May 31, 2024

Via Electronic Mail

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

DELTA STATES UTILITIES LA, LLC, AND ENTERGY LOUISIANA, LLC, EX PARTE
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 (Docket No. UD-24-01)

Dear Clerk:

Please find the enclosed Summary of Testimony, Direct Testimony of Karl R. Rábago on behalf of the Alliance for Affordable Energy, and Motion to Compel Production of HSPM-CS Materials and For Leave to File Supplemental Direct Testimony with proposed order, as well as accompanying exhibits in the above mentioned docket. Please file the attached communication and this letter in the record of the proceeding. We will submit physical copies at your instruction. If you have any questions, please do not hesitate to contact me.

Thank you for your time and attention.

Sincerely,

Jesse S. George
New Orleans Policy Director
Alliance for Affordable Energy

Before
The Council of the City of New Orleans

DELTA STATES UTILITIES LA, LLC AND ENTERGY LOUISIANA, LLC, EX PARTE

DOCKET NO. UD-24-01

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

MAY 31, 2024

SUMMARY OF DIRECT TESTIMONY OF THE ALLIANCE FOR AFFORDABLE ENERGY

I. INTRODUCTION

On December 11, 2023, Entergy New Orleans, LLC ("ENO") and Delta States Utilities New Orleans, LLC ("DSU NO") filed a joint application before the New Orleans City Council ("the Council") to, *inter alia*, authorize the sale and transfer of ENO's gas distribution business to DSU and to allow DSU to operate as a jurisdictional natural gas Local Distribution Company. On February 1, 2024, the Council adopted Resolution R-24-49, establishing a docket, period of intervention, and procedural schedule for the consideration of the joint application. The Alliance for Affordable Energy ("Alliance") submits the attached expert testimony of Karl R. Rábago, principal of Rábago Energy, LLC. In addition, the Alliance offers the following summary of its direct testimony:

II. SUMMARY OF DIRECT TESTIMONY

The Council adopted Resolution R-06-88 to provide a framework for consideration of the sale and transfer of utility assets. R-06-88 creates a public interest standard that must include, *inter alia*, a finding by the Council that such a sale or transfer "will provide net benefits to ratepayers in both the short term and the long term". For reasons outlined in detail in the attached testimony of Mr. Rábago, ENO's and DSU NO's joint application fails to meet the standards set forth by the Council. Accordingly, we recommend against approval of the application and offer three alternative options for the Council's consideration:

Option 1: The Council should direct ENO to develop a retirement and managed decapitalization plan for the gas distribution utility that will result in ending all gas distribution service to residential and small commercial customers, and accompanying electrification of former gas energy loads, by no later than December 31, 2035.

Option 2: If the Council takes a decision not to require ENO to execute a managed decapitalization of the gas distribution utility, it should develop a plan for municipal takeover of the gas distribution utility and managed decapitalization of the gas utility by the end of 2035. The City should evaluate hiring a qualified firm to achieve this goal.

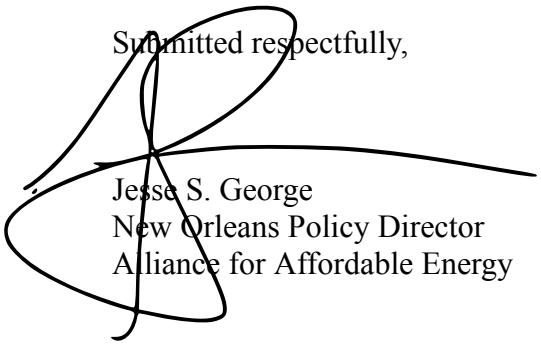
Option 3: If the Council takes a decision to allow the sale of the gas distribution utility to DSU NO and its parent Bernhard Capital Partners Management, LP ("Bernhard"), it should be calibrated to and conditioned on the outcome of a full rate review of the utility, and not to a simple carryover of existing rates, earnings levels, and spending plans. In addition, the Council should impose conditions on the sale including a requirement for developing and executing a managed decapitalization plan to accomplish electrification

of all residential and small commercial demand for gas by the end of 2035, a cap on any transition costs subject to independent third-party evaluation of the transition costs, an across-the-board rate decrease and rate caps for three years, and significant commitments to gas efficiency program investments and performance for residential and small commercial customers.

III. CONCLUSION

New Orleans is on the frontlines of a changed climate, and needs to move with urgency away from dependence on fossil fuels, as reflected in the Council's own climate and clean energy goals. Approval of this sale – creating a brand-new utility whose sole business is selling fossil gas, with an eye toward continued expansion and growth – would be disastrous for both ratepayers and for our City's efforts to lead on issues of climate adaptation and mitigation. Furthermore, as trends toward electrification continue, those left dependent on fossil gas in their homes will bear more and more of the cost of maintaining infrastructure that should become a relic of the past. ENO and DSU have failed to demonstrate that the proposed sale would provide net benefits in either the near- or long-term, as required by R-06-88, and the Council must deny their joint application.

Submitted respectfully,



Jesse S. George
New Orleans Policy Director
Alliance for Affordable Energy

Before
The Council of the City of New Orleans

DELTA STATES UTILITIES LA, LLC
AND ENTERGY LOUISIANA, LLC,
EX PARTE

DOCKET NO. UD-24-01

IN RE: APPLICATION FOR
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APPROVAL OF TRANSFER AND
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AND RELATED RELIEF

MAY 31, 2024

CERTIFICATE OF SERVICE

I do hereby certify that I have, this 31st day of May 2024, served the foregoing correspondence upon all other known parties of this proceeding by electronic mail.

Jesse S. George
Alliance for Affordable Energy

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BEFORE THE

COUNCIL OF THE CITY OF NEW ORLEANS

DELTA STATES UTILITIES LA, LLC AND ENTERGY LOUISIANA, LLC, EX PARTE	)	
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	)	**DOCKET NO. UD-24-01**

DIRECT TESTIMONY

OF

KARL R. RÁBAGO

ON BEHALF OF

ALLIANCE FOR AFFORDABLE ENERGY

MAY 31, 2024

I. INTRODUCTION AND QUALIFICATIONS

Q. Please state your name, business name and address, and role in this matter.

A. My name is Karl R. Rábago. I am the principal of Rábago Energy LLC, a Colorado limited liability company, located at 1350 Gaylord Street, Denver, Colorado. I appear here in my capacity as an expert witness on behalf of the Alliance for Affordable Energy ("Alliance").

Q. Please list your formal educational degrees.

A. I earned a Bachelor of Business Administration in Management from Texas A&M University in 1977, a Juris Doctorate with Honors from The University of Texas School of Law in 1984, a Master of Laws in Military Law from the U.S. Army Judge Advocate General's School in 1988, and a Master of Laws in Environmental Law from the Pace University Elisabeth Haub School of Law in 1990.

Q. Please summarize your experience and expertise in the field of utility regulation.

A. I have worked for more than 33 years in the utility industry and related fields, following my honorable discharge from the U.S. Army, where I served as an Armored Cavalry officer and a Judge Advocate. I am actively involved in a wide range of utility regulatory and ratemaking issues across the United States. My previous employment experience includes Commissioner with the Public Utility Commission of Texas, Deputy Assistant Secretary with the U.S. Department of Energy, Vice President with Austin Energy, Executive Director of the Pace Energy and Climate Center, Managing Director with the Rocky Mountain Institute, and Director with AES Corporation, among others. My resume is attached as Alliance-Rábago Direct Exhibit 1.

Q. Have you ever testified before the City Council of the City of New Orleans ("CNO" or "Council") or other regulatory agencies?

A. No. I have not submitted formal testimony before CNO prior to this. I have been working on behalf of the National Audubon Society and Audubon Delta on New Orleans-related issues for more than five years, including on Docket No. UD-19-01. In the past twelve years, I have submitted testimony, comments, or presentations in utility proceedings in Alabama, Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, Texas, Vermont, Virginia, Washington, and Wisconsin. I have also testified before the U.S. Congress and have been a participant in comments and briefs filed at several federal agencies and courts. A listing of my previous testimony is attached as Alliance-Rábago Direct Exhibit 2.

Q. Does your experience give you insights into the responsibilities and duties of the Council in this proceeding?

A. Yes. As a public utility commissioner in Texas, I participated in making decisions on hundreds of rate review, rulemaking, and planning decisions in cases involving investor-owned, municipal, and cooperative electric and telephone utilities. Those matters ranged widely, from ministerial annual interest rate approvals, for example, to prudence and rate decisions on a $12.4 billion nuclear power plant, to mergers and acquisitions. I sat as a public utility commissioner on Entergy's purchase of Gulf States Utilities in 1994. I

provided expert testimony in the application of NextEra Energy to acquire Hawaiian Electric Company, and in the Great Plains Energy merger with Westar. I have appeared before hundreds of commissioners, board members, and other public officials in formal, informal, and educational proceedings in the years since. I have contributed to the writing and passage of laws and rules in many jurisdictions and have made a career of advancing regulatory and market opportunities for competitive alternatives to monopoly control of essential services businesses. I remain honored to have served as a utility regulator and remain deeply respectful of the public interest obligation that comes with the job.

Q. From your perspective as a former utility regulator and frequent expert witness, what is your opinion of the foremost obligations facing the Council in this proceeding and for the gas distribution utility in the years to come.

A. As the Council itself has recognized, and as the citizens of New Orleans know all too well, New Orleans is ground zero for the accelerating adverse impacts of climate change. Having lived in southeast Texas and southwestern Louisiana, I know firsthand how severe weather impacts the low-lying areas along the Gulf of Mexico. The burning and leaking of fossil methane gas is a major contributor to climate change—as electric generators end their use of coal, as drivers switch to electricity for motive power, and as responsible public and private industrial and chemical facilities move to new sources of thermal energy, it will become perhaps the greatest. New Orleans must continue aggressively to end its dependence on fossil fuel use. Further, science and regulatory oversight is now revealing the long-hidden deadly effects that fossil methane gas has in

our homes and businesses,[1] and for the planet.[2] Therefore, the foremost obligations of the Council are to use this crucial opportunity to start the process of ending dependence of the City and its citizens on poisonous and climate-destroying fossil methane gas, to initiate and manage a decapitalization of the fossil methane gas distribution utility, and to reject big-money efforts to prolong deadly dependence on dirty energy sources.

II. OVERVIEW OF TESTIMONY AND RECOMMENDATIONS

Q. Please provide an overview of your testimony in this proceeding.

A. In this testimony I review the proposal by Entergy New Orleans ("ENO") and Delta States Utilities New Orleans ("DSU NO") to transfer ownership of New Orleans' fossil gas distribution utility and evaluate it against the Council's Resolution R-06-88. Based on my finding that the proposed transfer of ownership is not in the public interest, I make recommendations as to alternative paths that the Council should take.

Q. Please summarize your recommendations to the Council.

A. I recommend that the Council disapprove the proposed transfer of ownership of the gas distribution utility. To facilitate a managed decapitalization process, or to undertake any future consideration of the sale or transfer of management of the gas distribution utility

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[1] J. Kluger, *There's Yet Another Danger Lurking in Your Gas Stove,* Time Magazine (online edition) (May 3, 2024), available at: https://time.com/6973296/gas-stove-nitrogen-dioxide-danger/.

[2] U.S. House of Representatives Committee on Oversight and Accountability, *Denial, Disinformation, and Doublespeak Big Oil's Evolving Efforts to Avoid Accountability for Climate Change,* Joint Staff Report (April 2024), available at: https://www.budget.senate.gov/imo/media/doc/fossil_fuel_report1.pdf. *See also* M. Lavelle & N. Kusnetz, *Exxon Criticized ICN Stories Publicly, But Privately, Didn't Dispute the Findings,* Inside Climate News (May 2, 2024), available at: https://insideclimatenews.org/news/02052024/exxon-pivot-from-denial-to-deception/.

ENO should be directed to file a full general rate case for the gas distribution utility. No further action should be taken on sale or transfer of the gas distribution utility without such a comprehensive review of the gas distribution utility system. I offer three alternative paths for the Council's consideration, in order of preference.

Option 1: The Council should direct ENO to develop a retirement and managed decapitalization plan for the gas distribution utility that will result in ending all gas distribution service to residential and small commercial customers, and accompanying electrification of former gas energy loads, by no later than December 31, 2035.

Option 2: If the Council takes a decision not to require ENO to execute a managed decapitalization of the gas distribution utility, it should develop a plan for municipal takeover of the gas distribution utility and managed decapitalization of the gas utility by the end of 2035. The City should evaluate hiring a qualified firm to achieve this goal.

Option 3: If the Council takes a decision to allow the sale of the gas distribution utility to DSU NO and its parent Bernhard Capital Partners Management, LP ("Bernhard"), it should be calibrated to and conditioned on the outcome of a full rate review of the utility, and not to a simple carryover of existing rates, earnings levels, and spending plans. In addition, the Council should impose conditions on the sale including a requirement for developing and executing a managed decapitalization plan to accomplish electrification of all residential and small commercial demand for gas by the end of 2035, a cap on any transition costs subject to independent third-party evaluation of the transition costs, an across-the-board rate decrease and rate caps for three years, and

significant commitments to gas efficiency program investments and performance for residential and small commercial customers.

III. STANDARD FOR REVIEW

Q. What standard has the Council established for review of the proposed transaction?

A. Council Resolution R-06-88[3] sets out an eighteen-factor test by general order for reviewing the application in this proceeding:

> 1. No utility subject to the jurisdiction of the Council shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control or ownership of any of the assets, common stock or other indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated entity or any other entity, where the values involved in such action exceed one percent (1%) of the gross assets of such regulated utility or common carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right, interest, asset, obligation, stock ownership, or control, involved in such action without prior full disclosure of the prior intendment and plan of such utility or common carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Council. This section is intended to apply to any transfer of ownership and/or control of public utilities and common carriers regardless of the means used to accomplish that transfer.
>
> 2. In determining whether to approve any such transfer of ownership or control the Council shall take into account the following factors:
>
> a. Whether the transfer is in the public interest.
>
> b. Whether the purchaser is ready, willing and able to continue providing safe, reliable and adequate service to the utility's ratepayers.
>
> c. Whether the transfer will maintain or improve the financial condition of the resulting public utility or common carrier.
>
> d. Whether the proposed transfer will maintain or improve the quality of service to public utility or common carrier ratepayers.

[3] New Orleans City Council Resolution R-06-88 (Mar. 16, 2006).

e. Whether the transfer will provide net benefits to ratepayers in both the short term and the long term and provide a ratemaking method that will ensure, to the fullest extent possible, that ratepayers will receive the forecasted short and long term benefit.

f. Whether the transfer will adversely affect competition.

g. Whether the transfer will maintain or improve the quality of management of the resulting public utility or common carrier doing business in the City.

h. Whether the transfer will be fair and reasonable to the affected public utility or common carrier employees.

i. Whether the transfer would be fair and reasonable to the majority of all affected public utility or common carrier shareholders.

j. Whether the transfer will be beneficial on an overall basis to City and local economies and to the communities in the area served by the public utility or common carrier.

k. Whether the transfer will preserve the jurisdiction of the Council and the ability of the Council to effectively regulate and audit the public utility's or common carrier's operations in the City.

l. Whether conditions are necessary to prevent adverse consequences which may result from the transfer.

m. The history of compliance or noncompliance that the proposed acquiring entity or principals or affiliates have had with regulatory authorities in this City or other jurisdictions.

n. Whether the acquiring entity, persons, or corporations have the financial ability to operate the public utility or common carrier system and maintain or upgrade the quality of the physical system.

o. Whether any repairs and/or improvements are required and the ability of the acquiring entity to make those repairs and/or improvements.

p. The ability of the acquiring entity to obtain all necessary health, safety and other permits.

q. The manner of financing the transfer and any impact that may have on encumbering the assets of the entity and the potential impact on rates.

r. Whether there are any conditions which should be attached to the proposed acquisition.

3. The entity seeking acquisition or control of a public utility or common carrier subject to the Council's jurisdiction, or any other action described herein, shall have the burden of proving that the requirements of this Order have been satisfied.

4. Any transfer accomplished without Council approval is void.

Q. Based on your training as a lawyer and your experience in the utility industry, how do you summarize the factors set out in the Resolution R-06-88?

A. I do not offer a formal legal opinion. However, I have more than thirty-three years of experience in reviewing, applying, and drafting regulatory laws, regulations, and ordinances. In my expert opinion, Council Resolution R-06-88 establishes a public interest test for mergers, acquisitions, and other covered transactions and includes seventeen additional factors that support the overarching public interest test. Each of these factors are plainly written and can be taken, individually and as a whole, at face value according to the plain meaning of the words used. In my experience, the Council factors reflect common practice for review of merger, acquisition, reorganization, and similar transactions proposed for review and approval by regulated entities.

Q. How does DSU NO view the requirements of Resolution R-06-088?

A. DSU NO agrees with me that the overarching test is whether the proposed transaction is in the public interest.[4] Inexplicably and incorrectly, DSU NO mischaracterizes the eighteen factors in Council Resolution R-06-088 as evaluating "whether the proposed transaction is in the public interest using a no harm standard."[5] In so doing, DSU NO also seeks in general to make the requirements in Council Resolution R-06-88 optional rather than plainly mandatory, and specifically as to the net benefits requirement of subsection

[4] DSU NO Resp. to CNO 1-20(a).

[5] DSU NO Resp. to CNO 1-20(a).

2.e. of the Resolution.[6] In fact, DSU NO would reject the plain language of Council Resolution R-06-088, and states that it "does not interpret [Chapter 158 of the City Code, secs. 158-42, 158-44, 158-45 (relating to provision of information) and Council Resolution R-06-88] as requiring quantifiable benefits for the proposed transaction to be in the public interest. Rather, *Resolution R-06-88 requires an overall no harm standard of review with respect to whether the transaction is in the public interest, through an 18-factor analysis."*[7]

Q. Are you familiar with a "no harm" standard for mergers, acquisitions, and similar transactions?

A. Yes. I am familiar with the application of the no harm standard as relates to the competitive aspects of mergers, acquisitions, and similar transactions when reviewed by Federal antitrust regulators.[8] The breadth of the Council's responsibilities and regulatory oversight of the gas distribution utility and this transaction is substantially greater than this standard.

Q. How then do you proceed to review the proposed transaction in this case as compared to the approach taken by DSU NO?

A. In my view, the application must stand muster against each and every factor that the Council chose to include in its Resolutions R-06-88 and R-24-49. I therefore disagree

[6] DSU NO Resp. to CNO 1-20(a).

[7] DSU NO Resp. to CNO 1-14(a) (emphasis added).

[8] *See, e.g.,* A. Beigel, J. Snyder & A. Cessna, *Antitrust / Mergers & Acquisitions Advisory: Federal Antitrust Enforcers Publish 2023 Final Merger Guidelines: A Reflection of Heightened Enforcement,* Alston & Bird (Jan. 19, 2024), available at: https://www.alston.com/en/insights/publications/2024/01/federal-antitrust-enforces-publish-2023-final.

with DSU NO's efforts to pick and choose from the Resolutions and recommend that the Council expressly reject DSU's efforts to modify the meaning and substance of the Council's Resolutions as well.

Q. Does the no harm standard appear in Council Resolution R-06-88 or in Council Resolution R-24-49,[9] which established this proceeding?

A. No, the words do not appear in the resolutions.

Q. Is it reasonable to characterize the standard established in Council Resolutions R-06-88 and R-24-49 as establishing a no harm standard for review of this application as a whole?

A. No. The cited factors on net benefits and overall beneficial outcomes are clearly and plainly worded.[10] There are two factors that can be reasonably seen as embodying a no harm standard, which stand in stark contrast to the benefits-related factors. These relate to whether the transaction will adversely affect competition,[11] and whether conditions are necessary to prevent adverse consequences which may result from the transaction.[12] In my experience the Council's plain statement of when merely avoiding adverse consequences is acceptable reinforces the Council's intention that benefits to ratepayers and the City and local economies be positive.

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[9] New Orleans City Council Resolution R-24-49 (Feb. 1, 2024).

[10] R-06-88(2)(e), (j).

[11] R-06-88(2)(f).

[12] R-06-88(2)(l).

Q. How does DSU NO attempt to justify its request for Council approval of the proposed transaction?

A. DSU NO proposes a customized test for its own benefit, that the proposed transaction "satisf[y] all of the *relevant public interest factors, will not result in harm and/or will provided* [sic] *net benefits to the affected stakeholders and is in the public interest.*"[13]

Q. Does DSU NO define which public interest factors it believes are "relevant?"

A. No.[14]

Q. Does DSU NO explain when the no harm test applies and when the net benefits test applies?

A. No.[15]

Q. Does DSU NO define who affected stakeholders are?

A. No.[16]

Q. Should DSU NO be allowed to rewrite Council Resolution R-06-88 in order to secure approval of its application?

A. No. Furthermore, even under the fantastical notion that an applicant for utility acquisition approval could chose its own standard for application approval, my testimony demonstrates that DSU NO has proposed a transaction that not only fails to show

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[13] DSU NO direct testimony of Jeffrey Yuknis, Appendix B – 18-Factor Public Interest Analysis, at 2 (emphasis added).

[14] DSU NO direct testimony of Jeffrey Yuknis, Appendix B – 18-Factor Public Interest Analysis.

[15] DSU NO direct testimony of Jeffrey Yuknis ("Yuknis Direct"), Appendix B – 18-Factor Public Interest Analysis.

[16] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis.

benefits, but that also has many other fundamental flaws that will result in great cumulative harm.

IV. REVIEW OF PROPOSED TRANSACTION AGAINST FACTORS IN COUNCIL RESOLUTION R-06-88

Q. How did you approach your review of the proposed sale of the ENO gas distribution utility to DSU NO?

A. My review of the proposed transaction follows the eighteen factors established by the Council and addresses the proposed sale of the ENO gas distribution utility to Bernhard. While the underlying transaction is structured as a sale of both Entergy's New Orleans ("ENO") and Louisiana ("ELL") gas distribution utilities, I focus on the ENO transaction. However, because unquantified claims of potential future benefits from the sale hinge on successfully establishing a shared services business affiliate to serve both new DSU gas distribution utilities—DSU NO and DSU LA—I point out issues associated with the coupled transaction as appropriate.

Q. Is the proposed transaction in the public interest? (Factor 2.a.)

A. No, the proposed transaction is not in the public interest for two sets of reasons.

(1) First, there is too much uncertainty about the costs and benefits to customers in this transaction, and too many flawed elements in the proposed transaction.[17] I address these issues in more detail in this testimony. But in summary, ENO and DSU NO expect New Orleans customers—who would have to foot the ultimate bill for Bernhard's investors—to buy "a pig in a poke, —something offered in such a way as to obscure its real nature or worth."[18]

(2) Second, the entire business premise for Bernhard acquiring the ENO and ELL utilities is to execute on a preferred "purchase and grow strategy" of acquiring and growing businesses that they invest in.[19] A growth strategy is entirely inconsistent with a climate-responsible energy future for New Orleans. A growth strategy is also out of step with analysis provided by ENO relating to gas consumption trends,[20] and with increased efficiency in gas use and accelerated electrification of thermal energy loads. The proposed sale complicates and makes more expensive the electrification of fossil methane gas uses in New Orleans. I have found nothing in the proposed transaction documents,

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[17] *See* DSU NO witness Brian Little direct testimony ("Little Direct") at 24-25. Although asserting that "[t]he core focused structure of DSU will result in long-term customer benefits in terms of continued safety and reliability through significant investments in infrastructure replacement and modernization, as well as an improved customer experience, including an improved credit and collections process based on industry best practices through the deployment and leveraging of new and modern technology, gas-specific customer care and other systems and processes," DSU NO provides no empirical or independent analysis that its stand-alone management of the gas distribution utility will be more efficient or cost effective without the synergies realized under Entergy's dual-fuel utility oversight.

[18] "Pig in a poke." *Merriam-Webster.com Dictionary*, Merriam-Webster, https://www.merriam-webster.com/dictionary/pig%20in%20a%20poke. Accessed 13 May 2024.

[19] Yuknis Direct at 34, DSU NO Resp. to CNO 4-3, 4-4.

[20] ENO Resp. to CNO 4-9 LR15, citing non-confidential data.

pre-filed direct testimony, discovery request exhibits, or any sources relating to the transaction that address climate change and the need to reduce greenhouse gas emissions associated with the fossil methane gas sector.

Q. Is DSU NO going to be ready, willing, and able to provide safe, reliable, and adequate service? (Factor 2.b.)

A. DSU NO has not established that it addresses this factor satisfactorily. The proposed transaction does not address how DSU NO will account for the climate change impacts of its business, the need to reduce and eliminate greenhouse gas emissions associated with its operations, and how it will protect customers from stranded costs in the transition away from dependence on fossil fuels. DSU NO asserts that by assuming the existing gas distribution employees, it will be ready to operate on the day of closing.[21] However, it also acknowledges that it has never operated a gas distribution utility, is trying to buy and take over two such utilities in Louisiana at the same time,[22] must hire 100 additional employees to operate at the same level as ENO,[23] and must spend significant additional funds in order to establish necessary and essentially duplicative operating capabilities. Furthermore, achieving operational status is also tied to establishing the shared service business that will support both DSU NO and DSU LA.[24] There is significant uncertainty

[21] Yuknis Direct at 4-5. DSU NO indicates that the closing is expected between 21 and 24 months after the filing of the application in this proceeding in October of 2023. Little Direct at 15.

[22] Yuknis Direct at 31-32.

[23] Joint Application of DSU NO and ENO ¶ 2, at 5.

[24] Yuknis Direct at 26-28.

associated with the transition costs that DSU NO must incur in order to provide safe, reliable, and adequate service. In my experience, for the first two years after a new owner assumes responsibility for operating a utility business there is significant inefficiency, and many unforeseen issues arise—and that is when an experienced utility distribution system operator takes over. More problematic still, DSU NO proposes to benchmark test year expenses for its first general rate case on this early period of operations,[25] with the potential of significantly and unreasonably inflating test year costs. The solution is for the Council to have the information it needs to set just and reasonable rates before it approves any proposed transaction. That can be accomplished by requiring ENO to file and for the Council to conduct a full updated general rate case before proceeding on the review of the proposed transaction. Then DSU NO and Bernhard should commit to capping transition costs, including costs associated with the shared services business unit-such that the total revenue requirement does not exceed the inflation-adjusted reasonable revenue requirement determined in the ENO rate case order.

Q. Will the transaction improve the financial condition of the gas distribution utility? (Factor 2.c.)

A. This cannot be determined. While DSU NO asserts that under new ownership it will have access to Bernhard capital financing, there is no evidence as to whether DSU NO will enjoy any priority for capital within the Bernhard organization,[26] or whether the costs of such capital will be capped or better than those enjoyed by ENO under Entergy

[25] Little Direct at 30.

[26] Yuknis Direct at 34.

ownership. DSU NO should commit to capping financing costs for a period of at least three years from the date of the closing of the proposed transaction.

However, the concern about capital for DSU NO is not about getting more capital to support growth. Rather, it is about stewarding capital, reducing capital investments to avoid stranded costs in the energy transition away from fossil fuels, and supporting electrification, efficiency, and a managed decapitalization of the gas distribution utility. Because DSU NO presumes the gas distribution utility will operate as an anachronistic growth utility,[27] its assertions regarding access to capital are out of sync with the future that the business should be planning for. The Council should require DSU NO and Bernhard to develop and submit for Council approval a plan, for completed execution no later than 2035, for the managed decapitalization and retirement of all assets and arrangements used in the distribution of fossil methane gas to residential and small commercial customers.

Q. Will DSU NO maintain or improve the quality of service for customers? (Factor 2.d.)

A. By the terms of the proposed transaction, it will not. The proposed transaction is for Bernhard to provide, through DSU NO, the same services that ENO has provided, but with a 33% increase in staff headcount,[28] significant additional costs to stand up services and functionality that will remain with Entergy, a new shared services business unit that has yet to be built, all while assuming operational, financial, and regulatory

[27] Yuknis Direct at 34, DSU NO Resp. to CNO 4-3, 4-4.

[28] Joint Application of DSU NO and ENO ¶ 2, at 5.

responsibilities for two gas distribution utilities—something Bernhard has never done before.[29] DSU NO provides no commitments to improve any specific service performance metrics. DSU NO's claim that when it runs the gas distribution business, service will be improved because gas distribution services work will be the core focus of the business, unlike under the multi-fuel utility business run by ENO.[30] However, none of the witnesses from DSU NO or ENO have identified specific shortcomings or deficiencies that the sole-focus DSU NO will overcome, how the new organizations—DSU NO, DSU LA, and DSU Services—will specifically provide better service, how the new distribution utility will help customers use gas more efficiently and achieve cost-effective electrification of thermal energy loads, or how specific quality of service metrics will be improved and by how much.

Q. Will the proposed transaction provide net positive benefits in the short and long term for customers? (Factor 2.e.)

A. DSU NO provides no specific commitments of net benefits for customers in the short or long term. The 33% increase in staffing and the costs of establishing new service support functionality creates a significant cost that customers will face when DSU NO proposes

[29] DSU NO witness Brian Little direct testimony ("Little Direct") at 19. "The shared services DSU NO will receive from DSU Services will be consistent with the shared corporate services currently received by the ENO Gas Business from ESL. These services will encompass customer service, human resources, employee benefits, payroll, accounts payable, finance and accounting, information technology, senior executive, regulatory affairs, gas supply, government, legal, stores, supply chain, fleet services and environmental functions."

[30] Yuknis Direct at 33.

new rates.[31] DSU NO proposed a continuation of existing rates, existing capital structure, existing cost of equity, existing cost of debt, and existing spending levels—all without an empirical assessment of whether those values reflect the cost of service for DSU NO. Further, DSU NO provides no commitments to reduce rates, provide enhanced services, or otherwise deliver net benefits to customers, either in the near term or after it files its first rate case. As noted previously in this testimony, DSU NO takes the position that it can meet the net benefits test without quantifying or delivering net benefits to customers.[32] I disagree with DSU NO's position and conclude that the applicants have not provided information to support a conclusion that the proposed transaction satisfies the customer benefits factor of the Council's public interest test. The Council should require, as a condition of approval of the proposed transaction, that DSU NO make a commitment to providing customer bill credits at a level that ensure net positive benefits.

Q. Are there any other reasons why you feel that the proposed transaction fails the customer benefits factor of the Council's public interest test?

A. Yes. The Sewerage & Water Board of New Orleans ("S&WB") is moving to stop paying retail prices for gas it uses to generate electricity for its pumps, and instead, plans to take electricity directly from ENO at transmission voltage. It is my understanding that the S&WB gas use reflects about 10% of the total sales of the gas distribution utility. The loss of such a large percentage of sales means a much smaller revenue stream over which to spread fixed costs. As a result, there is good reason for the Council to assume that the

[31] Joint Application of DSU NO and ENO ¶ 2, at 5.

[32] DSU NO Resp. to CNO 1-20(a).

S&WB Power Complex will yield increased sales and profits for the ENO electric utility and increased rates for remaining gas distribution utility customers. The S&WB Power Complex project and its rate fallout for gas distribution utility customers is a postcard from the electrification future, and the customers left holding the gas utility fixed costs bag will increasingly be those without the means to affordably keep up with other electrification customers. These costs could be mitigated if the proposed transaction does not proceed.

Q. Does the proposed transaction adversely affect competition? (Factor 2.f.)

A. Yes! Contrary to DSU NO's simplistic assertion that "the Transaction will in no way adversely affect competition,"[33] and even acknowledging that DSU NO seeks a monopoly franchise for *gas distribution service*, the retail gas service business today faces very real competition from beneficial electrification technologies. Indeed, in the face of the growing ongoing threat of climate change, it is in the public interest for the Council to encourage a transition away from direct use of gas by customers and to rely on market forces, policy, and all other reasonable tools to facilitate and accelerate that transition. As such, the grant of an exclusive franchise to a single-fuel business with reduced regulatory and policy visibility and oversight stands to adversely affect the ability to apply market forces to support transition objectives. The managers of and investors in the proposed DSU NO business will have and will doubtless invoke a fiduciary responsibility to maximize profits from the sale of fossil methane gas, and the proposed business structure as a stand-alone gas distribution system will mean that DSU

[33] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 8.

NO will be focused on throughput, not climate-responsible energy services. Installing a profit-maximizing private investment firm with a strategy of growing the use of climate-changing fossil fuel[34] is inconsistent with the Council's climate objectives. It is especially noteworthy that even with Entergy having decided that this is a prudent time to exit the gas distribution business in New Orleans and Louisiana, as a dual-fuel utility ENO is a more efficient and less-expensive platform for aggressively pursuing beneficial electrification. The Transaction's proposed shift in ownership and operating mission of the gas distribution utility is therefore adverse to competition and inconsistent with the public interest.

Q. Will the proposed transaction maintain or improve the quality of management for the gas distribution utility? (Factor 2.g.)

A. DSU NO asserts that it will maintain or improve the quality of management for the gas distribution utility because it is planning to install a team of qualified and experience gas and investment business leaders. However, two essential data points are missing from DSU NO's assertions. First, the simple practical reality that the change in management will result in discontinuities, inefficiencies, and delays in the ordinary course of removing and installing management teams. These adverse impacts will be magnified by the fact that several organizational functions, facilities, and capabilities will be retained by Entergy and must be built from scratch by DSU NO. DSU NO and Bernhard offer plans and intentions that they will be ready to seamlessly transition management on day one

[34] Yuknis Direct at 34.

after closing,[35] but this flies in the face of both my experiences and reasonable expectations. Second, the transaction plan for management changeover and assertions about the capabilities of the new management team are unverified assertions only.[36] Bernhard and DSU NO provide no independent analysis of the current and appropriate future state of the management of the gas distribution utility to assure the Council that the transaction will not result in adverse impacts on management quality. The Council does not have the evidence it needs to find that the management quality public interest factor has been satisfactorily addressed.

Q. Is the proposed transaction fair and reasonable to gas distribution utility employees? (Factor 2.h.)

A. DSU NO proposes to retain all gas distribution utility employees, and to otherwise offer to maintain the status quo for employees that move to the new organization.[37] However, DSU NO provides no evidence the status quo is fair and reasonable or whether and how Bernhard proposes to improve conditions for employees in the new organization. Likewise, DSU NO makes no commitments as to how it will treat employees when it files its first rate case.

Q. Is the proposed transaction fair and reasonable to utility shareholders? (Factor 2.i.)

A. The proposed transaction will yield proceeds for ENO. While DSU NO asserts that "the fairness of this transaction to ENO's shareholders is evidenced by the availability of new

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[35] Joint Application of DSU NO and ENO ¶ 8, at 8.

[36] Yuknis Direct at 28-31.

[37] Joint Application of DSU NO and ENO ¶ 9, at 9.

capital to fund beneficial investments in the electric utility that would not otherwise be available," that "[b]y freeing up capital that otherwise would be invested in the ENO Gas Business and utilizing for future electric investment the net proceeds created by the Transaction, ENO may be able to reduce its dependency on new financings and maintain its ability to access capital markets for other beneficial investments," and that "the Transaction should enable ENO to pay off some of its debt, which improves its credit."[38] However, this string of theoretical possibilities is unsupported by commitments. ENO makes no specific commitment as to how the proceeds realized from the transaction will be used—whether to enrich shareholders or provide electric customers with benefits.[39] Further, there is no quantitative evidence that the potential benefits to ENO shareholders and customers will be greater under the proposed transaction as compared to continued Entergy ownership of the gas distribution utility. There are insufficient facts available to determine if proposed transaction will be fair to Entergy shareholders, and there are no commitments in the proposed transaction to ensure that result.

Q. Will the proposed transaction be beneficial on an overall basis to City and local economies and to communities in the area service? (Factor 2.j.)

A. DSU NO provides no commitments to reduce rates, provide enhanced services, or otherwise deliver net benefits to customers, either in the near term or after it files its first rate case. DSU NO does point out that it will incur new costs to establish offices and to

[38] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 9-10.

[39] ENO witness Deanna Rodriguez direct testimony ("Rodriguez Direct") at 4.

increase headcount by 100 positions,[40] but both are costs associated with filling gaps created by the transaction itself and the fact that DSU NO is not buying a self-sufficient gas distribution utility—DSU NO quantifies no net benefits that will be created by the transaction. As noted previously in this testimony, DSU NO also takes the position that it can meet the net benefits test without quantifying or delivering net benefits to customers.[41] I disagree with that position and conclude that the applicants have not provided information to support a conclusion that the proposed transaction satisfies the customer benefits factor of the Council's public interest test.

Q. Will the transfer preserve the jurisdiction of the Council and the ability of the Council to effectively regulate the gas distribution utility? (Factor 2.k.)

A. DSU NO asserts that the proposed transaction "will replace one investor-owned utility with another, with the LDC remaining subject to the Council's jurisdiction," and that therefore, the proposed transaction "will preserve the jurisdiction of the Council and the ability of the Council to effectively regulate and audit the new LDC's operations within the City."[42] This assertion is not factually true and does not demonstrate that the regulatory oversight factor of the Council's public interest test will be met. The proposed transaction will require the Council to effectively regulate a new, privately held entity with less financial transparency than a publicly traded utility *plus* the existing Entergy organization. The proposed transaction will require regulatory oversight of affiliate

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[40] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 10-11.

[41] DSU NO Resp. to CNO 1-20(a).

[42] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 11.

transactions with a new, yet-to-be-built services organization and the proposed DSU LA. The proposed transaction includes no commitment to increase regulatory fee payments to the City to offset these added regulatory burdens. As a result, the proposed transaction makes regulatory oversight by the Council more expensive and more difficult. The proposed transaction fails the regulatory oversight factor of the Council's public interest test.

Q. Are conditions on the transaction necessary to prevent adverse consequences resulting from the transaction? (Factor 2.l.)

A. Conditions are necessary to prevent adverse consequences resulting from the proposed transaction, but they are not included in the proposed transaction. DSU NO asserts that the proposed transaction "is expected to allow greater focus on gas operations and investment in new assets and systems to ensure high-quality local gas distribution services for customers."[43] This expectation, devoid of metrics and commitments to meet such metrics, is a key theme of Bernhard's and DSU NO's "pig in a poke" approach to attempting to justify the proposed transaction. The "greater focus" argument is a gloss on the fact that the proposed transaction requires duplication of services and costs and reductions in operational and other synergies which should have been addressed with specific and material conditions and commitments. I summarize the required conditions and commitments in my discussion of Factor 2.r. of the Council's public interest test below.

[43] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 11.

Q. Is there a relevant history of DSU NO compliance issues with the City of New Orleans or other jurisdictions? (Factor 2.m.)

A. Because DSU NO and Bernhard have never successfully operated a gas distribution utility, and none of its management have ever managed a gas business with a goal of navigating a transition away from a business dependent on selling fossil fuels, there is no history of compliance issues with the City of New Orleans. The proposed transaction will create a period of regulatory discontinuity while Bernhard, DSU LA, and DSU NO all stand up compliance capabilities that they never had before. The absence of any compliance history is a bug, not a feature, of the proposed transaction.

Q. Will Bernhard and DSU NO have the financial ability to operate the gas distribution utility and maintain or upgrade the quality of the physical gas distribution utility system? (Factor 2.n.)

A. DSU NO asserts that "[a]fter the Transaction is completed, DSU NO will have access to equity capital through its relationships to Bernhard Capital, and additional required capital and financial ability to operate, maintain and, to the extent necessary, facilitate upgrades to the local gas distribution company."[44] This assertion fails to satisfy the financial ability factor of the Council's public interest test for several important reasons. First, the asserted *access* to equity capital through Bernhard is not a commitment. Second, I found no evidence that DSU NO will be provided priority access to capital within the Bernhard organization nor how competition for capital will be resolved to ensure that DSU NO enjoys *affordable* access to capital. Third, DSU NO provides no

[44] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 12.

evidence that under its proposal to continue existing rates, rate of return, and capital structure, customers will be treated fairly. Only a full rate case as a condition precedent to Council approval of the proposed transaction can assure just and reasonable rates for capital, debt, and ultimately, gas service. Finally, and as previously explained, the priority mission for the gas distribution utility should be developing and executing a strategy to achieve a managed decapitalization of the fossil gas utility business, not upgrade or expand it. As a dual fuel utility, ENO can navigate the transition away from fossil fuel use efficiently and cost-effectively. As a stand-alone gas distribution utility, DSU NO has no plan or financial strategy for achieving this important result. DSU NO has not demonstrated that it satisfies and is committed to satisfying the financial ability factor of the Council's public interest test.

Q. Are any repairs and/or improvements required for the gas distribution utility and do Bernhard and DSU NO have the ability to make those repairs and/or improvements? (Factor 2.o.)

A. DSU NO asserts that it "will need to make investment to replace certain assets and services of ENO that are not transferring,"[45] and that "no major repairs or upgrades to the ENO local gas distribution system are needed to consummate the Transaction."[46] The necessary investments to replace non-transferring assets and services, and the expenses associated with hiring staff to perform functions that transferring staff cannot, are incremental costs of the transaction. DSU NO proposes to recover the added investment

[45] Little Direct at 27-30.

[46] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 12-13.

costs through a regulatory asset and to track added staff and operating expenses into a test year calculation after at least one year of operation.[47] Because DSU NO cannot yet quantify the added costs of the improvements, or the just and reasonable costs of financing those improvements through debt or equity, and because DSU NO has not made a commitment to cap these costs at a level acceptable to the Council, the repair and improvements factor of the Council's public interest test has not been satisfactorily addressed.

Q. Do Bernhard and its DSU subsidiaries have the ability to acquire all necessary health, safety, and other permits? (Factor 2.p.)

A. DSU NO asserts that because some 200 ENO employees will be offered an opportunity to transfer to DSU NO, and because DSU NO will have backing from Bernhard, the proposed transaction satisfies the permits factor of the Council's public interest test.[48] This assertion is insufficient because it cannot address whether DSU Services will have necessary permitting abilities, whether DSU NO will efficiently hire and onboard the supplemental staff needed to assure efficient permitting ability, how a private equity investment fund with reduced regulatory oversight can help in meeting permitting requirements, and whether permitting requirements can be met without incurring additional customer costs. In order to satisfy the permitting factor of the Council's public interest test, DSU NO and Bernhard should commit to meeting all permitting

[47] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 13; Little Direct at 22.

[48] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 13.

requirements on time and at lower cost than incurred by ENO, and to capping any recovery of permitting costs at that level.

Q. Will the manner of financing for the transaction encumber the assets of the gas distribution utility and what are the potential impacts on rates? (Factor 2.q.)

A. DSU NO's proposal for financing the transaction will encumber the assets of the gas distribution utility, as is typical with utility financing.[49] The proposed transaction has a fundamental flaw regarding rates—the DSU NO proposal is to continue ENO rates, schedules, costs of equity and debt, and capital structure.[50] This proposal assumes but does not demonstrate that these costs are reasonable and reasonable for DSU NO. Moreover, while DSU NO and Bernhard propose not to recover transaction costs in future rates, the proposed transaction includes a provision for the accumulation of unspecified and yet to be determined costs associated with the transition from ENO to Bernhard control of the gas distribution utility.[51] Absent a current and complete rate evaluation, with adjustments reflecting DSU NO-specific issues and a cap on proposed revenue requirements, there is a very real likelihood that DSU NO's rates will not be just and reasonable. The Council has not been presented with sufficient evidence and/or commitments in the proposed transaction to address the rate impacts factor of its public interest test.

Q. Are there conditions that should be attached to the transaction? (Factor 2.r.)

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[49] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 14.

[50] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 14.

[51] Yuknis Direct, Appendix B – 18-Factor Public Interest Analysis, at 13.

A. Yes. As I have described in addressing the other factors in the Council's public interest test, the proposed transaction fails to include several key commitments that should have been included as conditions. These include:

- As a condition of the proposed transaction, ENO should file and the Council should have the opportunity to evaluate a full general rate case for the gas distribution utility before proceeding to determine whether the proposed transaction is in the public interest.
- DSU NO and Bernhard should commit to capping transition costs, including costs associated with any shared services functions, such that the total revenue requirement does not exceed the inflation-adjusted reasonable revenue requirement determined in the ENO full general rate case order.
- DSU NO and Bernhard should commit to capping capital and operating expenses and the amount and rates of return/costs of such expenses for a period not less than three years from the date of the closing of the proposed transaction.
- DSU NO should be required to develop and commit to achieving specific quality of service performance metrics for a period of at least three years from the date of closing of the proposed transaction. These metrics should include specific performance objectives relating to gas delivery efficiency and leak reduction metrics, customer gas use efficiency improvements, and cost-effective electrification of thermal energy loads metrics.

- DSU NO should commit to providing customer bill credits at a level that more than offsets any incremental costs of the proposed transaction in order to ensure that the transaction results in net positive benefits to customers.
- The Council should require ENO to submit a commitment to a disposition of sale proceeds that ensures direct customers benefits as a condition of the proposed transaction.
- DSU NO should commit to making regulatory fee payments to the City of New Orleans to offset the costs of added regulatory burdens as a condition of approval of the proposed transaction.
- DSU NO should commit to capping transition costs relating to improvements and increased costs relating to non-transferred staff and functionality from ENO.
- DSU NO should commit to meeting all permitting requirements for DSU NO, DSU Services, and Bernhard on time at a lower cost than incurred by ENO.

In addition, because of the growth threat of climate change and the material causal connection between the production, distribution, and use of fossil methane gas and the worsening of climate change as well as local human health impacts, the proposed transaction should also include the following conditions and commitments:

- DSU NO should develop and submit a plan for Council approval prior to the closing of the transaction, for the managed decapitalization of the fossil methane gas distribution business by a date certain, but not later than 2035 for residential and small commercial customers. The plan should include a pathway for the retirement or

transfer of assets with commitments to protect customers and citizens of New Orleans from stranded costs.

Q. What are your findings based on review of the proposed sale of the gas distribution utility against the Council's required factors for review?

A. In summary, I find that the applicants have failed to demonstrate that the proposed transaction is in the public interest.

V. OTHER FLAWS IN THE PROPOSED TRANSACTION

Q. Are there other aspects of the proposed transaction that merit the Council's attention?

A. Yes. First, I wish to emphasize the lack of objective, independent review of the merits and key metrics for any key aspect of the proposed transaction. Second, there are also several problems with the ENO side of the transaction. Third, and especially in light of the climate crisis, the Council, its advisors, and the public should have an opportunity to review the merits of a sale of the gas distribution utility as compared to alternative options *before* evaluating the specific merits and deficiencies of a singular proposal to take over the business.

Q. What kind of evaluations are required before the Council decides on the proposed transaction?

A. A full rate case should be conducted to determine whether rates, spending plans, returns, capital structure, and other elements of the gas distribution utility rates are just and reasonable today, and whether they should be carried over to a new operator of the utility. It is not reasonable to assume that ENO's rates are just and reasonable for gas customers

under DSU NO and Bernhard ownership, especially as Entergy retains a significant number of employees and operating capabilities. A full reevaluation of the formula rate plan and infrastructure replacement plans[52] should be commissioned and conducted as well. Further, an independent third-party should be retained to perform a valuation of the gas distribution utility assets and planned investments, especially in light of accelerating climate change. An independent evaluation of the management qualifications of any potential replacement for ENO in running the gas distribution utility should also be obtained. And finally, a comprehensive strategic review should be commissioned for all reasonable pathways for reorganization of the gas distribution utility under continuation, decapitalization, and other reasonable scenarios.

Q. What problems do you see on the ENO side of the transaction?

A. First, under the proposed transaction, not only will Bernhard incur costs that customers must pay due to loss of operational functionality and dual-fuel utility synergies, but ENO will also lose a contributor to the recovery of fixed costs associated with management and operation of the gas distribution utility. These costs are not accounted for in Bernhard's review of the proposed transaction against the Council's eighteen-factor public interest test, and no such evidence was submitted by ENO. Second, both ENO and Bernhard assert that the sale of the gas distribution utility will increase access to capital needed for electric system investments. However, ENO makes no commitment that the proceeds of the sale will be used to benefit customers and not simply enrich Entergy shareholders.

[52] DSU NO assumes a continuation of Entergy's Gas Infrastructure Replacement Program and its Gas Formula Rate Plan as part of the proposed transaction. Little Direct at 20.

Third, neither ENO nor Bernhard have provided independent evidence that the purchase price is objectively reasonable and not just the deal that ENO and Bernhard prefer.

Finally, and most importantly over the mid-to-long term, the separation of the electric and gas distribution utility businesses will increase the difficulty and costs associated with electrification of current gas loads, especially in the residential and small commercial sectors.

Q. At this stage, what have ENO and Bernhard put before the Council?

A. ENO and Bernhard have proposed *their* best deal for the transfer of the operation and assets of the gas distribution utility to a new organization. It is not, however, a very good deal for the City of New Orleans and the customers of the gas distribution utility. This is not surprising given the shrinking lifespan of a business sector that depends on homes and businesses burning fossil fuel in those homes and businesses. The Council is missing key elements of information and analysis necessary to decide whether the ENO/Bernhard deal, or any deal to sell the gas distribution utility is a deal worth pursuing.

Q. What are some of the missing key elements of analysis the Council must have or undertake?

A. The public interest inherent in the provision of utility energy services requires analysis before the deal is reviewed, especially on the following issues:

- Whether it makes sense for the Council to presume indefinite operation of a fossil gas distribution utility, as proposed by Bernhard, especially for residential and small commercial customers and in light of climate change—all without commitments

regarding protecting customers from potential stranded costs and more stringent emissions regulations costs.

- Whether ENO is making a prudent decision in proposing to sell the gas distribution utility rather than taking alternative pathways, including managed decapitalization of the gas distribution utility and the accelerated retirement of those utility assets while aggressively pursuing a holistic—electric and gas utility—approach to electrification of thermal energy needs for residential and small commercial customers.
- If ENO is unwilling to undertake managed decapitalization of the gas distribution utility and accelerated retirement of the gas delivery system, whether alternative pathways, including a search for new management with a true public interest mission and business model is more prudent and cost-effective over the near and long term.
- Whether ENO's failure to commit to maximizing electric customer benefits with the proceeds of the sale of the gas distribution utility signals a likely outcome that enriches none but Entergy shareholders and executives, and whether such a disposition honors the investments that New Orleans gas customers have made in the gas distribution utility over years past.
- Whether Bernhard, a private equity business with an intended strategy of acquiring and growing the gas distribution utility is an economically rational and morally defensible choice to run the gas distribution utility in an era of accelerating climate change.

- Whether the Bernhard firm, inexperienced in gas utility management and operation has the sophistication, skills, and capacity to take on the challenges facing the gas distribution business in light of Bernhard's avowed objective of increasing fossil fuel use and climate changing emissions, and to lead, rather than resist, a just transition away from fossil fuel dependence—for public benefit and not just for private equity profits.

- Whether the operating revenues of the gas distribution utility while it winds down should be invested in public goods like electrification, local community generation, and aggressive increases in building and business energy efficiency—rather than in enriching private equity investors whose only focus is growth for the sake of private profits.

VI. RECOMMENDATIONS

Q. Please reprise your summarized recommendations to the Council.

A. I recommend that the Council disapprove the proposed transfer of ownership of the gas distribution utility. To facilitate a managed decapitalization process, or to undertake any future consideration of the sale or transfer of management of the gas distribution utility ENO should be directed to file a full general rate case for the gas distribution utility. No further action should be taken on sale or transfer of the gas distribution utility without such a comprehensive review of the gas distribution utility system. I offer three alternative paths for the Council's consideration, in order of preference.

Option 1: The Council should direct ENO to develop a retirement and managed decapitalization plan for the gas distribution utility that will result in ending all gas distribution service to residential and small commercial customers, and accompanying electrification of former gas energy loads, by no later than December 31, 2035.

Option 2: If the Council takes a decision not to require ENO to execute a managed decapitalization of the gas distribution utility, it should develop a plan for municipal takeover of the gas distribution utility and managed decapitalization of the gas utility by the end of 2035. The City should evaluate hiring a qualified firm to achieve this goal.

Option 3: If the Council takes a decision to allow the sale of the gas distribution utility to DSU NO and its parent Bernhard Capital, it should be calibrated to and conditioned on the outcome of a full rate review of the utility, and not to a simple carryover of existing rates, earnings levels, and spending plans. In addition, the Council should impose conditions on the sale including a requirement for developing and executing a managed decapitalization plan to accomplish electrification of all residential and small commercial demand for gas by the end of 2035, a cap on any transition costs subject to independent third-party evaluation of the transition costs, an across-the-board rate decrease and rate caps for three years, and significant commitments to gas efficiency program investments and performance for residential and small commercial customers.

Q. Does this conclude your direct testimony?

A. Yes.

BEFORE THE

COUNCIL OF THE CITY OF NEW ORLEANS

DELTA STATES UTILITIES LA, LLCC AND ENTERGY LOUISIANA, LLC, EX PARTE	)	
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	)	**DOCKET NO. UD-24-01**

MOTION TO COMPEL PRODUCTION OF HSPM-CS MATERIALS AND FOR LEAVE TO FILE SUPPLEMENTAL DIRECT TESTIMONY

The Alliance for Affordable Energy ("the Alliance") respectfully submits this Motion to Compel Production of HSPM-CS Materials and for Leave to File Supplemental Direct Testimony in the above captioned docket.. The Alliance and other intervenors in this docket have been prejudiced by Entergy New Orleans, LLC's ("ENO") and Delta States Utilities, LLC's ("DSU") practice of designating certain discovery materials as "HSPM-CS", a level of restriction above the Highly Sensitive Protected Materials ("HSPM") designation which has no basis in the New Orleans City Council's ("the Council") Resolution and Order Adopting New Official Protective Order, R-07-432, attached as AAE Exhibit A.

In order to timely meet the existing procedural schedule and to show good faith in enabling the timely disposition of matters in this docket, the Alliance has filed direct testimony prepared without the benefit of access to the HSPM-CS materials. However, the Alliance's due process rights to fully and effectively participate in this proceeding have been abridged as a result of the denial of access to the HSPM-CS materials.

Accordingly, the Alliance moves to compel ENO and DSU to produce to all parties any and all HSPM-CS materials produced thus far in this docket no later than Friday, June 7, 2024. The Alliance agrees to remain bound by the existing confidentiality requirements as to all such HSPM-CS materials produced. The Alliance further moves for leave to file supplemental direct testimony no later than Friday, June 14. No party will be prejudiced by the granting of this motion.

Respectfully submitted,

Jesse S. George
New Orleans Policy Director
Alliance for Affordable Energy
jesse@all4energy.org

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon "The Official Service List" via electronic mail this 31st day of May 2024.

Jesse S. George

RESOLUTION
R-07-432

CITY HALL: SEPTEMBER 20, 2007

BY: COUNCILMEMBERS MEDURA, 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 A 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:_____