FN 28-30

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August 29, 2018

CONFIDENTIAL COMMUNICATION

BY-HAND DELIVERY
Hon. Calvin Johnson (Email: fourwakes@gmail.com)
Matthew Coman (Email: mcoman@shergarner.com)
Sher Garner, LLC
909 Poydras Street
Suite 2800
New Orleans, LA 70112

Re: New Orleans City Council –
Entergy/New Orleans Power Station Investigation
(Motion M-18 – 196)
Our File No. 52114

Dear Judge Johnson and Matt:

This is a follow-up to our conference call with Matt this morning about outstanding issues in this matter.

As we discussed, we are prepared to produce the first two witnesses that you requested for interviews at your office on Wednesday, September 5, 2018. We have requested several times that you send us the names of the other Entergy witnesses you wish to interview so that we can schedule them on the dates you previously provided – September 5, 6, and 7. There is no reason why we cannot complete at least this part of the process next week.

Here is our position on the outstanding issues in this matter:

- **Privileged documents** – On August 22, 2018, we sent you a revised privilege log covering our two productions of documents on June 8, 2018, and August 21, 2018. To date, Entergy has produced approximately 6,965 documents. The communications identified on the privilege log are clearly privileged pursuant to Article 506 of the La. Code of Evidence and Rule 501 of the Federal Rules of Evidence. Case law has repeatedly held that in-house counsel communications and/or attorney mental impressions within the company are protected by attorney-client privilege and the attorney work product doctrine. *E.g.*, *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed. 584 (1981); *Exxon Mobil Corp.*, 751 F. 3d 379, 382-383 (5th Cir. 2014); *Kyle v. La. Public Service Com'n*, 878 So. 2d 650, 658-59 (La. App. 1st Cir.

2004). Scholarly commentary in Louisiana says the same thing. 21 La. Civ. L. Treatise, 7.6. Accordingly, Entergy maintains its assertion of attorney-client privilege. Further, these matters are also protected under the work product doctrine of Louisiana Code of Civil Procedure article 1424 and Federal Rule of Civil Procedure 26. Documents created in "anticipation of litigation" are not discoverable. And a governmental investigation triggers the protection. *E.g.*, *In re LTV Sec. Litig.*, 89 F.R.D. 595, 612 (N.D. Tex. 1981); *In re Int'l Sys. & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1238 (5th Cir. 1982); *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 377, 381, 381 n.7 (E.D. Pa. 2006); *Baker v. Chevron USA, Inc.*, No. 1:05-CV-227, 2009 WL 10679629, at *5 (S.D. Ohio June 8, 2009); *In re Trasylol Prod. Liab. Litig.*, No. 08-1928-MDL, 2009 WL 2575659, at *1 (S.D. Fla. Aug. 12, 2009). Accordingly, Entergy maintains its assertion of privilege under the work product doctrine.

- **Participation by Entergy's in-house counsel in witness interviews and sworn statements** – Entergy's in-house counsel, Cory Cahn, is a member of the legal team in this matter and is entitled to attend witness interviews and sworn statements. Contrary to your representation, he is not a fact witness "relative to allegations that ENO, Entergy, or some other entity paid or participated in paying actors to attend and/or speak at one or more public meetings in connection with ENO's NOPS application." (Motion M-18-196, New Orleans City Council, May 24, 2018). Please reconsider your decision to cancel the scheduled interviews next week if Mr. Cahn will be present.

- **Participation by Entergy's counsel in all witness interviews** – We would also appreciate it if you would reconsider your decision to exclude Entergy's counsel from participating in interviews and sworn statements of all non-Entergy witnesses in connection with the City Council's investigation. Entergy has a fundamental right to participate in the interviews/statements and question the witnesses claiming to have information relevant to this proceeding.

- **Cell phone data** – As we have discussed, Entergy does not provide cell phones to its employees. While Entergy makes a small stipend available to employees who choose to use their personal cell phones for company business, Entergy employees are required to purchase their own cell phones and pay for service. Furthermore, Entergy does not store text messages from its employees' personal cell phones on the Entergy network. In connection with the City Council's investigation, we requested that the employees identified in Topic No. 2 (Nos. 1-15) provide us with any text messages meeting the criteria outlined in your letter dated August 8, 2018. We previously produced several text messages to the City Council on June 8, 2018, and included several text messages in the August 21, 2018, production to you. Your request that Entergy image and search the cell phones of certain employees raises serious Constitutional concerns, which we will address next week.

We would like to resolve these disputes as quickly as possible so that Entergy witness interviews can be completed next week and you can deliver your report to the City Council on schedule.

Sincerely,

Walter F. Becker, Jr.
Terry Q. Alarcon

WFB/sbr
Enclosures

cc: Cory R. Cahn **(Via email: ccahn@entergy.com)**

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September 10, 2018

CONFIDENTIAL COMMUNICATION

Hon. Calvin Johnson (Email: fourwakes@gmail.com)
Matthew Coman (Email: mcoman@shergarner.com)
Sher Garner, LLC
909 Poydras Street
Suite 2800
New Orleans, LA 70112

Re: New Orleans City Council –
Entergy/New Orleans Power Station Investigation
(Motion M-18 – 196)
Our File No. 52114

Dear Judge Johnson and Matt:

We would like to take this opportunity to address the discovery issues that you have raised so that the investigation can proceed. While we believe that our positions are sound, in the interest of resolving these outstanding issues and allowing the City Council's investigation to proceed, we are offering to compromise on the majority of the issues and will explain further our position on the issue of the legal privilege, which at this point represents the only issue that is not subject to compromise.

I. Entergy New Orleans, LLC ("Entergy") Has Complied with the City Council's Request for Documents And Is Cooperating Fully With The Investigation

A. Entergy Has Produced All of its Business Records In Response to the City Council's Investigation

As a general matter, we have worked diligently over the last several months to respond to the City Council's requests for the production of documents and cooperate in the ongoing investigation. To date, we have produced 6,965 documents, which represent all of the business records that have any relationship to the investigation and includes all of the documents that

Entergy's attorneys reviewed in connection with the internal investigation. We identified and produced responsive documents using both our search terms and the thirty-two (32) additional search terms set forth in your letter dated August 8, 2018. In short, you have all of the records—and more—that Entergy's attorneys utilized in their investigation.

B. Entergy Has Repeatedly Offered to Make Its Employees Available for Interviews and Sworn Statements

In addition to the written discovery, Entergy has offered repeatedly to make its employees available for both interviews and sworn statements. Although we believe that interviews followed by sworn statements unduly burden Entergy's employees and needlessly increases legal fees, we are amenable to proceeding with this duplicative discovery. Since you have withdrawn your objection to Entergy's attorney, Cory Cahn, attending the interviews, we are prepared to proceed with Gary Huntley's interview on September 11 (1:30 p.m.) and Chanel Lagarde's interview on September 13 (1:30 p.m.). Charlotte Cavell may be available on September 13 (9:00 a.m.), but that will depend on whether she is called for jury duty. We will confirm on Tuesday. Demetric Mercedel is available on September 17, 24, 25, 26 and 28, and Antoinette Green-Brown is available on September 17. If you will identify the remainder of the Entergy witnesses you wish to interview, we can begin working to schedule their interviews on one of the following dates: September 17-18, 20-21, 24-26, 28 or October 1-2, 5, and 8-12. To be clear, however, Entergy will not produce its employees for interviews or sworn statements absent Mr. Cahn's attendance. Furthermore, for the reasons set forth below, Entergy will not produce its attorneys for interviews or sworn statements in this proceeding. Finally, despite the fact that it is customary in the legal profession to schedule the depositions of a party's witnesses at the office of the party's attorney, we also will agree to your demand that the interviews and statements take place at your offices.

C. Entergy Will Produce Certain Employees' Private Cell Phone Records for Review Under Appropriate Confidentiality Protections

With respect to the records of private cell phones for the four (4) individuals we discussed, solely as a compromise, Entergy will retain an outside vendor to image and search their personal cell phones using both Entergy's search terms and the thirty-two (32) search terms set forth in your August 8, 2018, letter. We will provide the results of those searches for your review under appropriate confidentiality protections at the office of Chaffe McCall with the understanding that you will not photograph or replicate the records. This compromise is limited to the four (4) individuals who may have had contact with The Hawthorn Group and/or Crowds on Demand in connection with the New Orleans Power Station proceeding.

D. Entergy Understands that the City Council Will Not Allow it to Attend the Interviews and Sworn Statements of Third Party Witnesses

Despite Entergy's repeated requests, we understand that you will not reconsider your decision to exclude Entergy from attending and participating in the interviews and sworn statements of any third party witnesses, despite the fact that you intend to rely on those

interviews and sworn statements as the basis for your investigative report. As a general proposition, "[i]n almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine witnesses." *Goldberg v. Kelly*, 397 U.S. 254, 269 (1970). Your decision is both regrettable and contrary to the City Council's pronouncement that the investigation would be transparent, but we understand that your decision is final and will proceed accordingly.

II. Entergy Will Not Waive the Attorney-Client Privilege or the Attorney Work Product Privilege

The last area of dispute involves your demands that (1) Entergy produce documents from the internal investigation conducted by Entergy's in-house attorneys, which are protected by the attorney client privilege or the attorney work product privilege; and (2) Entergy withdraw Cory Cahn as its counsel of record in this proceeding. While we understand that you are no longer objecting to Mr. Cahn's continued involvement, we wish to explain our position to you in more detail, in the hope that by understanding the applicable law and seriousness of the legal issues involved, we will be in a position to conclude this matter in a timely manner without further dispute. We note first, however, that our production to you included a privilege log detailing each document that was withheld.

The sanctity of the attorney-client privilege and work product doctrine are long-established in the law. The roots of these protections lie in the structure of our judicial system, which relies on an adversarial process grounded in effective advocacy by attorneys for all parties involved. In order for parties to be able to present their cases effectively, attorneys and clients alike need to be able to rely on the sanctity of their communications and the attorney's ability to advocate on behalf of a client without fear that her mental impressions and conclusions preparing for litigation will be subject to discovery. The waiver of these basic legal rights would establish a precedent for Entergy that extends far beyond the City Council's investigation, and it is for this reason that Entergy will not waive the privilege.

In your letter of September 4, 2018, you make a number of assertions that you believe render the legal protections unavailable in this case. These assertions are unreasonable and unsupported by the law. First, your letter states that Entergy may not claim the attorney-client privilege for an internal investigation directed by its in-house counsel. For this argument, you cite the United States Supreme Court's decision in *Upjohn Co. v. U.S.*, 449 U.S. 383, 394 (1981). Contrary to your assertion, in *Upjohn*, the Supreme Court *upheld* the attorney-client privilege for an *internal investigation* conducted by the company under the direction of its *in-house counsel*. And that privileged investigation took place before a legal proceeding was initiated. *Upjohn* wholly undermines the arguments in your letter. The decision in *Upjohn* more recently was followed by the D.C. Circuit of Appeals. In *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754 (D.C. Cir. 2014), the court reiterated the point in the very first paragraph of its opinion—an opinion that vacated a district court order that violated *Upjohn*:

> **More than three decades ago, the Supreme Court held that the attorney-client privilege protects confidential employee communications made during a business's internal investigation led by company lawyers.** *See Upjohn Co. v. United States,* 449 U.S. 383, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981). In this case, the District Court denied the protection of the privilege to a company that had conducted just such an internal investigation. The District Court's decision has generated substantial uncertainty about the scope of the attorney-client privilege in the business setting. We conclude that the District Court's decision is irreconcilable with *Upjohn.* We therefore grant KBR's petition for a writ of mandamus and vacate the District Court's March 6 document production order. (Emphasis added).

Louisiana's attorney-client privilege follows the rule of *Upjohn* in the in-house counsel setting. *See* La. Code Evid. art. 506, cmt. d.

With this legal backdrop, Entergy investigated certain allegations concerning the proceedings surrounding the New Orleans Power Station under the direction of its in-house counsel. The investigation was clearly for the purpose of seeking legal advice. Indeed, when the investigation began, opponents of the New Orleans Power Station had already filed a lawsuit challenging the certification of the New Orleans Power Station based upon allegations that Entergy's actions contributed to a violation of the Louisiana Open Meetings Law. There also were published reports that opponents of the New Orleans Power Station were going to ask the City Council to open an investigation into allegations that Entergy had paid some individuals to attend and/or speak at public meetings. Under these circumstances, there is no rational basis to contend that Entergy's internal investigation conducted by attorneys was a "business" matter that is not protected by attorney client privilege or the attorney work product privilege. The Supreme Court precedent established by *Upjohn* protects the confidentiality of Entergy's internal investigation.

Second, your letter overlooks the attorney work-product privilege. Courts—including the Supreme Court in *Upjohn*—routinely recognize that documents generated in a company's attorney-led, internal investigation, conducted in connection with a government investigation or in response to allegations of misconduct, are protected work product. *Upjohn*, 449 U.S. at 397-402; *In re Int'l Sys. & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1238 (5th Cir. 1982); *In re Copper Mkt. Antitrust Litig.*, 200 F.R.D. 213, 221 (S.D.N.Y. 2001); *In re Kellogg Brown & Root, Inc.*, 796 F.3d 137, 149-50 (D.C. Cir. 2015). This is especially true with respect to documents revealing attorney mental impressions, such as drafts, interview notes, and attorney memoranda.

And third, you contend that Entergy waived its privileges over internal investigative materials by issuing a summary report of its findings. That is simply incorrect. The cases cited in your letter stand only for the proposition that the attorney-client privilege may be waived when protected communications are disclosed or put at issue in litigation. Entergy's report does neither. The report does not disclose any confidential communications, and Entergy has not put any attorney-client communications at issue in any litigation. Entergy's work-product protections with respect to the underlying materials are likewise maintained. Numerous courts have

recognized that a company's work product privilege over internal investigative materials is not waived merely by the publication or disclosure of a summary report.[1] In fact, in *Upjohn*, the Supreme Court *upheld* work-product privilege over investigation materials even though the company "voluntarily submitted" a report to the SEC and IRS regarding its findings. *Upjohn*, 449 U.S. at 387.

Entergy has produced to the City Council all business records (and more) that were available to Entergy's attorneys during the internal investigation, and Entergy has agreed to produce the fact witnesses that were interviewed during the investigation at your office for both interviews and sworn statements. You are thus equally well positioned "to independently conduct all aspects of the Council's investigation into allegations that ENO, Entergy, or some other entity paid or participated in paying actors to attend and/or speak at one or more public meetings in connection with ENO's application for the New Orleans Power Station." City Council's Request for Statement of Qualifications, Section I ("Purpose"). The privileged records you seek were generated by Entergy's attorneys as part of their investigation and have no bearing on your obligation to "independently conduct" an investigation into the specific allegations at issue. For those same reasons, Entergy will not produce its attorneys for interviews or sworn statements and will not withdraw Cory Cahn as its counsel of record.

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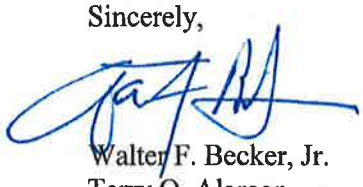
[1] *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 388-89 (E.D. Pa. 2006) (finding no subject matter waiver of matters underlying report issued to the FTC in response to FTC investigation; agreeing with the "[o]ther courts [that have] held that disclosure of a report . . . does not require disclosure of documents memorializing the underlying facts."); *In re Vioxx Prod. Liab. Litig.*, No. MDL 1657, 2007 WL 854251, at *5 (E.D. La. Mar. 6, 2007) ("The publication of a final investigative report does not waive the protection for the underlying drafts and materials because the work-product doctrine exists not to protect a 'confidential relationship,' but rather 'to promote the adversary system by safeguarding the fruits of an attorney's trial preparations from the discovery attempts of an opponent.' . . . In this case, the PSC's 'sword and shield' analogy does not appropriately reflect Merck's use of the Martin Report. Indeed, Merck has not cited, relied upon, nor used the Martin Report offensively in this litigation, and Merck represents that it has no intention of doing so in the future. Thus, considerations of fairness do not dictate that the work-product protection be vitiated in this case. If things change, however, and the Martin Report is sought to be used offensively in this litigation, or if Mr. Martin seeks to testify, the Court will have to reconsider whether the Plaintiffs are entitled to discover the materials underlying the investigation.") (internal citations omitted) (Fallon, J.); *S.E.C. v. Schroeder*, No. C07-03798 JW HRL, 2009 WL 1125579, at *7 (N.D. Cal. Apr. 27, 2009), *objections overruled*, No. C 07-03798 JW, 2009 WL 1635202 (N.D. Cal. June 10, 2009) (refusing to order defendants to produce internal notes and drafts of an investigation report created and made public in response to SEC investigation) ("This court concludes that Skadden's [the law firm hired to conduct the investigation for the company] internal notes and drafts need not be produced. 'Most courts have held . . . that simply because a final product is disclosed to the public (or a third person), an underlying privilege attaching to drafts of the final product is not destroyed.'") (citing *In re Air Crash Disaster at Sioux City, Iowa*, 133 F.R.D. 515, 518 (N.D. Ill. 1990) and *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 388–390 (E.D. Pa. 2006)).

In summary, in a good faith effort to reach an amicable resolution in this matter that will allow the investigation to proceed expeditiously, we will accede to your demands to both interview and take sworn statements from Entergy employees; to hold such interviews and statements at your offices; to provide the personal cell phone records of the four individuals discussed, subject to appropriate confidentiality protections; and, to discuss with you any concerns you may regarding the basis for our claims of privilege as to individual documents. We hope that, with the explanation given, you will better understand the legal basis for our positions.

We look forward to continuing to work with you to bring this matter to a full and fair conclusion as expeditiously as practicable.

Sincerely,



Walter F. Becker, Jr.
Terry Q. Alarcon

WFB/agc
Enclosures

cc: Cory R. Cahn
(Via email: ccahn@entergy.com)

October 16, 2018

DELIVERY BY E-MAIL

Judge Terry Q. Alarcon

Mr. Walter F. Becker, Jr.

Chaffe McCall, LLP

2300 Energy Centre

1100 Poydras St.

New Orleans, 70163-2300

Dear Judge Alarcon and Mr. Becker:

Our mandate from the City Council is to determine the truth of the allegations that Entergy New Orleans (ENO) utilized a claque at City Council meetings and other regulatory meetings. We agree that ENO may keep that which is private out of this process. The private communications of ENO employees are not at issue, nor are unrelated communications. However, concerns of privacy do not extend to using an assertion of legal privilege to obscure the truth.

If this were an adversarial proceeding, raising privilege arguments would be correct. However, I believe that in this investigation there is nothing ENO possesses relating to its efforts to turn out favorable speakers and other supporters that it should be allowed to withhold.

I am not advocating or taking a position on ENO's actions, but fulfilling my duty to determine whether ENO knew or should have known that people were paid to attend and to speak at City Council meetings and other regulatory meetings conducted to determine if the New Orleans Power Station should be built.

ENO has performed its own investigation regarding this matter.

Anything and everything that ENO has reviewed that pertains to this investigation should be disclosed to me and to Mr. Coman unless it is private personal information.

If the City Council agrees with ENO that the viewing of otherwise privileged documents would in some way compromise ENO and that your assertion of privilege applies to this investigation, then so be it.

To complete this investigation by October 19th it is imperative that ENO turn over or allow viewing of every communication that it reviewed regarding the issue of paid speakers as set out in Motion M-18-196.

Sincerely,

Calvin Johnson

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October 17, 2018

CONFIDENTIAL COMMUNICATION

BY HAND DELIVERY
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Re: New Orleans City Council –
Entergy/New Orleans Power Station Investigation
(Motion M-18 – 196)
Our File No. 52114

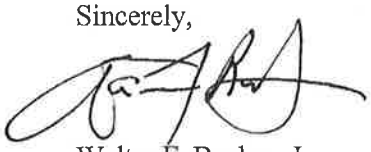
Dear Judge Johnson and Matt:

This will respond to your letters dated September 28, October 5, October 12, and October 16, 2018. During the course of the City Council's investigation, Entergy has identified and produced 9,225 pages of documents in response to the City Council's original document requests and your subsequent requests using Entergy's original 14 search terms and the 32 additional search terms that you provided. Entergy's production included 459 pages of documents that The Hawthorn Group provided to Entergy during its internal investigation, as well as the documents provided by Crowds on Demand. In addition, The Hawthorn Group produced 1,152 pages of documents directly to you in response to your request for production. Furthermore, Entergy has voluntarily produced 12 employees for interviews and two for sworn statements. At your request, four Entergy employees, including Charles Rice, voluntarily provided their personal cell phones to an outside expert for a full forensic examination. We have provided the results from those forensic examinations for your review and arranged for you to interview the expert. Simply put, Entergy has fully complied with the City Council's investigation, and you currently possess "[a]nything and everything that ENO has reviewed that pertains to this investigation."

Your most recent complaints regarding Entergy's production in this case center around your assertion that Entergy is legally prohibited from invoking the attorney-client privilege or the attorney work product doctrine in connection with legal advice provided by Entergy's in-house attorneys regarding ongoing litigation and the City Council's investigation. Your position is legally and factually incorrect. Case law has repeatedly held that in-house counsel communications and/or attorney mental impressions within the company are protected by attorney-client privilege and the attorney work product doctrine. *E.g.*, *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed. 584 (1981); *Exxon Mobil Corp.*, 751 F. 3d 379, 382-383 (5th Cir. 2014); *Kyle v. La. Public Service Com'n*, 878 So. 2d 650, 658-59 (La. App. 1st Cir. 2004). Scholarly commentary in Louisiana says the same thing. 21 La. Civ. L. Treatise, 7.6. Further, these matters are also protected under the work product doctrine of Louisiana Code of Civil Procedure article 1424 and Federal Rule of Civil Procedure 26. Documents created in "anticipation of litigation" are not discoverable. And a governmental investigation triggers the protection. *E.g.*, *In re LTV Sec. Litig.*, 89 F.R.D. 595, 612 (N.D. Tex. 1981); *In re Int'l Sys. & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1238 (5th Cir. 1982); *In re Linerboard Antitrust Litig.*, 237 F.R.D. 373, 377, 381, 381 n.7 (E.D. Pa. 2006); *Baker v. Chevron USA, Inc.*, No. 1:05-CV-227, 2009 WL 10679629, at *5 (S.D. Ohio June 8, 2009); *In re Trasylol Prod. Liab. Litig.*, No. 08-1928-MDL, 2009 WL 2575659, at *1 (S.D. Fla. Aug. 12, 2009).

While there is no valid legal or factual basis supporting your position, Entergy will agree to make the documents identified in your letters as Nos. 1, 2, 3, 4, 5, and 7 available for your review at the law office of Chaffe McCall. This offer is being made in compromise so as to not delay the conclusion of the investigation. Furthermore, this offer is being made subject to your agreement that the voluntary production of these documents will not be used in any way to seek the production of other documents listed on Entergy's privilege log, including on a theory of subject matter waiver. If you are in agreement, please contact me at your earliest convenience to arrange a mutually convenient time to review the documents.

Sincerely,



Walter F. Becker, Jr.
Terry Q. Alarcon

WFB/sbr
Enclosure

cc: Cory R. Cahn **(Via email: ccahn@entergy.com)**

FW 31

Entergy

Report of Investigation
New Orleans Power Station Advocacy

May 10, 2018

EXECUTIVE SUMMARY

This memorandum addresses allegations contained in a recent lawsuit and in recent news reports that some people were paid to attend or speak as supporters of the Entergy New Orleans, LLC's (ENO's) proposed New Orleans Power Station (NOPS) at certain public meetings sanctioned by the Council of the City of New Orleans (Council). As a result of these allegations, we undertook a detailed internal investigation to determine whether any such payments occurred and whether anyone at Entergy made such payments, authorized such payments, or had previous knowledge that such payments would be or were being made.

Upon completing our investigation, we can confirm that Entergy did not pay, or authorize any other person or entity to pay, supporters to attend or speak at Council meetings, nor were we aware that any person or entity engaged on our behalf would do so or had done so. This conclusion is true of Entergy New Orleans, LLC, Entergy Corporation, and all other Entergy companies (collectively, Entergy).

ENO contracted with The Hawthorn Group (Hawthorn), a national public affairs firm, to assist with organizing local grassroots support for NOPS at two public meetings relating to NOPS: the public hearing at the Council on October 16, 2017, and the Council's Utilities, Cable, Telecommunications and Technology Committee (Utility Committee) meeting on February 21, 2018. We have learned from our investigation that Hawthorn, without the Company's knowledge or approval and contrary to the requirements of our contract, subsequently retained a subcontractor, Crowds on Demand. We further learned that Crowds on Demand did pay individuals that it recruited to appear and/or speak at those two meetings. Hawthorn has admitted that their engagement of Crowds on Demand was without the knowledge or approval of anyone at Entergy.

Again, no one at Entergy authorized or directed any person or entity to pay individuals to attend or speak at any of the Council meetings. The unauthorized subcontract was a violation of our primary contract with Hawthorn, the payments made by Crowds on Demand run directly counter to Entergy's corporate values and current business practices, and they

would have been flatly prohibited by Entergy if we had any prior notice about the planned payments.

While no one at Entergy paid, authorized, or had any previous knowledge of this payment activity, we recognize that our interactions with our stakeholders must always be based on honesty and integrity, and we take ultimate responsibility for the actions of those purporting to act on our behalf. We are taking immediate steps to ensure such a situation never arises again.

THE INVESTIGATION

The investigation was conducted internally primarily by attorneys who were not directly involved in the New Orleans Power Station proceeding. They conducted interviews of numerous employees who were involved in the NOPS proceeding, including those who were involved in retaining Hawthorn, and/or were themselves involved in developing grassroots support for NOPS. Additionally, to the extent necessary to confirm the facts, Entergy spoke with representatives of Hawthorn including its Chairman and CEO and Crowds on Demand including its founder and CEO, to obtain the facts of what occurred from their viewpoint. Hawthorn has also provided a letter outlining its role in the events. In addition, the investigation included the application of electronic discovery techniques, including the search and review of thousands of pages of contracts, contract change orders, emails, and other relevant documents.

RELEVANT FACTS

Two meetings arranged by the Council are implicated in recent news coverage alleging that supporters of the New Orleans Power Station (NOPS) were paid to attend or speak at those meetings: an October 16, 2017 public hearing to receive public comment on NOPS and a February 21, 2018 meeting of the Utility Committee at which the Utility Committee voted 4-1 to recommend approval of NOPS to the full Council. At each of these meetings, extensive public comment, both in favor of and in opposition to the proposed plant, was received and recorded by a court reporter and by videotape. Including a subsequent meeting on March 8, 2018 at which the full Council approved NOPS, there were more than 12 hours of public comment, and more than 100 people spoke, some at multiple meetings.

In anticipation of the upcoming public meetings, in fall of 2017, ENO retained Hawthorn, a national public affairs company with headquarters in Virginia, to assist in developing grassroots support for the proposed plant, including mobilizing supporters to attend and to speak at the October 16th meeting. The contract specified that Hawthorn would turn out 75 supporters, 10 of whom would speak at the meeting. The supporters were to prepare their own handmade signs, but would be provided with branded t-shirts. Hawthorn represented in the contract that "it has the competence to perform the Work, the necessary personnel, will use best efforts to perform the work in a professional manner, will not perform any work that it cannot perform in accord with contract, will perform in good faith, will perform with highest

standards of care and practice appropriate to nature of work and exercise the highest degree of thoroughness, competence and care customary in the utility industry."

The contract with Hawthorn does not contemplate or authorize that any of these supporters would be paid for their attendance. We have confirmed that no one at Entergy who engaged or worked with Hawthorn or was involved in any manner in organizing support for NOPS was informed at any time that any supporters turned out by the work of Hawthorn would be paid. Based on our contract and their national reputation, Entergy fully expected that Hawthorn would identify legitimate supporters for the plant and encourage them to attend the meeting. Indeed, in a communication to Entergy Hawthorn specified that they would turn out New Orleans citizens who support building NOPS for their own reasons (jobs, local energy, reliability, economic development, community investment, etc.) and that these will be real supporters whom they have identified, recruited and educated about the benefits of the power station and why it is the most desirable solution at this time and for future energy needs.

ENO's contract with Hawthorn also clearly provides that "Work shall be performed solely by Contractor or by those Subcontractors that Company may from time to time allow by its prior written approval." However, without informing ENO or seeking its approval and in violation of the contract, in or about September 2017, Hawthorn retained a subcontractor, Crowds on Demand, to assist with fulfilling its contractual obligations. The provision in our contract with Hawthorn was specifically included to ensure that the services for which we contracted would be provided by Hawthorn and its employees, and in the manner expected, based on the experience and reputation of Hawthorn, and not by an unapproved subcontractor.

At the October 16 meeting, the Council Chambers were filled to capacity, and some people were unable to be seated due to space limitations. A significant portion of the audience was filled with NOPS supporters wearing bright orange t-shirts that read "Clean Energy. Good Jobs. Reliable Power." Many of the NOPS supporters—employees, retirees, union members and others—attended and/or spoke as a result of community outreach efforts by ENO's own personnel to present their genuine support of the proposed facility. No compensation was offered or paid to those supporters. We now know, as a result of our investigation, that Crowds on Demand did in fact compensate most, if not all, of the other individuals it recruited to appear at the meeting.

Prior to the February 21, 2018 Council Utility Committee meeting, ENO again contracted with Hawthorn to recruit 30 supporters, including 10 speakers to attend that meeting. As at the October meeting, many genuine supporters attended; however, we now know that Crowds on Demand also recruited and compensated people to attend this meeting.

After those meetings had occurred, on March 5th, Entergy received an email distributed by opponents and on March 7th, we received a related inquiry from a blog writer who posed the following specific question and the alleged facts underlying the question:

> Has Energy paid anyone to speak in favor of the company's proposed new project in New Orleans East at any of the public meetings/hearings- including any past council meetings, the meeting tomorrow on the 8 or at the DEQ permit hearing last night? There is a man who has gone on the record to say he was hired and paid $120 as an actor to speak on behalf of Entergy about his support for the new proposed plant at a previous city council meeting.

Entergy immediately sent emails to Hawthorn for its response to these allegations. Hawthorn responded: "Apparently their evidence is one person who is dilusional [sic] or lying." Hawthorn also advised Entergy to respond by saying, among other things, "that's simply not true." Hawthorn did not reveal its relationship with Crowds on Demand to Entergy at that time.

On March 8, 2018 the full Council met and voted 6-1 to approve NOPS. There was no contract with Hawthorn relating to this March 8th Council meeting. No supporters were recruited or paid by Crowds on Demand, Hawthorn, or any other person or entity to attend or speak in support of NOPS at the March 8th meeting. An estimated 250 community members attended the meeting, with 100 to 200 in attendance to oppose the facility. After several hours of public comment, the Council voted 6-1 in favor of the plant and adopted the over-180 page Resolution approving the plant. On April 19, 2018, the Council denied a Petition for Rehearing, also by a 6-1 vote.

On April 19, 2018, several intervenors and a few individuals filed a lawsuit in Civil District Court in New Orleans claiming that the manner in which the public meetings on February 21st and March 8th were conducted—preventing some members of the public from attending the entire meeting due to fire safety regulations regarding the capacity of the rooms—was a violation of the Louisiana Open Meetings law. The lawsuit also includes allegations of payments to supporters, including actors. These allegations are not central or even relevant to the Open Meetings law violation claims. However, written allegations contained in a lawsuit are distinct from the numerous wild and in most cases unsubstantiated allegations thrown out by opponents of the plant during the long public comment period. Thus, when the lawsuit was filed Entergy began an investigation into the validity of the allegations.

The New Orleans Power Station was approved by the City Council after approximately 21 months of Council proceedings, including multiple public hearings and meetings organized by the Council, voluminous discovery on every aspect of the proposal, thousands of pages of expert testimony and exhibits, and a weeklong evidentiary trial. Moreover, Entergy itself conducted some 22 community meetings touching each Council District in an effort to inform the public about the need for the plant. Entergy firmly believes that, consistent with the Council's own rules, the Council voted in support of NOPS based on the merits of the case and the evidence presented by all parties involved in the proceeding.[1]

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[1] The New Orleans Municipal Code provides in pertinent part that "(b) Whenever it is deemed desirable by the council that members of the public at large who are not parties of record should be heard on any matter under this article, or wherever such hearing is required by the city charter or any applicable law, the council president or other presiding officer shall declare at the beginning and end of the at-large hearing the nature of such hearing,

In conclusion, the investigation has determined that no one at Entergy paid anyone to attend or speak at any Council meeting, nor did anyone at Entergy direct or authorize any contractor or subcontractor to pay anyone to attend or speak at the October or February Council meetings or any other meeting related to NOPS. In fact, the actions of Crowds on Demand, which was engaged by Hawthorn contrary to the requirements of our contract with Hawthorn, were taken without Entergy's knowledge or approval. Such actions are contrary to our values and would have been specifically prohibited or stopped had we been made aware.

NEXT STEPS

We recognize that our interactions with our stakeholders must always be based on honesty and integrity, and we accept ultimate responsibility for the actions of those purporting to act on our behalf. We are taking immediate steps to ensure that no similar situation arises in the future, including the following:

- Entergy has ended its contractual relationship with The Hawthorn Group. All fees paid to Hawthorn for work under the NOPS support contract will be returned to Entergy. Entergy will donate those refunded fees to charitable organizations.

- Entergy is amending its mandatory Supplier Code of Conduct to expressly prohibit the practice of paying individuals to attend or speak at any public meeting or meetings before any governmental, regulatory or other agency with oversight over Entergy's operations. Entergy's Supplier Code of Conduct communicates Entergy's expectations that contractors act with the highest ethical and legal standards in their business activities with Entergy.

- Entergy is taking steps to ensure that all new applicable contracts expressly prohibit the practice of paying individuals to attend or speak at any public meeting or meetings before any governmental, regulatory or other agency or body with oversight over Entergy's operations.

- Entergy is developing and implementing training for the relevant employees and contractors in order to periodically educate them regarding Entergy's prohibition against the practice of paying individuals to attend or speak at any public meeting or meetings before any governmental, regulatory or other agency or body with oversight over Entergy's operations.

- Entergy will immediately contact all relevant vendors to ensure that they comply with Entergy's prohibition of the practice of paying individuals to attend or speak at

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and shall declare that *no part of statements made or evidence adduced at such at-large public hearing shall, in legal terms, form (and such matter shall not form) the basis of any council decision in a contested proceeding.*" Municipal Code of the City of New Orleans, Section 158-431 (b) (emphasis added).

any public meeting or meetings before any governmental, regulatory or other agency or body with oversight over Entergy's operations.

- Entergy will conduct periodic contract performance assessments to verify compliance with its prohibition of the practice of paying supporters to attend or speak at any meeting before any governmental, regulatory or other agency or body with oversight over Entergy's operations.

- Entergy New Orleans will not include any contract costs related to grassroots advocacy work in the rates set for the New Orleans Power Station.