



## 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 16<sup>th</sup> 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 5<sup>th</sup>, Entergy received an email distributed by opponents and on March 7<sup>th</sup>, 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 8<sup>th</sup> 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 8<sup>th</sup> 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 21<sup>st</sup> and March 8<sup>th</sup> 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.<sup>1</sup>

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<sup>1</sup> 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.