQUEST)	DOCKET NO. UD-16-02
FOR COST RECOVERY AND)	
TIMELY RELIEF)	
)	

**ADVISORS' MOTION TO STRIKE PORTIONS OF
SUPPLEMENTAL TESTIMONY OF BEVERLY WRIGHT, PH.D.**

Now come the Advisors to the Council of the City of New Orleans ("Advisors"), who through undersigned counsel, respectfully move to strike the following portions of Dr. Beverly Wright's Supplemental Testimony pursuant to New Orleans City Code, Section 158-478:

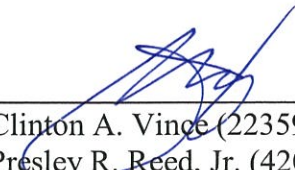
1. Table of Contents Roman Numeral IV;
2. Page 3, lines 5-9 and 17-25;
3. Page 4, lines 1-28;
4. Page 5, lines 1-22;
5. Page 6, lines 1-19

All portions of testimony that should be stricken from the record are highlighted in yellow in the attached Exhibit A for ease of reference.

For the reasons explained in the memorandum in support of this motion, which is also attached hereto and made a part hereof, the above portions of Supplemental Testimony are inadmissible and otherwise improper and therefore should be stricken from the record.

WHEREFORE, the Advisors to the Council of the City of New Orleans pray that their Motion to Strike be granted and that the above-referenced citations be stricken from the record.

RESPECTFULLY SUBMITTED:



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Presley R. Reed, Jr. (42065)
Emma F. Hand (476001)
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Advisors to the Council of the City of New Orleans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon "The Official Service List" via electronic mail and/or U.S. Mail, postage properly affixed, this 16th day of November, 2017.



J. A. "Jay" Beatmann, Jr.

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

APPLICATION OF ENTERGY NEW)	
ORLEANS, INC. FOR APPROVAL TO)	
CONSTRUCT NEW ORLEANS)	
POWER STATION AND REQUEST)	DOCKET NO. UD-16-02
FOR COST RECOVERY AND)	
TIMELY RELIEF)	

**MEMORANDUM IN SUPPORT OF
ADVISORS' MOTION TO STRIKE PORTIONS OF SUPPLEMENTAL TESTIMONY OF
BEVERLY WRIGHT, PH.D.**

On October 16, 2017, Beverly Wright, Ph.D, submitted supplemental testimony in this proceeding on behalf of Deep South Center for Environmental Justice (“DSCEJ”), Alliance for Affordable Energy (“Alliance”), 350 Louisiana - New Orleans, and Sierra Club (“Wright Supplemental Testimony”). The stated purpose of Dr. Wright's testimony is to discuss what she describes as the “significant problems regarding (1) the fairness of this utility docket proceeding being undermined by the conflicting roles of the New Orleans City Council Consultants to recommend the City Council agree to Entergy developing a new power plant on potential sites in East New Orleans and also to advise the Council on whether the proposed Entergy gas power plant is in the public interest; (2) the false statement made by Entergy which resulted in there being no environmental assessment of its industrial impact on nearby residential neighborhoods and schools in East New Orleans, where residents are predominantly African American and Vietnamese American; and (3) Entergy’s repeated overestimations of customer need for the proposed gas power plant.”¹

¹ Wright Supplemental Testimony, 3:5-13.

Unfortunately, Dr. Wright's testimony, as specifically referenced in the motion accompanying this memorandum, largely constitutes legal opinions and conclusions that are outside of her areas of expertise and experience and unsupported by facts. Accordingly, as will be discussed below, portions of her testimony are inadmissible pursuant to the Louisiana Code of Evidence. Therefore, the referenced testimony should be stricken from the record of this proceeding.

I. Dr. Wright's Testimony Includes Legal Opinions and Conclusions Regarding a Settlement Reached at the Federal Energy Regulatory Commission and Unanimously Approved by the New Orleans City Council

Dr. Wright dedicates an entire section of testimony to statements that are conclusions about questions of law. In section IV of her Supplemental Testimony, beginning on page 3 entitled "The Conflicting Roles of the New Orleans City Council Consultants Undermine the Fairness of This Proceeding," Dr. Wright strays from her stated expertise and experience and provides legal analyses and conclusions regarding her interpretation of a settlement at the Federal Energy Regulatory Commission ("FERC") with respect to several issues addressed in that settlement.² Moreover, in addition to lacking the requisite legal qualifications and background to provide expert legal analysis regarding the settlement proceedings, Dr. Wright, having not participated in either the FERC proceeding or the subsequent Council proceeding approving the settlement, also lacks sufficient firsthand knowledge thereof to testify as a factual witness regarding those proceedings.

Moreover, if Dr. Wright's "legal" analysis were correct, which it is not, it would also apply to the Council and would disqualify the Council from proceeding to function in this entire

² The Settlement Agreement dated August 14, 2015 resolved all outstanding issues in FERC Docket Nos. ER14-75-000, ER14-75-001, ER14-76-000, ER14-76-001, ER14-77-000, ER14-77-001, ER14-78-000, ER14-78-001, ER14-79-000, ER14-79-001, ER14-80-000, ER14-80-001, ER14-128-000, ER14-1328-000, and ER14-1329.

docket.

The Entergy Operating Companies that participated in the FERC settlement include Entergy Gulf States Louisiana, LLC, Entergy Louisiana, LLC, Entergy New Orleans, Inc. (“ENO”) and Entergy Texas, Inc. (“Operating Companies”). The Louisiana Public Service Commission (“LPSC”), the Public Utility Commission of Texas and the Council of the City of New Orleans (“Council”) also actively participated in the settlement negotiations, however, FERC's acceptance of the settlement agreement was subject to the approval of the LPSC, PUCT, and the Council. Thereafter, the Council did, in fact, unanimously approve the settlement on November 5, 2015 in Resolution No. R-15-524.

Dr. Wright quotes portions of Resolution No. R-15-524 in her testimony and provides her legal interpretation of language in the Resolution and the underlying FERC settlement. Dr. Wright points to page 12 of Resolution No. R-15-524, which states;

WHEREAS, ENO will use reasonable diligent efforts to pursue the development of at least 120 MW of new-build peaking generation capacity within the City of New Orleans. As part of this commitment, ENO will fully evaluate Michoud or Paterson, along with any other appropriate sites in the City of New Orleans, as the potential site for a combustion turbine (“CT”) or other peaking unit to be owned by ENO, or by a third party with an agreed-to PPA to ENO. This evaluation will take into consideration, among other material considerations, the results of the Michoud site analysis that was completed in connection with the Summer 2014 Request for Proposal; and

WHEREAS, ENO commits to use diligent efforts to have at least one future generation facility located in the City of New Orleans;

Dr. Wright erroneously concludes that this language and the FERC settlement constitute a final agreement between the Council and ENO to build a power plant.

Similarly, Dr. Wright incorrectly concludes, without factual references, that the language in Resolution No. R-15-524 demonstrates “a separate process outside of Council regulations, public notice, and Council utility dockets for the consultants to work out with Entergy the

specific features -- 'at least 120 MW of new-build peak generation capacity'-- and potential sites-- 'Michoud or Paterson' in East New Orleans-- for the construction of a new power plant.”³

Dr. Wright asserts that this language identifies specific sites in East New Orleans without noting that the language **also** specified “along with any other appropriate sites.” Accordingly, Dr. Wright incorrectly suggests that those two sites, Michoud or Paterson, had somehow been selected over other options as the site for a specific project. The language is clear on its face that ENO was instructed to consider any other sites that would be appropriate in addition to the existing brownfield sites of Michoud and Paterson.

In addition, Dr. Wright refers throughout her testimony to the cited language as the “City Council's **prior agreement** with Entergy to build a new gas power plant” (emphasis added).⁴ Clearly, Dr. Wright misunderstands and draws legal conclusions with an unsupported evaluation of a highly complicated and wide-ranging FERC settlement that resulted from several years of litigation and negotiation. Legal interpretations of settlement agreements and legislative instruments from non-lawyers without specialized knowledge, expertise or educational background in law are excludable from their expert witness testimony.⁵ As such, these statements should be stricken from the record in this proceeding. Furthermore, Dr. Wright's conclusions are contrary to the plain language of the settlement agreement and the Council's resolutions regarding it.

With respect to Resolution No. R-17-100 adopted by the Council on February 23, 2017, which pertains to ENO's 2015 Integrated Resource Plan (“IRP”), Dr. Wright asserts that the

³ Wright Supplemental Testimony, 4:21-25.

⁴ *Id.*, 5:5-6.

⁵ Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 147, 119 S.Ct. 1167, 1174, 143 L.Ed.2d 238 (1999) citing Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 590, 113 S.Ct. 2786, 2795, 125 L.Ed.2d 469 (1993).

Council “concludes that a new gas power plant is needed in the City of New Orleans.”⁶

However, in several sections of that resolution, omitted by Dr. Wright, the Council unambiguously states that **the decision to approve or deny ENO's application to build the New Orleans Power Station (“NOPS”) will be fully vetted in Council Docket No. UD-16-02.**

Pages 28-29 of Resolution No. R-17-100 plainly states the following:

WHEREAS, the Council agrees that the size and timing of the new CT should be fully vetted in Council Docket No. UD-16-02, including any transmission and reliability considerations and costs which were not addressed in the 2015 Final IRP; and

WHEREAS, ENO should be advised that approval of the 2015 Final IRP by the Council **does not constitute approval of any specific new resource, including the proposed NOPS CT unit under consideration in Council Docket No. UD-16-02. ENO will continue to bear the burden of demonstrating that any new proposed resource is in the best interest of ratepayers....** (emphasis added).

Again in the second ordering paragraph on page 94, the Council emphatically reiterates its position with respect to ENO's request to build NOPS as follows:

2. All issues related to ENO's NOPS CT proposal should be fully vetted in Council Docket No. UD-16-02 including, but not limited to the need for a CT, size, timing, environmental concerns, social justice, cost, transmission, and reliability considerations. **ACCEPTANCE OF THIS IRP SHALL HAVE NO PRECEDENTIAL EFFECT WITH RESPECT TO THE COUNCIL'S EVALUATION OF ENO'S NOPS CT APPLICATION IN COUNCIL DOCKET UD-16-02.**

In the face of this explicit language, it cannot be reasonably concluded that an agreement had or has already been made to construct NOPS. Any suggestion to the contrary simply ignores the express orders of the Council and the record of these proceedings to date, which includes multiple sets of testimony by ENO and intervenors, hundreds of discovery requests, at least a dozen public outreach meetings conducted by ENO and two public hearings held by the Council Utilities Regulatory Office. Dr. Wright's Supplemental Testimony cannot change these facts.

⁶ *Id.*, 5:13.

Finally, Dr. Wright asserts another unsupportable legal and factual conclusion: that the Advisors recommended that the Council “agree” to permit ENO to build a gas fired generating unit “prior to any public review.”⁷ The record is clear that no such agreement exists and none reasonably appears in any of the resolutions referenced by Dr. Wright. Her legal opinion could be called a laymen’s interpretation of an approved FERC Settlement Agreement that was unanimously adopted by the Council in Resolution No. R-15-524, but it does not emanate from Dr. Wright’s considerable stated areas of expertise and experience, which do not include legal training.

To date, the Council has not decided on any generating unit and no Council resolution or settlement agreement says that such decision has been made. All options have been referenced in the relevant documents and all are being considered in this fully transparent and open proceeding.

Section IV of Dr. Wright's Supplemental Testimony includes an entire legal discussion about language included in the FERC Settlement Agreement as adopted in Council Resolution No. R-15-524. Though a much respected and an accomplished sociologist, Dr. Wright’s credentials clearly establish she is not a lawyer. Consequently, she does not present the qualifications to interpret legal settlement agreements or Council resolutions, especially in written pre-filed testimony in a Council utility docket. Furthermore, there are no legal issues in this docket that require expert testimony regarding the interpretation of legal documents and legislative instruments.

Louisiana law is clear that an expert's testimony regarding legal issues is inadmissible on the basis that it does not comport with the expert's scientific, technical, or other specialized

⁷ *Id.*, 6:15-16.

knowledge that will assist the trier of fact to understand the evidence or to determine a fact in issue.⁸ The testimony must also be based on sufficient facts or data.⁹ Dr. Wright's Supplemental Testimony regarding the FERC Settlement Agreement, as approved in Resolution No. R-15-524, does not provide any scientific, technical or other specialized knowledge to assist the Council in understanding or determining facts in this docket.

Even if Dr. Wright's testimony were considered admissible, which it is not, her legal interpretation and opinions are not based on sufficient facts as required by the Code of Evidence. As noted above, Dr. Wright's interpretation of the FERC settlement as an agreement between the Council and ENO to build a power plant is not factually based and is not accurate. No specific resource, size, or location was approved by the Council or in any way agreed upon by the parties in the FERC proceeding.

The FERC Settlement Agreement approved by the Council contains the same language that was included in Resolution No. R-15-524, which was quoted by Dr. Wright on page 4 of her Supplemental Testimony. However, the very next paragraph in the FERC Settlement Agreement (Section II.E), while not reproduced in the text of Resolution No. R-15-524, was approved by that Resolution and states unequivocally;

The commitments set forth in this Section II.E are subject to mutually satisfactory resolution of all material considerations, including, without limitation: (a) financial feasibility for ENO; (b) affordability for ENO customers; (c) economic feasibility in comparison to other potential projects, locations,

⁸ La. Code Evidence Ann. Art. 702:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (1) The expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (2) The testimony is based on sufficient facts or data;
- (3) The testimony is the product of reliable principles and methods; and
- (4) The expert has reliably applied the principles and methods to the facts of the case.

See Iteld v. Four Corners Const., L.P., 2012-1504 (La. App. 4 Cir. 6/5/13), 157 So. 3d 702; Wilson v. Wilson, 542 So. 2d 568 (La. Ct. App. 1st Cir. 1989); Morrison v. Johnston, 571 So. 2d 788 (La. Ct. App. 2d Cir. 1990).

⁹ La. Code of Evidence Ann. Art. 702.

or alternatives; (d) timely rate recovery; (e) regulatory jurisdiction over such facility(ies) to the extent not owned by ENO; and (f) consistency with sound utility practice and planning principles (emphasis added).

This provision directly contradicts and plainly refutes any claim that the FERC Settlement Agreement represents an agreement between the Council and ENO to build a power plant, much less any specific plant. In fact, not only was there no agreement to build a power plant, the language of the FERC Settlement Agreement unambiguously affirms that no generating facility would be built without the “mutually satisfactory resolution of all material considerations” including the “economic feasibility in comparison to other potential projects, locations, or alternatives.”

While the FERC Settlement Agreement was not an agreement between ENO and the Council to build a power plant or any other generating resource, it was a critically significant resolution of litigation having a variety of potentially harmful effects on ENO's customers. The agreement, from the Council's perspective, was to allow ENO and the other Operating Companies to terminate the System Agreement early in exchange for a number of essential concessions from ENO that would mitigate any harm to New Orleans ratepayers caused by the early termination. Directing ENO to pursue a potential plant in New Orleans for Council consideration was one of several elements of a package designed to give the Council effective options to protect New Orleans ratepayers.

Specifically, some of these key concessions included: (1) the creation of a separate Transmission Pricing Zone (“TPZ”) within the Midcontinent Independent System Operator, Inc. (“MISO”) for New Orleans; (2) the option for ENO to participate in up to a 30% share of the next LPSC-certified combined cycle gas turbine in the Amite South region constructed or acquired by a purchase power agreement by ELL or EGSL; (3) the option for ENO to acquire

10% of the capacity and energy of any and all future CCGT acquisitions made by ELL and/or EGSL within Amite South in the event ENO did not acquire Union Power Station Power Block 1 (“Union Power”); and (4) an agreement from ENO to use reasonable diligent efforts to pursue the development of at least 120 MW of new-build peaking generation capacity within the City of New Orleans at any appropriate site, not limited to only the Michoud or Paterson sites.

The Council's decision to approve ENO's request to purchase Union Power alone is expected to save customers approximately \$175 million based on ENO estimates. Likewise, the Council's decision to approve the FERC settlement, which allowed ENO to participate in MISO with a New Orleans-only TPZ will save ENO customers tens of millions in additional dollars and customers will avoid the burden of bearing a disproportionate share of transmission project costs.

As to possible additional generation, the Council did not approve any specific resource or project by adopting the FERC Settlement Agreement. Rather, the Council, facing the loss of two significant generation units at ENO's Michoud facility that accounted for approximately 784 MW of capacity, wisely built in certain protections for ENO customers to allow for the addition of a new generation resource in the future, if such addition was supported in future proceedings.

II. Dr. Wright's Testimony Includes Legal Conclusions and Opinions Regarding Claims of Due Process

A. The Advisors' Roles as a Party in Utility Proceedings and Providing Assistance to the Council in the Decision Making Process Does Not Violate Any Party's Rights to Due Process

On page 6 of Dr. Wright's Supplemental Testimony, she provides discussion of purported “conflicting” roles of the Council's Advisors and claims that somehow these roles should be considered a violation of the parties' due process rights. Although it is unclear from Dr. Wright's Supplemental Testimony whether she is relying on the 5th Amendment to the U.S. Constitution,

the 14th Amendment to the U.S. Constitution or Section 2 of the Louisiana Constitution of 1974, all of which contain due process clauses, it is evident that she is making a constitutional argument that should be stricken from the record. Such an analysis is beyond Dr. Wright's stated qualifications and experience and, moreover, not one that can be addressed by any form of expert testimony.

Even if Dr. Wright's testimony in this regard were considered admissible, which it is not, the role of the Council's Advisors in utility proceedings is a matter of well-settled Louisiana and federal law. It is abundantly clear that a party's due process rights are not violated by the Advisors' participation in utility rate proceedings as parties in the case as well as providing advice to Councilmembers as part of the decision making process. This exact question was addressed by the Louisiana Fourth Circuit in a 1991 litigation involving a Council proceeding;

The law, both federal and state, is that a 'separation of functions' is required in adjudicative proceedings, but not in legislative proceedings. **The federal Administrative Procedure Act requires separation of functions in adjudicative proceedings, but explicitly exempts 'proceedings involving the validity or application of rates, facilities, or practices of public utilities.'** Federal case law has established that separation of functions is not required in ratemaking proceedings on either statutory or constitutional due process grounds. **The U.S. Supreme Court has stated that under federal and state case law, the combination of investigative and judging functions is not a denial of due process.** In Louisiana, the state Administrative Procedure Act distinguishes between judicial proceedings, in which separation of functions is required, and rulemaking proceedings, in which it is not (citations omitted).¹⁰

Moreover, in Gulf States Utilities Co. v. Louisiana Public Service Commission, the Louisiana Supreme Court rejected Gulf States' contention that it was denied due process on the basis that the Commission's majority opinion was authored by the Commission's consultants and

¹⁰ Alliance for Affordable Energy, Inc. v. Council of City of New Orleans, 578 So. 2d 949, 968 (La. Ct. App.4th Cir.), (emphasis added), writ granted sub nom. Alliance for Affordable Energy, Inc. v. The Council of the City of New Orleans, 585 So. 2d 554 (La. 1991), writ granted, 585 So. 2d 555 (La. 1991), and vacated sub nom. Alliance for Affordable Energy v. Council of City of New Orleans, 588 So. 2d 89 (La. 1991). Decision vacated for reasons other than the proposition of law cited herein.

counsel who had acted as the company's adversaries during the hearings. The Court noted that the Commission is statutorily permitted to retain special counsel, engineers, consultants, etc. to assist its economics and rate analysis division in “evaluating, reviewing, and representing the commission in matters affecting services and rates charged by public utilities to Louisiana consumers or the judicial review thereof.”¹¹ Like the LPSC, the Council has the same authority to retain legal counsel, engineers, and consultants to assist with utility matters.¹²

The contention that a violation of due process occurs when such staff members take an adversarial stance in hearings and then advise the Commission regarding its decision has been consistently rejected by Louisiana and federal courts.¹³ The case law rejects generally the proposition that the combination of functions is a denial of due process, particularly where the proceeding is rulemaking or ratemaking.¹⁴

The Administrative Procedure Act is also consistent with the jurisprudence on this issue. The Act specifically exempts proceedings involving rates of public utilities from the separation of functions requirement imposed on adjudicatory proceedings.¹⁵

Were any of this not the case not only would the Advisors be precluded from performing their functions, but so too, would the Council itself in this docket.

For more than 50 years, the law has expressly concluded that advisors engaged by utility regulators to participate as parties to rate proceedings may also assist the regulatory body in the decision-making process. Accordingly, Dr. Wright's Supplemental Testimony opining on due process is contrary to settled state and federal law, totally outside of her stated expertise and, in

¹¹ LSA-R.S. 45:1163.3; Gulf States Utils Co. v. Louisiana Pub. Serv. Comm'n, 578 So. 2d 71, 82 (La. 1991)

¹² Home Rule Charter of the City of New Orleans, Article III, Section 3-130.

¹³ American Telephone & Telegraph, 449 F.2d 439 (D.C.Cir.1979); Wilson & Co. v. United States, 335 F.2d 788, 796 (7th Cir.1964).

¹⁴ *Id.*

¹⁵ 5 U.S.C. § 554(d).

any event, not properly the subject of expert testimony. Therefore, this portion of Dr. Wright's testimony is inadmissible and should be stricken from the record.

B. Dr. Wright's Legal Conclusion That "There was a Separate Process Outside of Council Regulations, Public Notice, and Council Utility Dockets...for the Construction of a New Power Plant" is Not Based in Any Sufficient Facts

The assertion on page 4 of Dr. Wright's Supplemental Testimony that there was a "separate process outside of Council regulations, public notice, and Council utility dockets for the consultants to work out with Entergy the specific features ... for the construction of a new power plant" is simply mistaken and without factual or evidentiary support. The Settlement Agreement was fully vetted in not one but two proceedings, one at FERC and one before the Council, both of which were publicly noticed and open to intervention and comment from the public in accordance with FERC's regulations and the Council's procedures, respectively.

The process in which the Council's Advisors initially recommended that ENO use reasonable diligent efforts to pursue the development of at least 120 MW of new-build peaking generation capacity within the City of New Orleans was a fully public and open process at FERC. FERC maintained jurisdiction over matters concerning the Entergy System Agreement and a public notice was issued regarding ESI's request to shorten the System Agreement termination notice period on October 15, 2013. Comments and interventions in the FERC docket to consider ESI's request were due on November 12, 2013. It should be noted that the New Orleans City Council and others filed timely intervention requests in the FERC docket, but neither the DSCEJ, the Alliance, 350 Louisiana - New Orleans, nor the Sierra Club intervened or otherwise participated in any manner in those proceedings.

On November 21, 2013, after proper notification, the Council adopted Resolution No. R-13-432. Docket No. UD-13-03 was established to investigate the prudence and reasonableness of shortening the System Agreement termination notice provision and any resulting impact on New Orleans ratepayers. DSCEJ did not intervene or otherwise participate in Docket No. UD-13-03 either. Also on November 21, 2013, the Council adopted Resolution No. R-13-433 after being properly noticed, which established Docket No. UD-13-04 to consider issues related to the prudence of ENO's support of a Louisiana-wide TPZ and the resulting impact that a Louisiana-wide TPZ would have on New Orleans ratepayers. Again, DSCEJ did not intervene or otherwise participate in Docket No. UD-13-04.

On August 14, 2015, ESI filed the Settlement Agreement in the public proceeding at FERC, the contents of which are the focus of Dr. Wright's Supplemental Testimony. Thereafter, on August 27, 2015, ENO filed a "Notice of Settlement in FERC Docket ER14-75" in both Council Docket Nos. UD-13-03 and UD-13-04 so that the Council would be able to publicly consider whether the proposed Settlement Agreement was in the public interest. In order to assure a full public process in accordance with Council procedures in addition to the public process occurring at FERC, the Council, on September 3, 2015, adopted Resolution No. R-15-437, which stated that it was **"the Council's desire that all parties affected by the Settlement Agreement be provided an opportunity to understand the proposal, submit comments and have their views considered prior to the Council's final consideration of the Settlement Agreement."** (emphasis added)

All parties had the opportunity to submit comments regarding the Settlement Agreement. Again, DSCEJ was not a party to either of these Council dockets and did not submit comments. The Alliance was a party, but chose not to submit written comments on the settlement. After

receiving no opposition from any party or the public at large, on November 5, 2015, after proper notice, the Council adopted Resolution No. R-15-524, which approved the FERC Settlement Agreement as being just, reasonable and in the public interest.

Despite Dr. Wright's testimony that the Council conducted a "separate process outside of Council regulations," the evidence clearly demonstrates that there were multiple opportunities for parties and members of the public to weigh in at FERC and in the local Council dockets on the proposed FERC Settlement Agreement. However, neither the Alliance, DSCEJ, 350 Louisiana- New Orleans, nor Sierra Club availed themselves of any of these opportunities. Now, nearly two years after the FERC Settlement Agreement was adopted by the Council, these same organizations, through Dr. Wright's Supplemental Testimony, question the Council's decision by claiming due process deficiencies despite the fully transparent, legal and public process employed. As such, Dr. Wright's Supplemental Testimony in this regard is contrary to the facts and law, outside of her stated expertise, and, therefore, inadmissible and should be stricken from the record.

III. Conclusion

Evidence in this proceeding should be excluded when it is not probative and relevant.¹⁶ Evidence shall not be admitted if it is adverse to the substantive rights of any party or parties.¹⁷ Simply put, the portions of Dr. Wright's Supplemental Testimony in this proceeding filed on October 16, 2017 contain legal opinions and conclusions that are outside of her stated qualifications and experience, contrary to the facts and law and are therefore inadmissible and should be stricken from the record. For these reasons, the Advisors' Motion to Strike should be granted.

¹⁶ City Code of New Orleans, § 158-476.

¹⁷ *Id.*

RESPECTFULLY SUBMITTED:



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Presley R. Reed, Jr. (42065)
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Advisors to the Council of the City of New Orleans

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon the following parties of record by electronic mail on this 16th day of November 2017.



J. A. "Jay" Beatmann, Jr.

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

**APPLICATION OF ENTERGY NEW)
ORLEANS, INC. FOR APPROVAL TO)
CONSTRUCT NEW ORLEANS POWER)
STATION AND REQUEST FOR COST)
RECOVERY AND TIMELY RELIEF)**

DOCKET NO. UD 16-02

PRE-FILED SUPPLEMENTAL TESTIMONY

OF

**DR. BEVERLY WRIGHT, Ph.D.
DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE, INC.**

ON BEHALF OF

**DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE,
ALLIANCE FOR AFFORDABLE ENERGY, 350 LOUISIANA – NEW ORLEANS,
AND SIERRA CLUB**

October 16, 2017

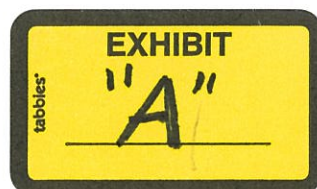


TABLE OF CONTENTS

I.	Introduction	1
II.	Summary of Prior Testimony	1
III.	Purpose of Supplemental Testimony	3
IV.	The Conflicting Roles of the New Orleans City Council Consultants Undermine the Fairness of This Proceeding	3
V.	Entergy's False Statement Resulted in No Environmental Assessment of Its Industrial Impact on Nearby Neighborhoods and Schools	7
VI.	Entergy Has Repeatedly Overestimated Customer Need for the Gas Plant	9
VII.	Exhibits to Testimony	12

LIST OF EXHIBITS

- Exhibit 1. Entergy New Orleans, Inc., Environmental Assessment Statement, August 5, 2004
- Exhibit 2. Louisiana Department of Environmental Quality, Map of Michoud Site and Surrounding Area
- Exhibit 3. Deep South Center for Environmental Justice, Entergy's Decreasing Forecasts of Customer Need for Electricity in New Orleans, LA

1 **I. Introduction**

2
3 **Q1. Please state your name and occupation.**

4 A. My name is Beverly Wright. I am the Executive Director of the Deep South Center for
5 Environmental Justice.

6 **Q2. Please describe the Deep South Center for Environmental Justice.**

7 A. The Deep South Center for Environmental Justice is a nonprofit organization in New
8 Orleans, Louisiana founded in 1992 that conducts research and provides educational and
9 policymaking opportunities for communities, scientific researchers, and policymakers to promote
10 the rights of all people to be free from environmental harm as it impacts health, jobs, housing,
11 education, and quality of life.

12
13 **II. Summary of Prior Testimony**

14
15 **Q3. Please provide a brief summary of your January 6, 2017 Direct Testimony.**

16 A. In my direct testimony, I presented an environmental justice analysis of the racially
17 discriminatory effects of Entergy's proposed New Orleans Power Station, a gas power plant. For
18 this analysis, I examined the following:

19 • whether there were meaningful opportunities for public notice and participation in the
20 Integrated Resource Plan ("IRP") prepared by Entergy New Orleans, Inc.;

21 • public response to the IRP and Entergy's first application for City Council approval of
22 the proposed gas power plant;

23 • Entergy's decision to select a site for the proposed gas power plant without any criteria or
24 analysis to consider the impact of a gas power plant in close geographic proximity to

1 neighborhoods and schools, where residents are predominantly African American and

2 Vietnamese American; and

3 • the steps taken by Entergy in its applications for environmental permits to avoid
4 assessment of the negative impacts of the gas power plant on the health, safety, environment, and
5 quality of life of the residents living nearby the Michoud site.

6 Based on this analysis, I found that the decisions and circumstances leading up to and
7 including Entergy's first application for City Council approval of the proposed gas power plant
8 follow the pattern of systemic environmental racism that disproportionately burdens
9 communities of color with toxic industrial pollution and hazards. I concluded that, if approved,
10 the proposed Entergy gas power plant would have the racially discriminatory effect of burdening
11 predominantly African American and Vietnamese American residents with toxic air pollution
12 and other environmental hazards. I, therefore, recommended that the City Council of New
13 Orleans deny the application by Entergy for the proposed gas power plant.

14 **Q4. In regards to Entergy's second application for the proposed gas plant, do you have**
15 **any changes to the conclusions you reached in your Direct Testimony?**

16 A. I have no changes to make to my Direct Testimony. The racially disproportionate
17 impacts of the proposed Entergy gas power plant and the woefully inadequate process for public
18 input that excluded the participation of people who would be most impacted by the proposed
19 power plant have not been addressed, much less remedied, in the second application filed by
20 Entergy. Entergy's second application seeks Council approval of either a 226 MW combustion
21 turbine gas plant or reciprocating gas engines with a capacity of 128 MW.

22

1 **III. Purpose of Supplemental Testimony**

2
3 **Q5. What is the purpose of your Supplemental Testimony?**

4 A. In reviewing Entergy's second application for the New Orleans Power Station and related
5 information, I have determined there are significant problems regarding (1) the fairness of this
6 utility docket proceeding being undermined by the conflicting roles of the New Orleans City
7 Council Consultants to recommend the City Council agree to Entergy developing a new power
8 plant on potential sites in East New Orleans and also to advise the Council on whether the
9 proposed Entergy gas power plant is in the public interest; (2) the false statement made by
10 Entergy which resulted in there being no environmental assessment of its industrial impact on
11 nearby residential neighborhoods and schools in East New Orleans, where residents are
12 predominantly African American and Vietnamese American; and (3) Entergy's repeated
13 overestimations of customer need for the proposed gas power plant. These problems compound
14 those raised in my prior Direct Testimony. They constitute additional grounds for the City
15 Council to deny Entergy's application for the proposed gas power plant.

16
17 **IV. The Conflicting Roles of the New Orleans City Council Consultants**
18 **Undermine the Fairness of This Proceeding**

19
20 **Q6. What is the problem regarding the fairness of the process to determine whether the**
21 **Entergy gas power plant is in the public interest?**

22 A. The problem is that the New Orleans City Council Consultants, who are parties to this
23 utility docket proceeding and have the responsibility of advising Councilmembers on whether or
24 not the proposed Entergy gas power plant is in the public interest, are the same individuals who
25 also recommended the City Council agree to Entergy building a new power plant in New Orleans

1 with the Michoud site as a potential location for the power plant. The City Council followed this
2 recommendation when it issued Resolution R-15-524 by majority vote, which states as follows:

3 WHEREAS, ENO [Entergy New Orleans, Inc.] will use reasonable
4 diligent efforts to **pursue the development of at least 120 MW of new-build**
5 **peak generation capacity within the City of New Orleans.** As part of this
6 commitment, **ENO will fully evaluate Michoud or Paterson, along with any**
7 **other appropriate sites in the City of New Orleans, as the potential site for a**
8 **combustion turbine (“CT”) or other peaking unit** to be owned by ENO, or by a
9 third party with an agreed-to PPA to ENO. This evaluation will take into
10 consideration, among other material considerations, the results of the Michoud
11 site analysis that was completed in connection with the Summer 2014 Request for
12 Proposal; and

13 WHEREAS, **ENO commits to use diligent efforts to have at least one**
14 **future generation facility located in the City of New Orleans”**

15 New Orleans City Council Resolution R-15-524, November 5, 2015 [emphasis added].

16 The New Orleans City Council Consultants advised the City Council to enter into this
17 agreement with Entergy and issue Resolution R-15-524 more than one year prior to Entergy’s
18 submission of the controversial Integrated Resource Plan on February 1, 2016. In the IRP,
19 Entergy argues in favor of constructing a new gas power plant. The Council’s agreement and
20 resolution occurred before utility forecasts, analyses, modeling, and data reviews required for the
21 IRP could be completed. Thus, it is appears that there was a separate process outside of Council
22 regulations, public notice, and Council utility dockets for the consultants to work out with
23 Entergy the specific features – “at least 120 MW of new-build peak generation capacity” – and
24 potential sites – “Michoud or Paterson” in East New Orleans – for the construction of a new
25 power plant.

26 On the advice of the New Orleans City Council Consultants, the City Council issued two
27 subsequent resolutions establishing a period of intervention and procedural requirements for the
28 consideration of Entergy’s gas power plant application (Resolution R-16-332) and revising the

1 procedural schedule for this application (Resolution R-16-506). Although each resolution
2 presents a chronology of events leading up to Entergy's application, each omits any reference to
3 the City Council's Resolution R-15-524, in which the City Council agrees to Entergy pursuing
4 the development of a new gas power plant in New Orleans. These resolutions, prepared by the
5 New Orleans City Council Consultants, leave the public in the dark as to the City Council's prior
6 agreement with Entergy to build a new gas power plant.

7 The New Orleans City Council Resolution R-16-506 indicates that the utility consultants
8 disagree with the proposed Entergy power plant having a capacity that is larger than 194 MW.
9 This would be consistent with their recommendation for a power plant with a capacity of at least
10 120 MW.

11 Furthermore, it is worth noting that the New Orleans City Council Consultants drafted a
12 resolution (Resolution R-16-25) for the City Council to approve the 2015 Integrated Resource
13 Plan ("IRP"), which concludes that a new gas power plant is needed in the city of New Orleans.
14 The consultants presented this draft resolution at the public meeting of the Council's Utility,
15 Cable, Telecommunications and Technology ("UCTT") Committee on December 14, 2016. The
16 IRP was the subject of significant criticism by some of the Intervenors in this proceeding as well
17 as every person who gave oral comments at the June 15, 2016 public hearing on the Integrated
18 Resource Plan, which I analyzed in my prior Direct Testimony. However, during the UCTT
19 Committee meeting, the New Orleans City Council Consultants vocally opposed the suggestion
20 made by representatives of the Alliance for Affordable Energy to change the word "approved" to
21 "accepted" in the draft resolution with the meaning that the City Council accepts the IRP without
22 judgment in favor of or otherwise affirming the IRP. The City Council voted to defer the draft

1 resolution until its next meeting in January 2017. After hearing from constituents who opposed
2 approval of the IRP, the City Council unanimously voted to change the language from
3 “approved” to “accepted” in Resolution R-17-100 that was passed on February 23, 2017.

4 As I explained in my prior Direct Testimony, my work for environmental justice has
5 involved developing institutional standards to ensure effective and meaningful public
6 participation in governmental decisions on matters involving proposed industrial developments
7 and other environmental concerns. These standards emphasize fairness and unbiased decision-
8 making. A scenario in which a decision-maker or an official advisor to a decision-maker is also
9 a proponent of a proposed development would be an anathema to these standards.

10 I respect the authority of the City Council to determine whether or not Entergy’s gas
11 plant application is in the public interest. However, the actions taken by the New Orleans City
12 Council Consultants taint this utility docket proceeding. The record shows that the consultants,
13 as parties to this proceeding, have the privilege to advise the City Council on whether it is in the
14 public interest to allow Entergy to develop a new gas power plant, but such advice is
15 compromised by the consultants’ recommendation that the City Council agree to this
16 development prior to any public review. The conflicting roles played by the Council’s utility
17 consultants undermine the guarantee of a fair process that New Orleans residents deserve. Their
18 conflicting roles warrant examination of whether this utility docket proceeding assures due
19 process for all parties and the public.

20

21

22

1 **V. Entergy's False Statement Resulted in No Environmental Assessment**
2 **of Its Industrial Impact on Nearby Neighborhoods and Schools**
3

4 **Q7. Please explain the false statement made by Entergy that resulted in there being no**
5 **environmental assessment of industrial impact on nearby residential neighborhoods and**
6 **schools.**

7 A. Entergy's first Part 70 air permit application for the Michoud power plant in 2004
8 required an Environmental Assessment Statement ("EAS"). In the EAS, Entergy is obligated to
9 identify the impacts of its power plant on the environment, any alternatives to the power plant,
10 and measures to avoid adverse environmental effects among other assessments. In addition, the
11 Environmental Assessment Statement ("EAS") requires Entergy to answer the following
12 question: "Does prospective site pose potential health risk as defined by proximity to: residential
13 areas, schools, hospitals, etc." Entergy provided the following false statement to this question:

14 There are no nearby residential areas.

15
16 The topographic map further illustrates there are no schools, hospitals, or other
17 public places in the vicinity of the plant site.
18

19 Entergy New Orleans, Inc., Appendix E – *Revised/Expanded "IT Questions" Decision: Entergy*
20 *Michoud 2 Repowering Project*, Part 70 Operating Permit, Michoud Electric Generating Plant,
21 LDEQ Permit No. 2140-00014-VO, Oct. 12, 2004, Activity No. PER19960001, EDMS Doc.
22 Nos. 24122261, 2478135. Entergy's full Environmental Assessment Statement is attached
23 hereto as Exhibit I.

24 At the time Entergy submitted its Environmental Assessment Statement to the Louisiana
25 Department of Environmental Quality (LDEQ) in 2004 and continuing today, predominantly
26 African American and Vietnamese American families live and attend schools in close geographic

1 proximity to the Michoud site, where Entergy now proposes to build a gas power plant. As a
2 result of Entergy's false statement, there has been no environmental assessment of the Michoud
3 power plant vis-à-vis nearby neighborhoods. Furthermore, and as explained in my prior Direct
4 Testimony, Entergy intends to apply for a renewal and modification of the Part 70 air permit for
5 the proposed gas power plant that does not require an Environmental Assessment Statement.

6 From the record, it appears that Entergy's false statement was overlooked by the LDEQ
7 when it issued the initial Part 70 air permit for the Michoud Electric Generating Plant on October
8 12, 2004 (Permit No. 2140-000140-V0). However, the LDEQ's recent public notice of the
9 proposed Part 70 renewal and modification permit for the proposed Entergy gas power plant
10 (Permit No. 2140-000140-V5) includes a map of the area surrounding the Michoud site. A
11 close-up view of this map shows the residential neighborhoods and two schools located within
12 two miles of the Michoud site. The LDEQ map is attached hereto as Exhibit 2.

13 The Environmental Assessment Statement is an important requirement that is supportive
14 of environmental justice goals. However, Entergy's egregious decision to not comply with this
15 requirement by submitting a false statement in 2004 and not correcting the EAS in its recent
16 application for a Part 70 air permit has denied the rights of nearby residents to information about
17 the impacts of Entergy's former and proposed power plants on their health, safety, environment,
18 and quality of life. The residents have also been denied the opportunity for mitigating, if not
19 eliminating, any of the adverse impacts that would be revealed by a factual and accurate
20 Environmental Assessment Statement.

21

22

1 **VI. Entergy Has Repeatedly Overestimated Customer Need for the**
2 **Proposed Gas Plant**

3
4 **Q8. Please explain Entergy's repeated overestimations of customer need for the gas**
5 **plant.**

6 A. Entergy requested a suspension of this utility docket proceeding in order to consider new
7 information showing customer need for electricity in the future is lower than Entergy's previous
8 forecast. Purportedly it was based on this new information that Entergy filed the second
9 application, which presents two options for a gas power plant. The Deep South Center for
10 Environmental Justice, the Sierra Club, and the Alliance for Affordable Energy jointly requested
11 that Entergy publicly disclose the new information, which it did.

12 In my analysis of Entergy's new forecast of decreased customer need for electricity and
13 its prior forecasts of customer need, I find that there is a pattern of repeated overestimations
14 without explanation. For example, on February 17, 2017, Entergy provided parties to this utility
15 docket proceeding its revised forecast showing customers in New Orleans will need 1,282 MW
16 of electricity in the year 2030. This is a drop of 54 MW in customer need from Entergy's prior
17 forecast of 1,336 MW in its initial application for City Council approval of the gas power plant
18 that was filed on June 20, 2015. In turn, Entergy's forecast of 1,336 MW is another drop in
19 customer need, this time, by 65 MW from its forecast in the Integrated Resource Plan filed on
20 February 1, 2015. For each of these substantial decreases in customer need for electricity,
21 Entergy has not explained or otherwise disclosed what change(s) contributed to the decreasing
22 customer need. The Deep South Center for Environmental Justice created the graph, *Entergy's*
23 *Decreasing Forecasts of Customer Need for Electricity in New Orleans, LA*, as a visual
24 representation of Entergy's forecast data compiled from Entergy's revised forecast issued earlier

1 this year, initial gas plant application to the City Council in 2016 (Direct Testimony of Seth E.
2 Cureington, page 18, Table 2), and Integrated Resource Plan in 2015 (page 79, Table 2). The
3 graph is attached hereto as Exhibit 3.

4 **Q9. How does Entergy's repeated overestimation of customer need factor in your**
5 **environmental justice analysis?**

6 A. Entergy's repeated overestimation of customer need for electricity has a direct bearing on
7 my environmental justice analysis. I must emphasize the point that Entergy uses its forecasts of
8 customer need to claim there is justification for building a new gas plant near predominantly
9 African American and Vietnamese American families residing in East New Orleans. Entergy is
10 asking the City Council to approve a project for which, by Entergy's own admission, there is
11 decreasing need and increasing alternatives. Such approval would result in racially
12 disproportionate pollution burdens and other industrial hazards, including the risk of gas
13 explosions, as well as accelerated land subsidence and impaired levee structure as a result of
14 Entergy's past and proposed groundwater use, which increase flood risks.

15 As a starting point, typical environmental assessments require proof that there is (1) a
16 need for the project, (2) no better alternative to the project, and (3) no alternative site for the
17 project. Entergy fails to meet this basic burden of proof.

18 Furthermore, the repeated overestimations of customer need along with the failure to
19 disclose the rationale for the decreasing forecasts indicate that Entergy is either incapable of or
20 unwilling to properly calculate how much electricity will be needed in New Orleans. This puts
21 the entire city at risk of making an unwise investment.

1 The repeated overestimations of customer need without explanation is arbitrary. One can
2 infer that Entergy's goal may not be meeting customer need for electricity, but, instead, meeting
3 a bottom line for profit that is currently estimated to be in excess of \$20 million for either gas
4 power plant option in Entergy's second application.

5 **Q10. Does this conclude your testimony?**

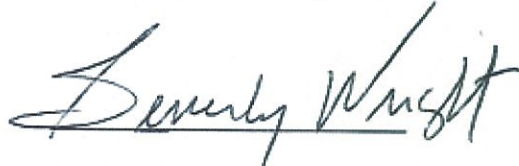
6 A. Yes.

AFFIDAVIT

STATE OF LOUISIANA)
)
PARISH OF ORLEANS)

I, Dr. Beverly Wright, do hereby swear under the penalty of perjury the following:

That I am the person identified in the attached prepared testimony and that such testimony was prepared by me under my direct supervision; that the answers and information set forth therein are true and accurate to the best of my personal knowledge and belief; and that if asked the questions set forth herein, my answers thereto would, under oath, remain the same.



Beverly Wright, Ph.D.

SWORN TO AND SUBSCRIBED BEFORE ME THIS 12th DAY OF October, 2017.

PAULA VINCENT JOHNSON
NOTARY PUBLIC, #50040
Orleans Parish, Louisiana
My Commission Is For Life



NOTARY PUBLIC

My commission expires: _____