

**LOUISIANA PUBLIC SERVICE COMMISSION
ADMINISTRATIVE HEARINGS DIVISION**

DOCKET NUMBER U-37882

ENTERGY LOUISIANA, LLC, EX PARTE

***In re: Application for certification of generation and transmission resources
and for other relief.***

**RULING ON MOTION
FOR ACCESS TO “ATTORNEYS’ EYES ONLY” INFORMATION**

HAVING CONSIDERED the *Motion of the Alliance for Affordable Energy and Union of Concerned Scientists for Access to “Attorneys’ Eyes Only” Information* (“AEO Motion”), filed on July 15, 2026, the memoranda in opposition and support, and the oral arguments of the parties,

IT IS HEREBY ORDERED that the AEO Motion is **granted**.

REASONS

This proceeding was initiated by Entergy Louisiana, LLC (“ELL”) on or about March 26, 2026, with the filing of its *Application of Entergy Louisiana, LLC for Certification of Generation and Transmission Resources and for other Relief Pursuant to the Commission’s Lightning Initiative* (“Application”). The Application seeks the Commission’s approval to add over five gigawatts (“GW”) of generation, battery storage, and transmission improvements, to serve Meta Platforms, Inc.’s (“Meta’s”) wholly-owned subsidiary, Evest LLC (“Evest” or “Customer”), and its large hyperscale data center that will be located in Richland Parish, Louisiana, adjacent to the facility previously approved in Commission Order No. U-37425 for Meta subsidiary, Laidley LLC.¹ ELL seeks approval pursuant to the Commission’s *Lightning Initiative* adopted at its

¹ See Order No. U-37425 - Entergy Louisiana, LLC, ex parte. In re: *Application for approval of generation and transmission resources in connection with service to a single customer for a project in North Louisiana* (“Laidley Proceeding”). In Order No. U-37425 the Commission accepted the settlement entered into by Entergy Louisiana, LPSC Staff, Sierra Club, Walmart, and Southern Renewable Energy Association, approving the generation and

December 2025 Business and Executive Session (“B&E”), wherein the Commission waived the requirements of General Order 10-14-2024 (R-34247) (the “Commission’s market-based mechanisms or “MBM” General Order”) if certain factors are demonstrated and proven in a certification proceeding.²

The Application was published in the Commission’s Official Bulletin No. 1372 dated March 27, 2026, for a 15-day intervention period. The Alliance for Affordable Energy and the Union of Concerned Scientists (“collectively, “the NPOs”) intervened in the proceeding, along with the Louisiana Energy Users Group (“LEUG”), Southern Renewable Energy Association (“SREA”), Sierra Club, the Association of Louisiana Electric Cooperatives, Inc., 1803 Electric Cooperative, Inc., Walmart Inc., and Gulf States Renewable Energy Industries Association.

On July 15, 2026, the NPOs filed the AEO Motion, claiming that ELL is attempting to deny the NPOs the right to fully participate in the proceeding, an attempt that previously failed in Docket No. U-37425 when a similar motion was granted. Specifically, the NPOs assert that ELL has designated “large swaths of the initial filing and discovery responses as ‘Attorney’s Eyes Only,’” including the terms of the *Electric Service Agreement* (“ESA”), preventing the following seven individual client representatives of the NPOs from obtaining access to confidential information despite having signed the *Confidentiality Agreement* and *Non-Disclosure Certificate* drafted by ELL: Alaina DiLaura, Logan Burke, Lauren Nagel, Paul Arbaje, Sam Bomberg, Jeff Deyette, and Lee Shaver. The NPOs aver that the *Confidentiality Agreement* contains stringent protections and that the client representatives intend to comply with its terms.

transmission resources proposed in connection with service to a customer project in North Louisiana, subject to certain conditions.

² See Minutes of December 17, 2025 B&E.

The NPOs assert that they cannot fully participate in the case when the decision-makers are not allowed to review such large portions of the filing, or even review the entirety of their own experts' testimony. Further, they argue that restricting the access interferes with the attorney-client relationship, as counsel are unable to fully advise their clients. The NPOs argue that there is no legitimate basis for restricting access given that the client representatives have signed the *Confidentiality Agreement* and are bound by it. And finally, the NPOs argue that the Commission has never approved the AEO designation.

Upon the filing of the AEO Motion, a deadline was set for the filing of comments on the motion no later than July 17, 2026. Accordingly, ELL filed *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* ("ELL Opposition") and SREA filed *Southern Renewable Energy Association's Response to the NPOs' Motion for Access to "Attorney's Eyes Only" Information* ("SREA Response") wherein it supported the position of the NPOs in the AEO Motion, but clarified that the NPO client representatives were not the only individuals precluded from reviewing the information; that specifically, the material designated AEO was withheld from SREA Executive Director, Simon Mahan, and SREA Transmission Director, Andy Kowalczyk. In the SREA Response, it supported and adopted the position of the NPOs, but objected to the exclusion of the aforementioned SREA representatives, who had likewise signed the *Confidentiality Agreement* and *Non-Disclosure Certificate*.

The ELL Opposition urges that the AEO Motion challenges long-held Commission policy of prohibiting the disclosure of customer-specific information, citing Commission General Order Nos. R-29213 and R-29213 Sub. A, Section 3.7, which provides:

The utility is prohibited from transferring any customer-specific information from any AMS outside the customer-utility working relationship without prior

Commission approval. Summary data for reporting purposes to governmental, regulatory, and industry groups in which individual customer data is clearly indivisible from the total would not apply to this restriction.³

ELL argues that the AEO Motion seeks to undo reasonable, commonsense restrictions placed upon its customer's most private and commercially and competitively sensitive information at the risk of allowing intervenors, who may include competitors, access to the information.

Further, ELL argues that it is unnecessary to even consider the NPOs' request, since by signing the *Confidentiality Agreement*, an unambiguous, enforceable contract, they are bound by its terms, and have waived any argument to the contrary. Specifically, ELL asserts that the *Confidentiality Agreement* defines "Attorneys' Eyes Only" ("AEO") information, which is a subset of HSPM information, and limits access to "Authorized Persons", who are also defined therein. The *Confidentiality Agreement* defines Authorized Persons as legal counsel or consulting or testifying experts "who are not employed by, or an agent or representative for (or anticipated to become an employee, agent, or representative of) the Reviewing Party or any other person or entity to which disclosure would cause such substantial competitive or other harm"

ELL has categorized those client representatives that signed the *Confidentiality Agreement*, but who do not meet the definition of Authorized Persons as HSPM Designees, and argues that HSPM Designees do not qualify as Authorized Persons as defined in the *Confidentiality Agreement*, and because they agreed to the terms of the *Confidentiality Agreement*, the inquiry should end with the plain language of the agreement. Further, ELL argues that despite the NPOs'

³ See LPSC General Order, Docket No. R-29213, *In re: Investigation to determine if is appropriate for LPSC jurisdictional electric utilities to provide and install time-based meters and communication devices for each of their customers which enable such customers to participate in time-based pricing rate schedules and other demand response programs. (Consolidated with) Docket No. R-29213 Sub. A., In re: Commission examination of the public benefits of potentially adopting rules, new tariffs, and/or other regulatory mechanisms that would promote (or require) the use of wireless metering in Louisiana.*

assertion that their client representatives were targeted, the AEO restrictions have been applied evenly, that the HSPM designees include client representatives of SREA, and that no other intervenor submitted a confidentiality agreement for a non-legal or non-outside consulting expert.

ELL argues that even assuming that the HSPM designees did not waive access to the AEO information, the Commission should protect this information to the highest extent possible. According to ELL, it has access to significant private and confidential information that reveals commercially and competitively sensitive aspects of its customers' operations, and the disclosure of such information could have wide-ranging impacts. ELL acknowledges that it is not possible in the context of this proceeding to completely avoid sharing the customer's information; however, ELL argues that the AEO designation is the least burdensome means of protecting the customer's sensitive data while allowing for the experts and advocates to use the information as needed to represent their interests in the proceeding. And finally, without providing any specifics, ELL's Opposition to the AEO Motion claims that an NPO intentionally disseminated HSPM information to an individual who had not been authorized to receive such information in a prior Commission proceeding. ELL argues that the prior incident demonstrates that there is a real risk of disclosure of sensitive information.

On July 23, 2026, NPOs filed *The Alliance for Affordable Energy and Union of Concerned Scientists' Motion for Leave to File Reply to Entergy Louisiana'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* ("NPO Reply"), which was granted, allowing for consideration of the NPO Reply.⁴

⁴ See *Ruling on Motion for Leave to File Reply and Notice of Modifications to Procedural Schedule*, issued on July 22, 2026.

The NPO Reply pointed out that ELL’s “cavalier attitude” toward clarifying who was allowed to receive the AEO material belies their assertion that the designation is necessary. The NPOs point out the discrepancy in the list provided to the NPOs, attached to the AEO Motion, and the list attached to the ELL Opposition. Further, the NPO Reply criticized the ELL Opposition for failing to distinguish the ruling granting the NPOs access to AEO information in Docket No. U-37425, and for failing to acknowledge that the NPOs have demonstrated that they will abide by the terms of the *Confidentiality Agreement* and have protected sensitive information from public disclosure. By contrast, NPOs argue that ELL inadvertently disclosed AEO information in Docket No. U-37425, and the Sierra Club inadvertently disclosed confidential information in the current proceeding.⁵

With regard to ELL’s reference to a prior incident involving an NPO, the NPO Reply attached a statement by Logan Burke, Executive Director of the Alliance for Affordable Energy (the “Alliance”), wherein she discussed an incident that occurred in Docket No. U-36105 on January 27, 2022. The incident involved a former employee of the Alliance who emailed a link to a password-protected site that served as a repository for confidential material, to the Alliance’s expert in that case, Ed Burgess. Upon learning that Mr. Burgess’s confidentiality agreement was not accepted by ELL, the former employee contacted Ms. Burke, who took immediate steps to ensure that the expert did not have access to or use the confidential material. According to Ms. Burke, the expert never saw or used any of the confidential information, and additional protocols were adopted to ensure that no confidential information is inadvertently shared with consultants.

In response to ELL’s argument that the NPOs waived access to AEO information by signing the *Confidentiality Agreement*, the NPOs assert that 1) the agreement was not an arms-

⁵ See NPO Reply, at FN 5,9.

length transaction; 2) the agreement has not been approved by the Commission; and 3) the agreement itself provides that “Each party to the Confidentiality Agreement shall have the right to seek changes in the Confidentiality Agreement, as appropriate, from the Commission, or the courts.”⁶ In addition, NPOs dispute that they fall into any of the categories of persons whose access would create an unreasonable risk of harm, as they are not competitors of Meta, nor in the business of building energy infrastructure, or transacting in the computing industry. At the oral argument, both SREA and the NPOs argued that although they knew what information was labeled AEO at the time they signed the *Confidentiality Agreement*, they did not know that they would be considered HSPM designees, and that ELL has not proven that are within those categories of persons that would create unreasonable harm.

ELL asserted that while no other client representatives has been denied Authorized Person Status, none has requested access to AEO information, including WalMart’s witness who filed testimony without the benefit of the AEO designated material. It is apparent that party representatives and witnesses in Commission proceedings habitually restrict their own access by not signing a confidentiality agreement if the nature of their work dictates that they should not have access to competitors’ data. As such, there is rarely a need to monitor the trustworthiness or discretion of the designated representatives.

There is no precedent for the use of the “Attorneys’ Eyes Only” designation at the Commission and it seems to be more typically used in the context of intellectual property disputes. There is, however, Commission precedent for limiting access of certain information only to attorneys, when the client is a business competitor. In LPSC Docket No. T-34241, *Dynamic Environmental Services, LLC vs. Steve Kent Trucking, Inc. and Kent & Smith Holdings, LLC*, In

⁶ See *ELL Opposition*, Attachment A, at p. 10.

re: Complaint against Steve Kent Trucking, Inc. and Kent & Smith Holdings, LLC and petition to rescind LPSC Order No. T-33737, and cancel Common Carrier Certificate Nos. 5662-G and 5662, for example, Kent & Smith Holdings LLC (“K&S”) sought two years of transcripts from the member meetings of Dynamic Environmental Services, LLC (“DES”). At issue in that proceeding was the improper transfer of an encumbered common carrier certificate. Both K&S and DES, clearly competitors in the transportation industry, claimed certain rights to the certificate. K&S argued that the transcripts of DES’s member meetings may reveal discussions about the certificate. In that case, the ALJ limited the time period to six months and limited the disclosure to only counsel for K&S and Commission Staff.⁷

Here, ELL is not asserting that the named NPO and SREA representatives will use the AEO data to directly compete with either ELL or Meta (as an industry counterpart or power producer might). Further, ELL has not provided the Tribunal with anything beyond the names of the HSPM designees that would demonstrate what the objectionable risk of harm is with regard to the specific client representatives who have been denied access to AEO information. At the oral argument, ELL indicated that it does due diligence on each person that requests a confidentiality agreement and then makes a determination whether or not they will be allowed access to AEO information. If a client representative does not request to sign a confidentiality agreement then no such due diligence is required. Had ELL provided the due diligence performed on the individual specified in Exhibit B to ELL’s Opposition, there may be more of a basis upon which to determine that the persons specified therein represent an unreasonable risk of harm, but they did not.

At oral argument, ELL argued that the AEO designation applies to a small subset of confidential information that is designated by the customer as “extremely trade sensitive

⁷ See LPSC Docket No. U-35927, *Ruling on Motions*, at pp 8-9.

information.” But this does not comport with the entire ESA, among other things, being designated as AEO. This is the same ESA that ELL argued proved the capacity need in this case. In fact, ELL’s issue with the NPOs appears to center on NPOs’ media presence, in addition to its active participation in the proceeding. This Commission addressed media access to confidential information in Commission Order No. U-19997, *In Re: Trans Louisiana Gas Company* (1994). In that proceeding, the Commission refused to deny access to a representative of the *Daily Advertiser*, as long as the representative signed the confidentiality agreement in the proceeding.

It is ELL’s burden to show that the HSPM designees signatures on the *Confidentiality Agreement* are insufficient and that an additional layer of protection is required. ELL has not met that burden. Further, the NPOs and SREA had reason to believe that they would be provided AEO information after the ruling in Docket No. U-37425, and therefore, ELL’s argument that they waived access to AEO information by signing the *Confidentiality Agreement* is rejected. Accordingly, the *AEO Motion* is granted.

Baton Rouge, Louisiana, this 6th day of August, 2026.



Melanie Verzwylt
Chief Administrative Law Judge

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