UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF LOUISIANA

IN RE:	*	NO. 05-17697
	*	
ENTERGY NEW ORLEANS, INC.,	*	CHAPTER 11
	*	
DEBTOR	*	SECTION "B"
* *	*	

THE COMMITTEE'S STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED, PURSUANT TO LOCAL BANKRUPTCY RULE 7056-1(4)

TO: THE HONORABLE JERRY A. BROWN
UNITED STATES BANKRUPTCY JUDGE

Movant The Official Committee of Unsecured Creditors (the "Committee"), respectfully submits this statement of material undisputed facts pursuant to Local Bankruptcy Rule 7056-1(A) in support of its *Motion for Summary Judgment That the Holders of Class 3 Claims Do Not Have a Prepetition Security Interest in the "Insurance Proceeds"* (the "Motion"). Pursuant to Local Bankruptcy Rule 7056-1(A), the statement of material undisputed facts is supported by citations to the record.

1. ENOI currently has outstanding six (6) series of first priority mortgage bonds in the aggregate principal amount of $230 million, ranging in maturity dates from August 2008 to September 2029 (collectively, the "Mortgage Bonds"). The Mortgage Bonds were issued pursuant to the Mortgage and Deed of Trust dated as of May 1, 1987 (as supplemented or amended from time to time, the "Indenture") by and among ENOI, The Bank of New York (successor to Harris Trust Company of New York and Bank of Montreal Trust Company) as Trustee and Stephen J. Giurlando (successor to Mark F. McLaughlin and Z. George Klodnicki) as Co-Trustee

(collectively, the "Indenture Trustee"). A copy of the Indenture, without the supplements, is annexed as Exhibit 1, to the Motion.

2. The Indenture purports to give to the Mortgage Bonds liens in certain ENOI property (the "Mortgage Collateral"), including ENOI's property, plant and equipment more fully described in the Indenture (the "PP&E"). The PP&E is generally comprised of the real estate, plants and electrical and gas distribution systems that serve the City of New Orleans.

3. The granting clause of the Indenture includes in the description of the property subject to the lien thereof numerous generally described corporeal immovable and movable property of ENOI and also "all properties of the Company specifically described in Article XX hereof and all other properties of the Company real, personal and mixed, of the kind or nature specifically mentioned herein or of any other kind or nature …." Indenture, Granting Clause at p. 11.

4. The granting clause of the Indenture also contains seven exclusions from the coverage of the lien of the Indenture. One of those exclusions covers "(1) cash, shares of stock, bonds, notes and other obligations and other securities not hereinbefore or hereafter specifically pledged, paid, deposited, delivered or held hereunder or covenanted so to be …." Indenture, Granting Clause, at p. 13. Another of these exclusions covers "(3) bills, notes, and other instruments and accounts receivable, judgments, demands, general intangibles and choses in action, and all contracts, leases and operating agreements not specifically pledged hereunder or covenanted so to be …." Indenture, Granting Clause at p. 13.

5. There is not an express grant in the Indenture of a lien or security interest in insurance policies, the proceeds of casualty insurance, or in cash.

6. Section 9.05 of the Indenture provides, in pertinent part:

> [ENOI] hereby covenants that it will keep or cause to be kept all the property subject to the Lien hereof insured against fire, flood, lightening, windstorm, hail, explosion and other risks to the extent that property of similar character is usually so insured by companies similarly situated and operating like properties (all such risks being hereinafter referred to in this Section as the "Specified Hazards"), to a reasonable amount, by reputable insurance companies, any loss, except as to materials and supplies and except as to any particular loss less than Five Million Dollars ($5,000,000), to be made payable to the [Indenture] Trustee as the interest of the [Indenture] Trustee may appear and/or to the holder of any other lien prior hereto upon property subject to the Lien hereof, if the terms thereof require losses so to be made payable; or that it will, in lieu of or supplementing such insurance in whole or in part, adopt some other method or plan of protection against loss by the Specified Hazards at least equal in protection to the method or plan of protection against loss by the Specified Hazards of companies similarly situated and operating properties subject to similar hazards, and that if it shall adopt such other method or plan, it will, except as to materials and supplies and except as to any particular loss less than Five Million Dollars ($5,000,000), pay to the [Indenture] Trustee on account of any loss sustained by reason of the destruction or damage of such property by any of the Specified Hazards, an amount of cash equal to such loss less any amounts otherwise paid to the [Indenture] Trustee, or to the trustee or other holder of any mortgage or any other lien prior hereto upon property subject to the Lien hereof, if the terms thereof require losses so to be paid.

Indenture, § 9.05, at pp. 59-60.

7. Steven C. McNeal, Vice President and Treasurer of the Debtor, executed a Certificate dated October 22, 2004, with respect to loss protection on the Mortgage Collateral (the "Certificate"), which is attached as Exhibit 2 to the Motion. The Certificate states:

> All of the Property subject to the Lien of the Mortgage is protected against loss originating from the ("Specified Hazards") by the method or plan of protection hereinafter set forth, as adopted by the Company pursuant to the provisions (except with respect to the deductibles) of said Section 9.05.

Certificate. Exhibit A to the Certificate lists the Insurance Policies. Certificate, Exhibit A.

8. The "method or plan of protection" adopted by ENOI consists of self insurance of $20 million and two policies of casualty insurance purchased by Entergy Corporation, parent of ENOI. The PP&E is insured under a $250 million policy of casualty insurance issued by OIL Insurance Limited, a Bermuda entity ("OIL"), dated April 1, 2005 (the "OIL Policy") and by an excess coverage program issued by underwriters at Lloyds and by Hartford Steam Boiler and Insurance Company, dated July 13, 2005 (collectively, the "Excess Policy") in an amount of up to $150 million in excess of the limits of the OIL Policy. The OIL Policy and the Excess Policy are hereinafter referred to collectively as the "Insurance Policies" and are attached as Exhibits 3 and 4, respectively, to the Motion.

9. The Indenture Trustee is neither named as a loss payee under the Insurance Policies nor required under the Indenture to be so named.

10. Section 9.05 of the Indenture provides that all funds received by the Indenture Trustee on account of a casualty to the PP&E, either as proceeds of insurance carried by the Debtor under the first alternative set forth in Section 9.05, or as funds deposited by the Debtor with the Indenture Trustee under the other method or plan of protection adopted by the Debtor under that Section:

> shall be paid by [the Indenture Trustee] to [ENOI] to reimburse [ENOI] for an equal amount spent in the rebuilding or renewal of the property destroyed or damaged, upon receipt by the [Indenture] Trustee of (1) an Officer's Certificate requesting the reimbursement, (2) an Engineer's Certificate stating the amounts so expended and the nature of such rebuilding or renewal and the fair value to [ENOI] of the property rebuilt or renewed ... and (3) an Opinion of Counsel that the property so rebuilt or renewed is subject to the Lien [under the Indenture] to the same extent as was the property so destroyed or damaged.

Indenture, § 9.05, at pp. 60-61.

11. Section 11.02 of the Indenture permits the Debtor to dispose of worn out or obsolete parts of the PP&E "[u]nless [ENOI] is in default in the payment of the interest on any of the bonds then Outstanding hereunder or one or more Defaults shall have occurred and be continuing ...." Indenture, §11.02, at p. 79.

12. Section 11.03 of the Indenture confers on the Debtor the right to obtain releases of the lien on the Mortgage and Pledged Property (as defined therein) upon the satisfaction of specified conditions "[u]nless [ENOI] is in default in the payment of the interest on any bonds then Outstanding hereunder or one more Defaults shall have occurred and be continuing ..." Indenture, §11.03, at p. 80.

Respectfully submitted,

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COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the above and foregoing document was served electronically on PACER system participants on this 3rd day of April, 2007 and to those on the attached distribution list via United States Mail, properly addressed and postage prepaid, on the 4th day of April, 2007.

/s/ Philip K. Jones, Jr.
Philip K. Jones, Jr.