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June 24, 2025

cc: MV/LE
LA PUBLIC SERVICE COMM
JUN 27 2025 AM 10:38

Via Fax 225-342-0877 & UPS Delivery

Ms. Krys (Kris) Abel
Business Technology Supervisor
Louisiana Public Service Commission
Galvez Building, 12th Floor
602 North Fifth Street
Baton Rouge, Louisiana 70802

Re: *Application of Entergy Louisiana, LLC for Approval of Generation and Transmission Resources in Connection with Service to a Single Customer for a Project in North Louisiana (LPSC Docket No. U-37425)*

Dear Ms. Abel:

Enclosed for your further handling please find an original and three copies of the Entergy Louisiana, LLC ("ELL") Memorandum in Opposition to Motion of the Alliance for Affordable Energy and Union of Concerned Scientists for Access to "Attorney's Eyes Only" Information. A check for \$25.00 is enclosed to cover the fax filing fee. Please retain the original and two copies for your file and return a date stamped copy to me in the enclosed, self-addressed envelope.

Thank you for your courtesy in this matter and please do not hesitate to contact me with any questions.

Sincerely,

D. Skylar Rosenbloom

DSR/rih

cc: Official Service List U-37425 (via electronic mail)

UPS

**BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION**

**APPLICATION FOR APPROVAL OF
GENERATION AND TRANSMISSION
RESOURCES IN CONNECTION WITH
SERVICE TO A SINGLE CUSTOMER IN
NORTH LOUISIANA**

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DOCKET NO. U-37425

**ENTERGY LOUISIANA, LLC'S MEMORANDUM IN OPPOSITION TO
MOTION OF THE ALLIANCE FOR AFFORDABLE ENERGY AND
UNION OF CONCERNED SCIENTISTS FOR ACCESS TO
"ATTORNEY'S EYES ONLY" INFORMATION**

Entergy Louisiana, LLC ("ELL" or the "Company") submits this opposition to the Motion of the Alliance for Affordable Energy and Union of Concerned Scientists for Access to "Attorney's Eyes Only" Information (the "Motion") filed by the Alliance for Affordable Energy and Union of Concerned Scientists (collectively, "NPOs"). For the reasons set forth below, the NPOs Motion should be denied, and the Tribunal should enter an Order affirming the Company's use of the Attorney's Eyes Only ("AEO") designation and related protection.

INTRODUCTION

Customer specific data is routinely provided to the Company in the ordinary course of business of providing electric service to the Company's customers. This data is private and commercially and competitively sensitive. For certain of our customers, their service and usage data provides sufficient information that, if released, would allow competitors to gain a detailed understanding about the customers' operations and competitive advantages. The release of this information could be commercially disastrous. As a result, ELL is committed to protecting its customers' data and generally does not produce in regulatory proceedings, even as Highly Sensitive Protected Materials, any customer-specific data in a manner that offers even the potential to be traced to a particular customer. Rather than follow this long-standing practice and withhold

the customer-specific information in this docket, however, the Company—with the agreement of the Customer—designated the Customer’s information as “Attorney’s Eyes Only” (“AEO”). The Company took this approach, rather than its usual approach of withholding all customer-specific information, in an effort to balance the Customer’s privacy interests and reasonable concerns about sharing its competitively sensitive information in the intensely competitive business environment in which it operates, on the one hand, with stakeholders’ interests in having visibility into the terms of the ESA and related agreements specific to the Customer to evaluate the issues in this proceeding, on the other. The AEO protections, which are fully consistent and contemplated by the Confidentiality Agreement routinely used in the Company’s proceedings before the Commission, reflect the unique sensitivity of customer-specific information and serve to increase the protections for such information and to restrict its dissemination and the potential for public disclosure. Information the Company has designated as AEO in this proceeding consists almost entirely of customer-specific information or information from which customer-specific details can be ascertained – and is made available to qualified attorneys and external consultants.

In accordance with these commonsense and reasonable restrictions, the NPOs have fourteen representatives with access to AEO information; the NPOs nevertheless contend that such protections should be eliminated. In particular, the NPOs contend that, among other things, the Confidentiality Agreement provides no basis for the increased protections for information labelled AEO, the designation of AEO has hampered the NPOs’ ability to meaningfully participation in this docket, and there exists “no legitimate risk of a public disclosure of the ‘AEO’ material.”¹ Each of these contentions is without merit as demonstrated by the facts: i) the Confidentiality Agreement executed by the NPOs specifically provides for heightened levels of protections for

¹ See NPO Motion at p. 1.

information that are in addition to the Confidential and Highly Sensitive Protected Materials (“HSPM”) designations, and, far from acting arbitrarily in invoking the AEO designation, ELL is acting to protect its customer’s most sensitive information; ii) the NPOs have been one of the most (if not the most) active participants in this docket and have fourteen individuals with access to AEO information, thus undermining any assertion of prejudice; and iii) the risk of public disclosure, and significant commercial harm to the Customer, not to mention deterring this or other prospective customers from developing projects in Louisiana, continues to exist, and NPOs have provided no justification for their assertions to the contrary.

Subjecting private customer-specific data that is competitively sensitive to disclosure in proceedings with numerous intervenors, including intervenors with business relationships and connections to a customer’s competitors, should not be a cost of doing business in Louisiana. If prospective customers wishing to locate projects in Louisiana must agree to such disclosures, many may choose to locate their projects elsewhere, in states that do not impose such onerous requirements. The AEO designation the Company has used here provides appropriate assurances to such customers that their private information will be protected while reasonably balancing the needs of intervenors and their lawyers and consultants.

Given that the AEO designation has been in place from the initial filing of the Company’s Application and supporting testimony, it seems curiously timed that the NPOs Motion was held until less than one month before trial. Regardless of the reason for the timing, the NPOs Motion should not be allowed to delay in any way the resolution of this matter, including by delaying the trial scheduled to begin on July 14, 2025. For these reasons, and the reasons further detailed below, the NPOs’ Motion should be denied, and an Order should be issued upholding the Company’s AEO designation and the accompanying protections.

ARGUMENT

By virtue of serving as the electric service provider for its customers, the Company obtains significant private and confidential information. For ELL's residential customers, this data provides insight into their private affairs, while for our commercial and industrial customers, this data reveals commercially and competitively sensitive aspects of their operations. Indeed, recognizing this sensitivity, the Commission has, for example, put in place rules that prohibit a utility from sharing customer-specific usage data with anyone other than on an aggregated and anonymized basis.² In all instances, disclosure of a customer's private and confidential data may have wide-reaching and long-lasting impacts. The Company accordingly takes its obligation to safeguard customer data very seriously. Thus, customer data, if relevant, is provided in an anonymized form when possible; if anonymization is not possible, the information is, as a rule, not provided—regardless of purported relevance. In the unique circumstances of this docket, anonymization of the customer data is not possible, but the customer-specific information holds particular relevance. As a result, this non-anonymized, customer specific information has been designated as AEO and only made available to attorneys and external consultants. Under these circumstances, the use of the AEO designation represents the most efficient and least burdensome compromise of the competing priorities of protecting sensitive information and full disclosure. It is with this framing in mind that the NPOs' Motion should be analyzed.

² See LPSC General Order Docket Nos. R-29213 and R 29213 Sub. A, Section 3.7 ("The utility is prohibited from transferring any customer-specific information from any AMS outside the customer-utility working relationship without prior Commission approval [with exception for summary-level data that does not reveal individual customer details].").

A. The Confidentiality Agreement Allows for the AEO Designation.

The Company's Confidentiality Agreement, attached hereto as Exhibit A, has been designed to provide maximum flexibility in protecting information to be produced by a party. As particularly pertinent here, the Confidentiality Agreement contemplates various levels of protections depending upon the sensitivity of data and specifically allows parties to impose additional protections "beyond those provided for in the Confidentiality Agreement."³ It is this provision, in the Confidentiality Agreement executed by the NPOs' client representatives, that allows for the Company to use the AEO designation.

The Confidentiality Agreement also allows a party producing protected information to withhold information from a person who has otherwise signed the Confidentiality Agreement when disclosure of the protected data would "present an unreasonable risk of harm."⁴ The Company relies upon this provision to withhold information from individuals and/or entities that could gain a competitive advantage from obtaining the information or in situations that present an increased risk of harm from the disclosure of such information, such as situations in which confidential bid information is withheld from entities that may participate in similar requests for proposals in the future.

³ The Confidentiality Agreement defines, in Section 1(c) through (e), three different sets of confidential information, each subject to more stringent protections: 1) "Confidential Information;" 2) "Highly Sensitive Protected Materials," a subset of Confidential Information; and 3) Critical Energy Infrastructure Information ("CEII"), for which an entirely separate agreement is needed. Finally, the Confidentiality Agreement, in Section 2(d), allows for protections beyond what are provided for in the Confidentiality Agreement. ("Nothing shall preclude a Producing Party from seeking protections for Highly Sensitive Protected Materials beyond those provided for in this agreement."). In Footnote 11 to the Motion, NPOs argue that this Section is not a valid basis for utilizing the AEO designation or the related additional protections therewith. The basis for the NPOs argument is that such protections were not sought from the Commission or this Tribunal. Section 2(d) requires no such order to assert more restrictive protections for information. Instead, such materials are to be provided to LPSC Staff and counsel for the Reviewing Parties, exactly what has occurred in this instance. Only in the event of a dispute is Commission or court relief required.

⁴ Confidentiality Agreement, Section 2(c).

This flexibility provides a producing party the ability to make reasoned judgments on a case-by-case basis to best protect not only its confidential information, but also the confidential information entrusted to it by others. Were the Tribunal to grant the NPOs' Motion and limit this flexibility, the Company would have to take more drastic and broad-based steps to protect its confidential information. For example, rather than limiting disclosure of information to certain of a party's representatives, the Company would be forced to prohibit disclosure to all of a party's representatives. Under such a framework, discovery disputes requiring resolution from the Tribunal would undoubtedly become the norm.

Contrary to the NPOs' representation, the Company's use of the AEO designation and restrictions on disclosure of information to particular representatives are expressly allowed by the Confidentiality Agreement executed by the NPOs. No further analysis is necessary, and the NPOs' Motion should be denied and an Order upholding the AEO designation, and its associated protections should be issued.

B. The AEO Designation Has Not Hampered the NPOs' Participation in this Docket

It is difficult to seriously consider the claim that the NPOs' "ability to participate in this case"⁵ has been hindered in any way as a result of the AEO designation. Contrary to the NPOs' claims concerning any purported inability to participate in this docket, the NPOs have been one of the most (if not the most) active parties in this docket, engaging in extensive motion practice, issuing 332 Requests for Information (inclusive of subparts), and filing testimony from three separate witnesses. This was, of course, made possible by the fact that the NPOs have adequate access to AEO information. Indeed, with fourteen representatives having access to AEO

⁵ NPO Motion at p. 5.

information, the NPOs have significantly more representatives with access to AEO information than any other Intervenor.

The Company recognizes that the AEO designation creates certain logistical challenges in communicating with a large team in which certain, but not all, members have access to the AEO data. However, the same is true for individuals who do not have access to other, less restrictive levels of confidential information—restrictions that have been used and enforced without issue for decades.

C. Significant and Legitimate Risk of Harm of Public Disclosure of AEO Materials

The NPOs claim that “there is no legitimate risk of a public disclosure of the ‘AEO’ material.”⁶ The NPOs appear to base this upon the existing protections within the Confidentiality Agreement requiring non-disclosure of confidential information. If the words of the Confidentiality Agreement alone guaranteed that no form of protected information would ever be disseminated publicly, the NPOs’ argument might carry the day. However, this simply is not the case.

For example, in this docket alone, there have been numerous instances in which HSPM and/or AEO information was inadvertently disclosed in discovery requests and testimony. In the confines of this docket, inadvertent disclosure is relatively contained. All parties are provided with the discovery or testimony, are presumably on notice that such a disclosure has been made, and have a relatively straightforward path to retract the improperly disclosed information. Discovery requests are not publicly available, and testimony, while available to the public, can be removed and corrected as soon as the inadvertent disclosure is identified, thereby limiting the

⁶ NPO Motion at p. 1.

further dissemination of protected information. The disclosures in this docket were not intentional, but rather the result of inadvertent error, a risk that can never be guarded against completely.

However, the NPO representatives for whom the NPOs seek access to AEO pose a unique concern with respect to inadvertent disclosures not found with most other intervenors. As self-appointed advocacy groups, the NPOs seek to spread their positions as far and wide as possible. They do so through constant engagement with the press, social media, and other forms of public outreach.⁷ Unlike discovery or filings in this docket, the Company does not receive notice of each statement the NPOs make to the press, social media, and other public channels. There are no opportunities to be put on notice that protected information has been disclosed, and there are correspondingly limited, if any, opportunities to retract the disclosure or contain the public's access to that confidential information. The harm is done outside the purview of the Company with virtually no opportunity to correct or contain any disclosure. It is important to note that the Company highlights this risk not in an effort to have the NPOs cease their public engagement efforts, as they are well within their rights to do so, but rather to identify that disclosure of protected information in those avenues is virtually undetectable and remedies are essentially unenforceable.

Finally, the NPOs' argument that the terms of the Confidentiality Agreement alone serve as sufficient protection for confidential data is disproven by experience. In another proceeding before the Commission, one of the NPOs intentionally disseminated HSPM information to an individual who had not been authorized by the Company to review such information. The

⁷ For example, NPO representatives Ms. Burke and Mr. Arbaje often provide interviews to the press, including regarding the subject matter of this docket. See, e.g., Entergy's Plan to Power Meta's Massive Louisiana Data Center Faces New Scrutiny, Josie Abugov, March 26, 2025 available at: https://www.nola.com/news/environment/louisiana-meta-ai-data-center-electricity-environment-energy-entergy/article_bd84eae2-9acf-4a26-8426-618b21091c9c.html. Additionally, NPOs also maintain frequently updated websites and blogs which have also discussed the subject matter of this docket. See, e.g., <https://blog.ucsf.org/paul-arbaje/entergy-doesnt-want-louisianans-to-know-how-expensive-this-gas-project-could-be/> and <https://www.all4energy.org/watchdog/a-bad-deal-for-louisianans/>. NPOs are also active on social media, including Twitter and Bluesky.

Confidentiality Agreement in that docket, as in this one, specifically prohibited HSPM information from being transferred to an individual by anyone other than the producing party, even if the receiving person has the ability to see such HSPM information. The referenced NPO nevertheless sent the information to an unauthorized individual. Compounding the infraction was the fact that the unauthorized person to whom the HSPM information was sent was ultimately deemed to be ineligible to receive such information due to the nature of his work with other entities. Had the terms of the Confidentiality Agreement been sufficient to guard against the disclosure of protected information as the NPOs contend, such intentional violation of the Confidentiality Agreement would never have occurred. For these reasons, the elevated protections utilized by the Company through the AEO designation are required to properly safeguard commercially and competitively sensitive information.

CONCLUSION

As part of service to its customers, the Company is entrusted with the customers' private and commercially and competitively sensitive information. Customers provide this necessary information with the understanding and expectation that the information will be guarded zealously. The Commission has recognized the importance of protecting individual customer information in a General Order and appropriately has imposed restrictions on the Company's ability to share such information other than on an aggregated basis. Through the limited use of the AEO designation and the accompanying protections, the Company has taken the least restrictive approach to balance both the safeguards of customer information while providing reasonable disclosure to the intervenors. Customers wishing to site major projects in Louisiana should not be forced to reveal their private competitively sensitive information as a price of doing business, and requiring otherwise risks Louisiana losing projects to other states whose regulatory processes pose less risk

to these customers' competitive positions. NPOs' motion should be denied, and an Order should be issued upholding the Company's use of the AEO designation and accompanying protections.

Respectfully submitted,

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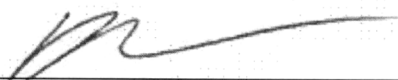
ATTORNEYS FOR ENTERGY LOUISIANA, LLC

CERTIFICATE OF SERVICE

LPSC Docket No. U-37425

I hereby certify that the foregoing pleading was served on all parties of record listed on the Official Service List through electronic delivery.

New Orleans, Louisiana, this 24th day of June 2025.

A handwritten signature in black ink, appearing to read 'D. Rosenbloom', is written over a horizontal line.

D. Skylar Rosenbloom

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

**APPLICATION OF ENTERGY)
LOUISIANA, LLC FOR APPROVAL OF)
GENERATION AND TRANSMISSION)
RESOURCES PROPOSED IN)
CONNECTION WITH SERVICE TO A)
SIGNIFICANT CUSTOMER PROJECT)
IN NORTH LOUISIANA, INCLUDING)
PROPOSED RIDER, AND REQUEST)
FOR TIMELY TREATMENT**

DOCKET NO. U-37425

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement shall govern the use of all information deemed confidential by a party in filings or in responding to discovery requests, unless the Louisiana Public Service Commission (“Commission” or “LPSC”) finds that such information is not confidential.

1. (a) Any party or person producing or filing materials, including but not limited to records stored or encoded on a computer disk or other similar electronic storage medium, in this proceeding (a “Producing Party”) may designate that material or any portion of it as confidential pursuant to this Agreement by typing or stamping on the face of the document or the storage medium containing the material and, to the extent practicable, on each page thereof, “CONFIDENTIAL INFORMATION PURSUANT TO CONFIDENTIALITY AGREEMENT IN LPSC DOCKET NO. U-37425” or words of similar import (hereinafter referred to as “Confidential Information”). Parties to this proceeding and persons and entities retained to assist them, to the extent they obtain access to Confidential Information pursuant to this Confidentiality Agreement (“Reviewing Parties”), shall protect the confidentiality of such materials in accordance with the terms and conditions of this Confidentiality Agreement.
- (b) A “Reviewing Party” is a party to Louisiana Public Service Commission Docket No. U-37425 or a representative of a party to the extent that it receives or is provided access to Confidential Information pursuant to this Confidentiality Agreement. Reviewing Parties, including outside counsel and consultants retained or engaged by the Reviewing Party to assist the Reviewing Party with respect to these proceedings, shall be permitted access to Confidential Information through the execution of a Confidentiality Agreement.
- (c) The term “Confidential Information” is hereby defined for the purposes of this Confidentiality Agreement to include materials or portions thereof referred to in paragraph 1(a) above, and to include as well materials or portions thereof that contain, quote from, are derived from, or otherwise could reveal the content of Confidential Information; provided, however, that Confidential Information shall not include any information or

material contained in the public files of the Midcontinent Independent System Operator, Inc., the Commission, the Federal Energy Regulatory Commission or any other federal or state agency. Confidential Information also shall not include materials or information which at the time of or prior to disclosure in these proceedings is or was public knowledge or which becomes public knowledge, or is otherwise in the public domain, other than through disclosure in violation of this or any other confidentiality agreement or protective order.

(d) The term “Highly Sensitive Protected Materials” is a subset of Confidential Information¹ and refers to material that a Producing Party, or an entity asserting confidentiality with regard to the material, claims is of such a highly sensitive nature that making copies of such material or providing access to such material to persons or entities engaged in certain activities or the employees of the Reviewing Party would expose the Producing Party, or the entity asserting confidentiality, or a person or entity to which the Producing Party or other entity asserting confidentiality owes a duty to protect the confidentiality of such materials, to an unreasonable risk of harm. The Producing Party may designate such materials or any portion thereof as Highly Sensitive Protected Materials pursuant to this Confidentiality Agreement by typing or stamping on the face of the document or the storage medium containing the material and, to the extent practicable, on each page thereof, “HIGHLY SENSITIVE PROTECTED MATERIALS PROVIDED PURSUANT TO CONFIDENTIALITY AGREEMENT IN LPSC DOCKET NO. U-37425” or words of similar import.

(e) It is not anticipated that Critical Energy Infrastructure Information (“CEII”) will be relevant information that will be produced in this proceeding. In the event that CEII should become relevant to the proceeding, the parties will address appropriate confidentiality protections for CEII at such time.

2. (a) Except as otherwise provided in this paragraph, a Reviewing Party shall be permitted access to Confidential Information 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, consultants, or other persons employed or retained by the Reviewing Party and directly engaged in these proceedings.

(b) Neither a Reviewing Party nor a Reviewing Representative shall disclose Confidential Information to any individual or entity unless said disclosure is explicitly authorized by this Confidentiality Agreement.

(c) Reviewing Representatives for purposes of reviewing Highly Sensitive Protected Materials in this proceeding shall not include any person whose duties include (or who directly supervises any employee whose duties include) any activity with respect to which the disclosure of particular Highly Sensitive Protected Materials would present an unreasonable risk of harm, such as, (i) the marketing or sale of electric power or energy at

¹ Unless otherwise stated, all references in this Confidentiality Agreement to “Confidential Information” shall specifically include “Highly Sensitive Protected Materials,” which are a subset of Confidential Information.

wholesale, (ii) the purchase or sale of electric power or energy at wholesale, (iii) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale; (iv) the pricing for: the sale of potential electric generation development project facilities or the electric power or energy therefrom, or of potential upgrades or enhancements to such facilities or the electric power or energy therefrom, with the exception of the development and/or evaluation of projects for self- or co-generation of electricity; (v) the pricing for competitive bids for purchases, sales, or construction of electric transmission facilities and (vi) design, construction, or operation of a data center.

For example, Reviewing Representatives for purposes of reviewing Highly Sensitive Protected Materials shall not include persons who assist or advise any potential bidders or sellers in preparing bids or proposals for, in negotiations relating to, or otherwise in connection with bids or proposals in response to any requests for proposals for supply-side resources issued on behalf of one or more of the utilities producing the information, and/or the pricing of renewable energy proposals and unsolicited offers for the purchase of generating resources, whether through purchase power agreements or the ownership of the resource. Nothing in this section shall preclude an attorney or consultant from acting as a Reviewing Representative and representing a party engaged in the activities described herein as long as that attorney does not engage in those activities or disclose that Highly Sensitive Protected Material to the individuals engaged in those activities.

Nothing herein, however, shall preclude a Reviewing Representative from providing public information to clients or participating in public proceedings pursuant to the LPSC's Market Based Mechanisms Order or certification proceedings resulting therefrom.

(d) Nothing shall preclude a Producing Party from seeking protections for Highly Sensitive Protected Materials beyond those provided for in this agreement. If the party asserting confidentiality believes that further protections should be afforded, or should a dispute arise with respect to the manner in which, or the Reviewing Representatives to which, Highly Sensitive Protected Materials are disclosed, such materials shall be made available for inspection by Commission Staff Counsel and outside 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 Agreement, which determination shall be made on a case by case basis, depending on the level of protection that may be necessary to protect the Producing Party, and any other person or entity to which the Producing 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 Commission or a court of competent jurisdiction, 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. Likewise, the party seeking review reserves its rights to seek a remedy from the Commission or a court of competent jurisdiction.

3. (a) Except for materials that are voluminous, a Producing Party shall provide one copy of Highly Sensitive Protected Materials to the person designated by the Reviewing Party to receive and maintain possession of such copy. The person so designated must be an authorized Reviewing Representative for purposes of reviewing such material under Paragraph 2, above. The copy provided to the designated Reviewing Representative may be provided (1) in hard copy, or (2) in an electronic format, as agreed to by the parties. The copy of Highly Sensitive Protected Materials that is provided to the designated Reviewing Representative shall be delivered to such Reviewing Representative via commercial courier such as FedEx or other means of delivery of comparable reliability. Absent the mutual agreement of the Producing Party and Reviewing Party and the existence of extraordinary circumstances, Highly Sensitive Protected Materials shall not be transmitted by electronic mail, whether (1) from the Producing Party to the Reviewing Party, (2) between Reviewing Parties, or (3) among Reviewing Representatives of a single Reviewing Party. In addition, no copies shall be made of Highly Sensitive Protected Materials, except for the purposes discussed in this subparagraph or in paragraph 11 below, and except that one hard copy may be made of Highly Sensitive Protected Materials that are provided in an electronic format, provided that each page of such hard copy shall bear the Highly Sensitive Protected Materials legend set forth in Paragraph 1(d). Only the designated Reviewing Representative shall receive and maintain possession of all Highly Sensitive Protected Materials received under this Confidentiality Agreement, whether in hard copy or electronic form. Reviewing Representatives who are authorized Reviewing Representatives for purposes of reviewing particular Highly Sensitive Protected Materials, but who are not designated to receive and maintain possession of such Highly Sensitive Protected Materials, may review the copy of those materials at the office of the designated Reviewing Representative. If necessary, and only with the express consent of the Producing Party, additional copies of Highly Sensitive Protected Materials in the number specified by the Producing party, in electronic or hard copy form, may be created under circumstances in which, due to the geographic distance between the designated Reviewing Representative and other Reviewing Representatives of the same Reviewing Party or other similar circumstances, the requirement of this subparagraph that only one copy of Highly Sensitive Protected Materials be provided to and maintained by each Reviewing Party would result in substantial hardship. Authorized Reviewing Representatives may take reasonably limited handwritten notes regarding the information contained in Highly Sensitive Protected Materials, provided that handwritten notes shall not be used to circumvent this protection against duplication of Highly Sensitive Protected Materials.
- (b) An authorized Reviewing Representative's notes, memoranda, or other documents, materials, or information regarding or derived from Highly Sensitive Protected Materials, whether in hard copy or electronic form, are to be considered Highly Sensitive Protected Materials and labeled as set forth in Paragraph 1(d), above, and are to be treated in all respects as Highly Sensitive Protected Materials pursuant to this Confidentiality Agreement. Authorized Reviewing Representatives must take all reasonable precautions to ensure that Highly Sensitive Protected Materials, including notes and analyses made from Highly Sensitive Protected Materials, are not viewed by any person other than an authorized Reviewing Representative.

- (c) Other than pursuant to a valid court order and/or subpoena or as otherwise expressly provided in this Confidentiality Agreement, an authorized Reviewing Representative may disclose Highly Sensitive Protected Materials to another person only if the person to whom the material is to be disclosed is an authorized Reviewing Representative under this Confidentiality Agreement and only if such disclosure is conducted in compliance with the provisions of this Confidentiality Agreement.
- (d) If the Producing Party believes that further protections should be afforded with respect to the manner in which the confidentiality of particular Highly Sensitive Protected Materials should be protected, which determination shall be made on a case-by-case basis depending on the level of protection that may be necessary to protect the Producing Party and any other person or entity to which the Producing 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, then the Producing Party shall retain its right, and shall not be deemed to have waived such right, to seek from the Commission, and from the courts as may be necessary, an order providing the level of protection for such materials that the Producing Party believes is required.
4. In the event that any authorized Reviewing Representative for purposes of reviewing Highly Sensitive Protected Materials ceases to be engaged in this proceeding or develops an intention to engage in one or more of the activities described in paragraph 2(c) above and subject to paragraphs 5 (c) and (d) below, that person:
- (a) must immediately notify the Producing Party in writing, as applicable, (a) that involvement in LPSC Docket No. U-37425 has ceased, or (b) of the intention to engage in such activity(ies);
- (b) shall be immediately disqualified from reviewing or receiving Highly Sensitive Protected Materials;
- (c) upon request of the Producing Party, shall return to the Producing Party (or any remaining authorized Reviewing Representative of the Reviewing Party) all Highly Sensitive Protected Materials in possession of such person, including all notes, memoranda, or other documents or information regarding or derived from Highly Sensitive Protected Materials; and,
- (d) shall not engage in any activity set forth in paragraph 2(c) above until the provisions of paragraph 4(c), above, have been complied with fully, and shall refrain from engaging in any activity listed in paragraph 3 above for thirty (30) days from the date that notice is given pursuant to paragraph 4(a), above, in order to afford the Producing Party an opportunity to seek from a court of competent jurisdiction any injunctive or other relief that may be appropriate.
5. (a) Unless otherwise authorized by a Producing Party, each Reviewing Representative who may be given access to Confidential Information shall, before gaining such access, agree in writing to the following certification, and shall provide a copy of a signed certification

in the form of that attached to this Confidentiality Agreement to counsel for the party asserting confidentiality:

“I certify my understanding and agreement that access to Confidential Information is provided to me pursuant to the terms and restrictions of the Confidentiality Agreement in Louisiana Public Service Commission Docket No. U-37425, and that I have been given a copy of the Confidentiality Agreement and have read it and agree to be bound by it. I understand and agree that Confidential Information, the contents thereof, and any notes, memoranda, or any other form of information regarding or derived from Confidential Information, shall not be disclosed to anyone other than in accordance with the Confidentiality Agreement and shall be used only for the purpose of the proceedings in Louisiana Public Service Commission Docket No. U-37425 and any appeals therefrom. Provided, however, if the content of the Confidential Information is publicly available or is obtained from independent sources other than in violation of this or any other confidentiality agreement or protective order, the understanding stated herein shall not apply.”

(b) Unless otherwise authorized by a Producing Party, neither a Reviewing Party nor a Reviewing Representative may grant access to Confidential Information to any person unless such person is an authorized Reviewing Representative who has executed a certification in the form and substance of that set forth in paragraph 5(a) above and provided a signed certification to counsel for the Producing Party prior to the disclosure or granting of access to Confidential Information.

(c) In the event that any Reviewing Representative to whom such Confidential Information is disclosed ceases to be engaged in this proceeding, access to such Confidential Information by such person shall be terminated, and, upon request by the Producing Party, any copies of Confidential Information in the possession of such person shall be returned to the Reviewing Party. Any person who has agreed to the foregoing certifications shall continue to be bound by the provisions of this Confidentiality Agreement, even if no longer so engaged.

(d) The Reviewing Party and Reviewing Representatives are responsible for ensuring that persons under their supervision and control comply with this Confidentiality Agreement.

6. (a) Except for materials that are voluminous, the Producing Party shall provide a Reviewing Party one copy of Confidential Information. Although only Confidential Information that has been designated Highly Sensitive Protected Materials shall be subject to the restrictions on copying set forth in Paragraph 3 above, the parties agree to make a good faith effort to limit the number of copies made of Confidential Information to those reasonably necessary under the circumstances and agree to distribute copies of Confidential Information only to Reviewing Representatives.

(b) Materials that are deemed “voluminous,” which may include materials in excess of five hundred (500) pages in length that cannot reasonably be provided in an electronic format,

shall be made available for inspection by Reviewing Representatives at a location in Baton Rouge, Louisiana or New Orleans, Louisiana specified by the party declaring such materials to be voluminous between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday (except holidays). Such voluminous materials may be reviewed only during the “reviewing period,” which period shall commence upon signing of this Confidentiality Agreement, and continue until conclusion of these proceedings. 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.

(c) Reviewing Representatives may take handwritten notes regarding the information contained in voluminous materials made available for inspection pursuant to Paragraph 6 (b) of this Confidentiality Agreement. In the case of Highly Sensitive Protected Materials that are voluminous, such handwritten notes shall be subject to and governed by the provisions of Paragraph 3. After an inspection conducted under this paragraph, a Reviewing Representative may designate materials to be copied. In the case of Highly Sensitive Protected Materials that are voluminous and made available under this paragraph, such copy shall be subject to, and governed by, the provisions of Paragraph 3 of this Confidentiality Agreement. The Reviewing Party shall be responsible for reimbursing the reasonable costs associated with producing copies of any materials designated for copying under this paragraph. Only one copy of the materials designated shall be reproduced by the party making voluminous 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 this proceeding.

7. All Confidential Information made available pursuant to this Confidentiality Agreement to the Reviewing Parties and their Reviewing Representatives shall be reviewed and used solely for the purpose of these proceedings and any appeals therefrom. Access to the Confidential Information may not be used in the furtherance of any other purpose, including, without limitation, (i) any other pending or potential proceeding involving any unrelated investigation, claim, complaint, civil action, or other grievance of whatever nature, or (ii) any business endeavor or competitive purpose of whatever nature. The Confidential Information, as well as the Reviewing Party’s or any Reviewing Representative’s notes, memoranda, or other information regarding, or derived from the Confidential Information, are to be treated confidentially by the Reviewing Party and its Reviewing Representatives and shall not be disclosed or used except as permitted and provided in this Confidentiality Agreement. Information derived from or describing the Confidential Information shall not be placed in the public or non-secure files of the Reviewing Party or any Reviewing Representative except in accordance with provisions of this Confidentiality Agreement. A Reviewing Party and its Reviewing Representatives must take all reasonable precautions to ensure that Confidential Information, including handwritten notes and analyses made from Confidential Information, are not viewed or taken by any person other than a Reviewing Representative of the Reviewing Party. No provision of this Confidentiality Agreement shall prohibit a Reviewing Party from requesting, in another proceeding or matter, any of the materials that have been designated in this matter as Confidential Information, Highly Sensitive Protected Materials subject to applicable confidentiality agreements or orders in such other proceeding or matter.

8. (a) If a Reviewing Party or Reviewing Representative tenders for filing any written testimony, exhibit, brief, or other submission that quotes from Confidential Information or discloses the confidential content of Confidential Information, 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 Confidentiality Agreement and the LPSC Rules of Practice and Procedure as amended by General Order dated August 31, 1992. Such documents shall be marked "CONFIDENTIAL INFORMATION PURSUANT TO CONFIDENTIALITY AGREEMENT IN LPSC DOCKET NO. U-37425" or with the designation "HIGHLY SENSITIVE PROTECTED MATERIALS PURSUANT TO CONFIDENTIALITY AGREEMENT IN LPSC DOCKET NO. U-37425" as appropriate and shall be filed under seal with the Executive Secretary of the LPSC and served under seal to the counsel of record for the Reviewing Parties. If testimony that quotes from Confidential Information or discloses the confidential content of Confidential Information is offered by a Reviewing Representative on behalf of a Reviewing Party in this proceeding, the Reviewing Party shall advise the Administrative Law Judge of such fact, and the Commission shall proceed pursuant to Rule 26 of the LPSC Rules of Practice and Procedure as amended by General Order dated August 31, 1992. The Commission may subsequently, on its own motion or on motion of a party, issue a ruling determining whether or not the inclusion, incorporation, or reference to Confidential Information is such that, pursuant to this Confidentiality Agreement, the written testimony, exhibit, brief, or other submission, or transcript of testimony, should remain under seal.

(b) Any Party or Reviewing Representative giving testimony or submitting exhibits at hearings or depositions in this proceeding must, at the time such testimony or exhibits are submitted, identify as Confidential Information or Highly Sensitive Protected Materials, as appropriate, any portion of such testimony or exhibits that has been or is at that time designated as Confidential Information or Highly Sensitive Protected Materials in accordance with this Confidentiality Agreement, by advising the Administrative Law Judge of such fact. In that event, the Commission shall proceed pursuant to Rule 26 of the LPSC Rules of Practice and Procedure as amended by General Order dated August 31, 1992, unless the Commission determines that the material does not qualify for the "Confidential Information" or "Highly Sensitive Protected Material" designations.

(c) All Confidential Information filed with the Commission, the Administrative Law Judge, 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, and shall bear the appropriate designation.
9. Each party to this Confidentiality Agreement shall have the right to seek changes in the Confidentiality Agreement, as appropriate, from the Commission, or the courts. Before resorting to the Commission or the courts, the party seeking modification of this Agreement will first attempt to negotiate the proposed changes with the other parties to the Agreement.
10. A Reviewing Party and/or Reviewing Representative may release Confidential Information only pursuant to a final order of a local, state, or federal governmental agency or authority or court of competent jurisdiction, as appropriate; provided, however, the Reviewing Party

and/or Reviewing Representative agrees that prior to such release it shall promptly notify the Producing Party, and its counsel of record, of the order and of the intention to comply with the order and so that the Producing Party timely may contest any release of the Confidential Information; and provided, further, the Reviewing Party and/or Reviewing Representative shall attempt to ensure that such Confidential Information is not disclosed to the public and is accorded the highest level of protection possible consistent with the terms of this Confidentiality Agreement; however, the Reviewing Party and/or Reviewing Representative will abide by any such final order. In addition to the obligation to notify imposed in the foregoing provision, if prior to the issuance of such a final order, a Reviewing Party and/or Reviewing Representative becomes aware of any intention or proceedings to obtain such an order, then the Reviewing Party and/or Reviewing Representative acquiring such knowledge shall promptly inform the Producing Party of such proceedings.

11. During the pendency of Docket No. U-37425 at the Commission, in the event that a Reviewing Party wishes to disclose Confidential Information to any person to whom disclosure may not be authorized by this Confidentiality Agreement, 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, the parties shall attempt to resolve such dispute in a mutually satisfactory manner, and in the event that is not possible, the parties may seek a resolution of such dispute by the Commission or by a court of competent jurisdiction. The parties to this agreement hereby consent to and agree to support a stay of such a ruling by an Administrative Law Judge or Hearing Examiner requiring disclosure or a change in designation pending a final order by the Commission in the event such ruling is the subject of an appeal or a request for interlocutory review by the Commission. Likewise, the parties to this agreement hereby consent to and agree to support a stay of such a final order by the Commission requiring disclosure or a change in designation pending a decision on a request for a preliminary injunction. Any party challenging the 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, or such other time period authorized by a court of competent jurisdiction to file a petition seeking a favorable ruling from the Louisiana Supreme Court. Any challenges concerning the appropriate designation of CEII shall be made before the Federal Energy Regulatory Commission.
12. Nothing in this Confidentiality Agreement shall be construed as precluding a Producing Party from objecting to the use of Confidential Information on grounds other than confidentiality, including the lack of required relevance. Without limiting any party's obligations arising under this Confidentiality Agreement, nothing in this Confidentiality Agreement shall be construed as an agreement or admission by any party or the Commission that the designation of any material as Confidential Information under this Confidentiality Agreement is appropriate.
13. All notices, applications, responses, or other correspondence shall be made in a manner that protects the Confidential Information at issue from unauthorized disclosure.

14. Following the conclusion of these proceedings, Reviewing Parties and their Reviewing Representatives, upon request by a Producing Party, shall return or destroy all copies of the Confidential Information made available by such party except for any copies filed or submitted to the Commission and that the Commission is required to retain pursuant to applicable public retention law or policy. Any documents subject to such retention requirement shall be maintained under seal and confidential unless otherwise designated pursuant to the terms of this Confidentiality Agreement. Further, all notes or other documents derived from or revealing the confidential content of such Confidential Information 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. Nothing in this paragraph shall require the destruction or redaction of Confidential Information that is part of the record of any appeal of any action of the Commission in Docket No. U-37425.
15. In the event of a breach of the provisions of this Confidentiality Agreement, 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 seek an injunction against such breach without any requirement to post bond as a condition of such relief.
16. In the event of an inadvertent breach of this Agreement by a Reviewing Party revealing Confidential Information, that Reviewing Party shall be under an obligation to: 1) notify the Producing Party of such inadvertent breach as soon as reasonably possible upon discovery of such breach, 2) seek to recall and have destroyed the inadvertently produced material by e-mail or telephone request, and 3) replace inadvertently produced material with material containing proper redactions.

Date: _____

By: _____
(Signature)

Print name: _____

Company: _____

Representing: _____