UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

In re:	)	Case No. 05-17697
	)	
ENTERGY NEW ORLEANS, INC.,	)	Section "B"
	)	
Debtor.	)	Chapter 11 Reorganization
	)	

STATEMENT OF THE *AD HOC* BONDHOLDER COMMITTEE IN SUPPORT OF FINANCIAL GUARANTEE INSURANCE COMPANY'S MOTION TO TERMINATE EXCLUSIVITY

The *ad hoc* bondholder committee (the "Bondholder Committee") of holders of first priority mortgage bonds (the "Bonds" and the Bond holders, the "Bondholders") issued by Entergy New Orleans, Inc. (the "Debtor"), by its undersigned counsel, states its support of the *Motion Pursuant to Section 1121(d) of the Bankruptcy Code for an Order Terminating the Exclusive Periods Within Which the Debtor may File and Solicit Acceptances to a Plan of Reorganization and Authorizing Financial Guarantee Insurance Company to File and Solicit Acceptance for Its Plan of Reorganization* [docket # 1256] (the "Motion") filed by Financial Guarantee Insurance Company ("FGIC"), respectfully showing as follows:

THE BONDHOLDER COMMITTEE

1. The Bondholder Committee organized when it learned of the terms of the Debtor's October 23, 2006 Plan of Reorganization (the "Debtor Plan") that attempts "to reinstate" the Bonds' below market interest rates while, through the guise of "unimpairment," strips collateral and illegally shifts over $12.5 million from the Bondholders to the Debtor's controlling parent, Entergy Corporation ("Entergy")

2. Upon organizing, the Bondholder Committee retained counsel to defend Bondholder interests against the predatory Debtor Plan.

3. On November 3, 2006, Bondholder Committee counsel filed its verified statement pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure.[1]

4. As set forth in the Rule 2019 statement, the members of the Bondholder Committee hold over one-third in amount of the Bonds.

THE BONDHOLDERS REJECT THE DEBTOR PLAN

5. The Debtor has requested and received three extensions of its exclusivity periods. The result of these extensions is the Debtor Plan, which the Debtor simply filed without discussion with Bondholders (or, to the Bondholder Committee's knowledge, their Indenture Trustee) and through which the Debtor, at Entergy's direction, strips from Bondholders their legal entitlement to full interest payment and collateral protection. Accordingly, the Bondholder Committee opposes the Debtor Plan, and the Bondholder Committee members, whose vote is necessary for confirmation, will vote down the Debtor Plan.

6. The Bondholder Committee submits that the Debtor Plan is neither confirmable nor susceptible to nonconsensual confirmation ("cram down"), and, if pursued in exclusivity, will lead to unnecessary and wasteful litigation. Accordingly, terminating exclusivity, as FGIC requests, likely will lead to a confirmable plan through further negotiation or through proposal of an alternative plan that, unlike the Debtor Plan, will satisfy the requirements of section 1129 of the Bankruptcy Code.

THE DEBTOR'S WRONGFUL TREATMENT OF THE BONDS

7. The Debtor Plan wrongly labels the treatment of the Bonds as "unimpairment." Debtor Plan, § 5.3. However, the Debtor and Entergy know that the treatment they propose is

[1] Other Bondholders have since contacted and likely will join the Bondholder Committee. Counsel will amend its Rule 2019 as appropriate.

not "unimpairment," and Debtor Plan § 5.3 "Option B" proves it. ("If (i) the Bankruptcy Court determines that Option A Impairs the Bond Claims . . ..")

8. The Debtor Plan's so-called "Option A,"[2] to which Option B refers, decidedly "impairs" the Bond claims. Option A does *not* cure all defaults under the Bond Indenture, does *not* provide the Bonds with the collateral protection that the Indenture provides, does *not* pay to the Bondholders the interest due, and does *not* compensate the Bondholders for damages caused by Bondholders' reasonable reliance on the Indenture. See In re PPI Enters. (U.S.), Inc., 324 F.3d 197, 202 (3d Cir. 2003)("If the debtor's Chapter 11 reorganization plan does not leave the creditor's rights entirely 'unaltered,' the creditor's claim will be labeled as impaired . . .") (emphasis added); see also In re L&J Anaheim Assocs., 995 F.2d 940, 943 (9th Cir. 1993)("The plain language of section 1124 says that a creditor's claim is 'unimpaired' unless its rights are left 'unaltered' by the Plan. There is no suggestion here that only alterations of a particular kind or degree can constitute impairment.")

9. Because the Debtor Plan actually impairs the Bonds, the Court cannot confirm the Debtor Plan unless the Bondholders vote to accept the Plan or the Court crams down the secured Bonds. 11 U.S.C. § 1129(a), (b). As stated, the members of the Bondholder Committee will reject the Debtor Plan as currently proposed, rendering the Bond class a rejecting class, and requiring resort to cram down -- cram down of a senior secured class that the Debtor proposes not to pay in full while leaving its equity -- Entergy -- unimpaired.[3]

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[2] This provision of the Debtor Plan is not an "option" in the traditional sense that it gives the Bondholders a choice. It is an option for Entergy to try an artificial unimpairment that forces this Court to expend judicial resources, that forces Bondholders to fight to get that which the Debtor in good faith should already be proposing, and ultimately forces the Debtor (and eventually New Orleans' residents) to pay for this fight.

[3] The Debtor Plan provides unimpaired recovery to equity. Debtor Plan, § 5.12 ("The Equity Interests are Unimpaired.") Accordingly, though the Debtor Plan nominally impairs two

10. Here, however, the Debtor may not "cram down" the Debtor Plan over the Bonds' rejection. The Debtor Plan discriminates against the Bonds and is neither fair nor equitable. In fact, based on the Debtor's (or really, Entergy's) attempt to capture both the interest payments that applicable law requires the Debtor to pay to the Bonds prior to any equity recovery and below-market interest rates on the Bonds, the Debtor Plan does not provide the Bonds with the value, which in this solvent Debtor case in which the Bonds are oversecured is *full value*, that the Bankruptcy Code's cram down provisions require. See 11 U.S.C. § 1129(b)(2)(A) (requiring value "on the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property.") Full value requires bringing the interest rates to market. In addition, payment to junior classes of equity without full payment to the senior secured Bonds cannot be fair nor equitable.

11. And use of the Debtor Plan-defined "Bond Interest Moratorium Period" (the "Interest Transfer") does not change the analysis. Even if the Interest Transfer applies in the current context of final claim treatment and confirmation (as opposed to an interlocutory adequate protection matter)[4] and even if the Interest Transfer complied with rather than violated

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other classes (unsecured claims and a judgment claim), the Debtor likely will modify this so-called impairment (and provide interest on unsecured claims) or the Court will see through Entergy's artifice, such that the Bond class will be the only actually impaired class. Accordingly, the Court likely will not even have to reach cram down because the Debtor Plan will fail section 1129(a)(10) of the Bankruptcy Code.

[4] Reserving on the issue of whether the Interest Transfer could be enforceable against non-consenting Bondholders (the members of the Bondholder Committee did not and do not consent), at most the Interest Transfer was an interlocutory adequate protection arrangement among certain entities who stipulated only that certain so-called new or "additional" collateral would not be looked to for payment of one year's interest. The Interest Transfer was *not* the elimination of all Bondholders' Trust Indenture Act-protected rights to full payment of interest prior to a return to equity. The latter matter was not and could not have been determined at that time. See In the Matter of Southland Corp., 160 F.3d 1054, 1058, n.3 (5th Cir. 1998) ("Southland's argument that the Banks' receipt of adequate protection payments at the non-default contract rate of interest somehow waived their right to assert a higher rate as part of a

the federal Trust Indenture Act,[5] the Debtor cannot legally reinstate the Bonds without curing *all* obligations thereunder and without "compensat[ing] the holder of such claim . . . for *any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law*." 11 U.S.C. § 1124(2)(C) (emphasis added). The Bondholders' damages include the $12.5 million in interest obligations for which the people of New Orleans have already paid Entergy but which Entergy proposes to keep and not to pay on the debt it used to set power rates. In fact, here, the Interest Transfer is *precisely* the damage that the Debtor must remedy under section 1124 of the Bankruptcy Code.[6] See In re Orlando Tennis World Dev. Co., 34 B.R. 558, 560-61 (Bankr. M. D. Fla. 1983) ("Our position with respect to the contractual obligations of the parties is that, except for certain reliance-related damages, the positions of the parties must be as they were on the eve of acceleration. To determine otherwise would, in most if not all cases, create the same practical effect as simple non-allowance of reinstatement and cure.")

12. Any legally confirmable plan of reorganization in the case of this *solvent* Debtor with oversecured Bondholders must pay *in full* the Bonds (with full interest, paid, not from the Bonds' collateral, but from the Debtor's solvency) or must have the Bondholders' consent.

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confirmed plan is meritless. Adequate protection payments are different from § 506(b) interest on oversecured claims.")

[5] 15 U.S.C. § 77(ppp)(b) ("the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security, on or after the respective due dates expressed in such indenture security . . . shall not be impaired or affected without the consent of such holder . . ..") Accordingly, the Trust Indenture Act requires *actual* consent of each affected Bondholder. Neither the Debtor nor the Indenture Trustee obtained such actual consent from each affected Bondholder.

[6] The Bondholder Committee members' costs and expenses in having now to organize, to correct the Bond recovery, and, if necessary, to litigate for the proper treatment are additional damage for which the Debtor must compensate the Bondholders in order to unimpair the Bondholders legally or to treat them fairly and equitably prior to a return to equity.

Because this is a solvent bankruptcy case and the Bondholders are oversecured, the Bondholder Committee will not vote "yes" on the forced transfer to Entergy of the interest that the Indenture requires the Debtor pay to the Bondholders. And, in fact, here, a "yes" vote from the Bondholder Committee may require more than payment of the interest Entergy seeks to take; it may require that which the Bankruptcy Code's cram down provisions require: the resetting of the Bonds' interest rate to market rates, which are materially higher than those the Debtor Plan seeks, without full payment, "to reinstate."

THE BONDHOLDER COMMITTEE
WILL WORK WITH FGIC ON ITS PLAN

13. The Bondholder Committee has started to work with FGIC and expects that it will quickly and consensually be able to complete with FGIC the terms of *one* confirmable plan. It has not yet read FGIC's plan and cannot say whether it agrees with each of its terms. However, to be clear, the Bondholder Committee is not planning to file its own plan; but, rather, is planning to work with FGIC to promote a fair and fully consensual plan among the Debtor's creditors.

CONCLUSION

14. For the foregoing reasons and those to be addressed at the hearing on the Motion, the Bondholder Committee supports the Motion, requests entry of an Order granting the Motion, and requests such other and further relief as the Court deems proper.

Dated: New York, New York
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By: /s/ David S. Rosner

David S. Rosner
Andrew K. Glenn
Daniel A. Fliman
KASOWITZ, BENSON, TORRES
& FRIEDMAN LLP
1633 Broadway
New York, New York 10019
(212) 506-1700
(212) 506-1800 (facsimile)

-and-

Joseph E. Friend
BREAZEALE, SACHSE & WILSON, LLP
909 Poydras Street
LL&E Bldg - Suite 1500
New Orleans, Louisiana 70112
(504) 584-5426
(504) 584-5452 (facsimile)

Counsel for the Bondholder Committee