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August 10, 2020

Mayor - President Josh Guillory  
Lafayette City-Parish Consolidated Government  
705 W. University Avenue  
Lafayette, LA 70502

City-Parish Attorney Greg Logan  
Lafayette City-Parish Consolidated Government  
705 W. University Avenue  
Lafayette, LA 70502

Re: Your "Complaint" of February 6, 2020  
against Terry Huval and "certain individuals at LUS and LUS Fiber"

Gentlemen:

Regarding your referenced "complaint", after a thorough review of documents and evidence requested and received, I respond.

**PREFACE**

Your "complaint", and the documents later submitted, as I will describe further, are indeed strongly worded, by able advocates, with **conclusions** that **crimes** have been committed and those accused are "**guilty**". Your complaint is directed generally at "certain individuals at LUS & LUS Fiber", most notably Terry Huval. Your complaint, as I will describe further, is directed to events which occurred in or about 2011. As you know, though your conclusions are clear, a "crime" must consist of **proof** of elements specifically and statutorily defined. Proof must be by **facts and circumstances** known and/or made available to the prosecutor from any source, including but not limited from a law enforcement agency, ultimately established beyond a reasonable doubt. Your "complaint" was submitted to the undersigned and to the Louisiana State Police on **February 7, 2020**.

However, prior to receiving your complaint, during a live radio broadcast, on **February 6, 2020**, to a question posed to you regarding "the future of LUS and/or LUS Fiber", you responded that a "**raid**" had occurred of LUS and/or LUS Fiber in connection with what appeared to be a police investigation. You suggested such "raid" (and the inferred police investigation), would affect the future of LUS/LUS Fiber. Upon hearing your radio statement, and unaware that either an actual police raid or law enforcement investigation had taken place, I dispatched investigators in my office to

confirm.

My investigators found that no **criminal complaint, prior to the broadcast**, had been made to or investigated by any law enforcement agency, of the nature of your complaint. I further inquired of the Lafayette Police Department, for any information regarding a “**raid**” which may have involved the LPD and LUS and/or LUS Fiber. LPD reported that no criminal complaint of the nature of your complaint had been made to LPD for investigation, and that no police report nor any documentation of such a police “**raid**” of LUS and/or LUS Fiber could be found. I was further unable to confirm that a complaint, of the nature of your complaint, had been made to the Louisiana Legislative Auditor.

Upon further inquiry regarding anything resembling a “**raid**” in Lafayette or any involvement of LPD with LCG, I discovered that the “**raid**” you publicly referenced on February 6, 2020, was **not** a police “**raid**” or police investigation at all. Rather it appeared to be an **internal administrative Q & A** of certain selected LUS and LUS Fiber employees by **LCG administration officials and LCG attorneys**. An LPD officer advised that, in 2019, the LPD officer was “**instructed**” to report to then LCG President Joel Robideaux “**to assist him with an assignment.**” The LPD officer met with President Robideaux, Lowell Duhon, Rick Zeno, and at least two other LCG administration employees (one an attorney).

The LPD officer was told that his presence was requested “**to assure the peace while the attorney interviewed LUS employees...in case any of the employees needing to be questioned were to be put on ADMINISTRATIVE LEAVE and refused to leave the premises...**” The LPD officer witnessed the meetings between the selected LCG employees and LCG administration and attorney, without incident. Eventually, the LPD officer left and “**did not take any police action**”. Until I made the inquiry of LPD, the LPD officer had not generated an official LPD report as to the “**request**” or the incident. It appears that these **administrative encounters** between LCG administration/attorney and LCG employees, witnessed by an LPD officer, may have been the “**raid**” which you referred to on February 6, 2020. Statements were taken by the LCG attorney without objection. LCG documents were obtained by LCG administration/attorney without incident. The incident can hardly be described as a “**raid**” of any kind.

## THE COMPLAINT

On **February 7, 2020**, the day after your radio broadcast regarding the “**raid**” of LUS and /or LUS Fiber, I received from Greg a “**Notice**” which he declared to be “**in compliance with La. R.S. 24:523**”, accompanied by a copy of a separate letter simultaneously sent to the Louisiana State Police. La. R.S. 24:523 by its terms **details the circumstances under which this Notice is intended or required:**

“...A. An agency head of an auditee who has **actual knowledge of or reasonable cause to believe** that there has been a **MISAPPROPRIATION OF THE PUBLIC FUNDS OR ASSETS** of his agency **shall immediately notify, in writing, the LEGISLATURE AUDITOR and the district attorney** of the parish in which the agency is domiciled of such **MISAPPROPRIATION**. “**Reasonable cause**” shall include **information obtained as a result of the FILING OF A POLICE REPORT, an INTERNAL AUDIT FINDING, or other source indicating such a MISAPPROPRIATION of agency funds or assets has occurred...**”

I might also add that, in addition to the necessity that a **MISAPPROPRIATION** (as a result of the filing of a police report or an audit finding) exists, La. R.S. 24:523 further provides:

“...C. When **MISAPPROPRIATION** is discovered and reported, **the attorney general, at the request of the legislative auditor**, shall be authorized to recover **MISAPPROPRIATED FUNDS** from the responsible party **by civil suit**. Upon a finding of **MISAPPROPRIATION**, the attorney general shall also seek restitution from the responsible party of those costs incurred by the legislative auditor to audit, investigate, or report an allegation of **MISAPPROPRIATION**, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit shall be recoverable from the responsible party....”

Upon receipt, I noted that the alleged “**MISAPPROPRIATION**” was not supported in either your “complaint” or the “Notice”. Upon receipt of your “complaint”, I did NOT find that a police report, audit finding, or any other **evidence** had been presenting indicating that a **MISAPPROPRIATION** had occurred. Though your “Notice” was sent to the District Attorney, I also noted that it did NOT indicate that it was sent to “the legislative auditor” as statutorily required nor to the Attorney General. As of today, I have not been able to confirm that a complaint has been made to the Louisiana Legislative Auditor nor to the Attorney General, of the nature of your complaint.

Along with the “notice” of “**MISAPPROPRIATION**”, I also received from Greg a copy of a 2-page letter, dated February 6, 2020, addressed to the Louisiana State Police, which constitutes your “complaint” against **Terry Huval** and “**certain individuals at LUS and LUS Fiber**”. In the short and terse letter, you requested an investigation be conducted by the LSP, generally of “**the integrity of public records, the destruction of which appears to be an attempt to cover up a crime...**” You referenced an LCG limited internal investigation and, as a result, your **CONCLUSION** that “there was sufficient evidence uncovered in the internal investigation to warrant further investigation by the Louisiana State Police **into the destruction of computer files, e-mail archives and possible manipulation of accounting or public finance records...**”

You made specific note in your **CONCLUSION** - the “**glaring example of destruction of public records [of] Terry Huval’s e-mails...that there was somewhere between 15,000 and 20,000 of Terry Huval’s e-mails deleted for the 2011 time period...**” You also noted the same time frame when pricing structures between affiliates LUS and LUS Fiber occurred for the “Power Outage Monitoring System and Sewer Lift-Station Fiber Service and which is currently under investigation by the Louisiana Public Service Commission...”, also the focus of your complaint.

The gist of your 2-page “complaint” centered around 2 matters:

1. Actions taken by Terry Huval and others person within LCG **in or about 2011** regarding pricing transactions between LUS and LUS Fiber which are currently under investigation by the Louisiana Public Service Commission, and,
2. The destruction or deletion of 15,000 to 20,000 of Terry Huval’s emails **for that 2011 time period**.

Without any **evidence to support the “reasonable cause”** mandated by La. R.S. 24:523, you requested a “thorough external criminal investigation” by the LSP. Your request of the LSP , again, the following **conclusions**:

“...We believe that certain individuals at LUS & LUS Fiber are **guilty of injuring public records** (La. R.S. 14:132); **theft** (La. R.S. 14:67); **malfeasance** (La. R.S. 14:134) **and/or criminal mischief** (La. R.S. 14:59). We further believe there may be additional crimes uncovered when a

thorough external criminal investigation is conducted...”

Your “complaint” did not contain evidence, at that time, to justify initiation a **criminal investigation**. It did appear that an **administrative investigation** had been started by LCG. It was also equally evident that an **administrative proceeding** was underway by the Public Service Commission, both appearing to examine the same 2011 transactions between LUS and LUS Fiber underlying your “complaint”. As I expected from the terse nature of your 2-page “complaint”, LSP immediately contacted the undersigned, as the District Attorney to whom any investigation would be delivered, as is the protocol, questioning the nature and manner of the request. A meeting the discuss your complaint was set for February 18, 2020.

## EVIDENCE TO SUPPORT THE COMPLAINT

Prior to our meeting, I made a written request on February 7, 2020, raised by the insufficiencies of your notice and the vagueness of your complaint, for **documents** that may have had any relevance to your “complaint”, as follows:

“Any and all documents or writings or memorandum, compiled as a result of or in any way connected to **any internal investigations, inquiries, audits, or examinations by LCG or any other public or private entities, including but not limited to the Louisiana Public Service Commission, the Louisiana Legislative Auditor, regarding LUS, LUS Fiber, and any former or present employees of LCG, LUS, and/or LUS Fiber...**”

Prior to a response to my request, you issued **another public comment** by way of a Press Release, on February 12, 2020, disseminated widely through local media, entitled “**District Attorney Issues Request for LUS, LUS Fiber Investigation Materials**”, wherein you publicly declared the following:

“...The District Attorney’s request stems from a recent announcement by Guillory of a **raid** that occurred in the fall of 2019 of LUS and a subsequent request of the Louisiana State Police for an investigation **concerning the integrity of public records, the destruction of which appears to be an attempt to cover up a crime**. Further, there are **concerns** regarding possible violations of law related to the matter of questionable payments from LUS to LUS Fiber and the motivations behind and appropriateness of said payments...”

“...The ultimate goal is to identify and correct the administrative and operational weaknesses that have allowed for questionable, financial support and illegal subsidization between LUS and LUS Fiber so that we may transition both entities to lawful and healthy operations. Guillory concluded...”

Your Press Release clearly suggested the goal of your “complaint” to be **administrative**. However, your “complaint” was forceful in its conclusions of **criminal guilt** and deserved further review.

So, preliminarily, prior to any review of any **evidence** to support your conclusions of guilt or your request for a criminal investigation, there were three potential questions to examine:

1. Whether a **criminal** misappropriation of funds or assets occurred, and could be proven,
2. Whether a **criminal** destruction of public records occurred, and could be proven, and,
3. Whether an alleged “**illegal subsidization**” between LUS and LUS Fiber occurred, and whether such was a **criminal** violation or an **administrative** violation?

## EVIDENCE AND FACTS

On February 18, 2020, you and I met with two detectives and a supervisor of the LSP, in an LCG conference room. At that point, no details had been provided, other than **allegations** and **conclusions**. Your complaint was based, as you then indicated, on internal investigations, audits, etc. conducted by LCG or its legal representatives. The specific question posed was whether your internal investigation consisted of **actual evidence**, to support your “complaint” that:

1. A “misappropriation of public funds” had occurred and by whom,
2. Emails, or any other “public documents” had been deleted or otherwise destroyed, and,
3. Who was “guilty of injuring public records...theft...malfeasance...and/or criminal mischief...” and by what acts?

At the February 18, 2020 meeting, you pointed out that LCG had encountered technical difficulties in examining email archives within the LCG system. “Whistle blower” information seemed to suggest emails were missing. However, it was only recently that an LUS computer engineer had obtained additional email archiving equipment located “300+ back up tapes” of saved emails that may have been the purported “missing emails”. As a result of the volume of information now available to examine, you requested technical assistance from LSP to assist in reviewing and comparing the newly discovered LCG back-up tapes.

All agreed that the examination to determine whether there were in fact destroyed or deleted emails could and should have been done by LCG to begin with to support your “complaint”. You complained of the possibility of destruction of LCG e-mails. LCG had within LCG control the necessary equipment, resources, and staff to determine whether destruction or deletion had occurred. You could not substantiate that there had actually been any destruction by your own engineers.

You have recently stated that LSP refused to initiate the investigation of the LCG email archives. This is not accurate. LSP cannot and should not utilize resources to initiate an unsubstantiated complaint. You were instructed that the e-mail servers and back-up tapes within the possession and control of LCG should be further examined by LCG to substantiate the allegation that the e-mails have been destroyed.<sup>1</sup> In the interim, I was advised that the emails you suggested were destroyed or deleted may not have been.

In addition, at that February 18, 2020, meeting, Greg provided a copy of what appeared to be an Executive Summary and the LUS Fiber Affiliate Transaction Internal Review FY 2017, of **December 16, 2019**, prepared by Lowell Duhon, Interim Director, Lafayette Utilities System, Kayla Miles, Interim Director, LUS Fiber, and Lawrence Marino, Oats and Marino, Assistant City Attorney. This appears to be the results of the **internal LCG investigation** regarding “two potential violations of the Fair Competition Act reported to the Louisiana Public Service Commission,” and the “illegal subsidization between LUS and LUS Fiber” mentioned in your Press Release of February 12, 2020, the alleged “illegal subsidization” matter underlying your complaint.

## THE DECEMBER 16, 2019 LCG INTERNAL INVESTIGATION REPORT

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<sup>1</sup> On May 29, 2020, City-Parish Attorney Greg Logan advised that “LCG continues to pursue its investigation regarding both destruction of public records and the underlying illegal pricing...Further complicating LCG’s investigation is the fact that LUS has a separate computer system from LCG. The investigation continues as we continue to discover additional evidence in every phase. We are now going through an extensive review of Huval’s hundreds of thousands of emails and computer files; this is a daunting task for LCG and the resources it has available...”

From the December 16, 2019 report of Lowell Duhon (Interim Director, LUS), Kayla Miles (Interim Director LUS Fiber), and Lawrence Marino (Oats and Marino, Assistant City Attorney), the following suggests that your “complaint”, as to the actions of LCG employees in the “illegal subsidization” allegations, may be more appropriately an administrative complaint and not criminal:

1. There were **charges by LUS Fiber to LUS which appear to violate the Rules of the Fair Competition Act and the Rules of the Public Service Commission;**
2. “...there is **reason for concern as to whether these charges are proper** under the Fair Competition Act and the Rules...”,
3. “...it is **reasonable to bring these matters to the Public Service Commission’s attention for consideration and determination as to whether they comply with the FCA and the Rules, as interpreted by the PSC, and if not, the appropriate remedy...**”,
4. As to the issue of the services and charges handled by Terry Huval in 2011:
  - a. “...The Power Outage Monitoring Service (“POMS”) billed under this account was **unique and unlike any services provided to nonaffiliates**. The full-cost accounting methodology was therefore the appropriate price basis. POMS was **apparently priced based on projected cost savings to LUS customers, not on LUS Fiber’s cost to provide the service, and therefore appears to be inconsistent with the Rules...**”

In addition, the LCG December 16, 2019 report, correctly sets forth the **legal positions of LUS, LUS Fiber, LCG, the Fair Competition Act, and the Louisiana Public Service Commission and its Rules**, as applicable to your complaint, as follows:

1. **LUS Fiber is a division of LUS, which is itself a division of LCG.**
2. LUS Fiber provides telecommunications services, including internet, television, telephone, and other services to individuals, businesses, LUS, and other LCG agencies, and other public agencies in the Lafayette area.
3. **The Fair Competition Act (FCA) precludes cross-subsidizing the services provided by LUS Fiber using funds from LUS or other LCG agencies.**
4. **The FCA further precludes LUS from paying a cost of LUS Fiber that is not a direct cost of a service because that would be a prohibited cross-subsidy.**
5. **The FCA requires the Louisiana Public Service Commission (PSC) to adopt rules to define and govern these types of transactions.**
6. **The FCA subjects LUS Fiber to PSC authority to enforce its Rules concerning these types of transactions.**
7. **The determination of whether LUS Fiber has made a prohibited cross-subsidy, and thus a violation of the Rules of the FCA and of the PSC is exclusively that of the Public Service Commission.**<sup>2</sup>

You will recall that the initial position taken by the LSP and the undersigned, at our meeting of February 18, 2020, was that your complaint may be **administrative or civil and not criminal**, subject

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<sup>2</sup> Jurisdiction over public utilities in general and rates in particular is vested in the Louisiana Public Service Commission. The LPSC is granted expansive, independent, and plenary regulatory powers over public utilities. That broad regulatory power comprises the right to exercise all necessary power and authority over public utilities for the objective of setting and regulating rates charged or to be charged, and service furnished by, those public utilities. *Gulf States Utilities Co. v. La. Public Serv. Com’n*, 633 So2d 1258 (La. S.Ct. 03/17/94). The doctrine of primary jurisdiction would obligate the district court to stay any judicial proceeding of an issue until the LPSC proceeding is ended. *Frith v. Southwest Ouachita Waterworks, Inc.*, 207 So3d 1121 (La. App. 2<sup>nd</sup> Circuit, 10/12/16).

to the exclusive jurisdiction of the Louisiana Public Service Commission. You, however, have persisted in your request for a **criminal investigation**.

## **SELF REPORTS OF LCG TO THE LOUISIANA PUBLIC SERVICE COMMISSION**

At the February 18, 2020 meeting, Greg also provided copies of **self-reports made by LCG to the Louisiana Public Service Commission, of these “illegal subsidization” violations**, as follows:

1. Letter of July 8, 2019, self-report by Joel Robideaux, Mayor-President, of actions of Terry Huval specifically, regarding the “POM” payments, reciting that:
  - a. LUS has paid LUS Fiber **“since November 2010”**,
  - b. **Terry Huval was the former director of both LUS and LUS Fiber**,
  - c. **In October 2010, and again in July 2011, Huval directed LUS Fiber to charge LUS amounts for services (which Robideaux now contends in 2019 may be in violation)**,
  - d. **In July 2011, LCG accounting notified Huval that there may be an question with the method by which Huval made such direction**,
  - e. **The direction pursued by Huval and the payments made by LUS to LUS Fiber continued from 2010 through 2018**,
  - f. **Audits were conducted thereafter, and LCG management did not raise the issue now raised by Robideaux (in 2019) but raised by LCG accounting in 2011**,
  - g. Reference was made by Robideaux to an earlier LCG letter of self-reporting dated April 14, 2018, which confirmed that **“steps have already been taken to prevent improper affiliate charges in the future by separating the directorship of LUS and its Communications Division into two separate positions; and by improving management controls...”**.
2. Letter of December 18, 2019, self-report by Joel Robideaux, Mayor-President, which included the December 16, 2019 report described above, but complained of **actions of Doug Dawson** specifically that:
  - a. **Telecom expert and LUS Fiber consultant had proposed charges which may exceeded market price**,
  - b. **The charges “may exceed market price, and if so, may have violated the Rules.”**

Again, this supported the initial position that the issues surrounding the “illegal subsidization” of 2011 between LUS and LUS Fiber, was not a criminal matter but rather an administrative matter subject to the exclusive jurisdiction of the Louisiana Public Service Commission. However, persistence prevailed for a further review.

At the February 18, 2020 meeting, Greg provided another document entitled **“Lafayette Consolidated Government – LUS and LUS Fiber Investigation”**, subtitled **“Cast of Characters”**, which contained, again, **conclusions regarding the target of your “complaint”, Terry Huval**, as follows:

**“Terry Huval – Longtime Director of LUS. LUS Fiber was conceived under Huval’s tenure. In attempt to conceal trouble with LUS Fiber’s profitability, Huval CONCOCTED A SCHEME for LUS Fiber to sell services to LUS and LCG at inflated prices. Although being billed and paid, the services were not being used. Huval was aware that said practices violated the Louisiana Fair Competition Act (FCA). Huval’s**

**actions CLEARLY VIOLATED THE MALFEASANCE STATUTE (La. R.S. 14:134)** as Huval intentionally failed to perform his duty in a lawful manner. As outlined below, **evidence of his pricing studies and communications with his supervisors concerning the transactions between LUS and LUS Fiber have disappeared, either deleted from the server or removed from LUS files and records.** When Huval's scheme was discovered, he retired from LUS..."

By the February 18, 2020 meeting, there was still NO evidence that any documents, emails, studies, etc. had "disappeared, either deleted from the server or removed from LUS files and records".

## **FURTHER SUBMISSIONS**

Pertinent to the initial inquiry<sup>3</sup>, I received a copy of an Audit Memorandum, dated June 4, 2019, prepared by the Staff of the **Louisiana Public Service Commission**, of LUS services, the scope of which audit was limited to the fiscal year 2017 financial transactions of LCG and LUS. However, "in addition to testing LUS' compliance with the Commission's Rules, the audit reviewed the financial results reported by the Communications System [LUS Fiber] during the period of fiscal year 2008 through fiscal year 2017". Of critical relevance to the inquiry raised by your "complaint", the Audit Memorandum of June 4, 2019, sheds light on "evidence" accumulated by the Public Service Commission which must be considered part of the basis of your "complaint", as follows:

"As part of the review of the affiliate transactions that the Communications System has engaged in, a series of billings for services rendered to LUS by the Communications System [LUS Fiber] was examined in order to determine whether LUS has complied with the Commission's Code of Conduct rules. **The series of affiliate transactions subject to further investigations stems from the billings over a period of years by the Communications System to the Wastewater and Electric Divisions of LUS for services that were not being used by those divisions...**"

In this regard, the PSC Staff made certain findings and recommendations in the context of its **administrative and civil proceedings involving LUS, LUS Fiber, and LCG**, which will have implications in the review of your **criminal** "complaint":

1. The issue was the billings by LUS Fiber to LUS for fiber connectivity services for installations that had not been completed, since 2011, in the amount of \$1,259,855.
2. The issue was also the billings by LUS Fiber to LUS for relocation and/or removal of services, after the contract for such had terminated, in the amount of \$274,882.
3. **When the issue arose, LUS Fiber transferred \$1,752,194.85 back to LUS.**
4. **The LCG auditor reported and the LPSC Staff found the payments as "acts of noncompliance with the Louisiana Public Service Commission's Code of Conduct..."**
5. The LCG auditor reported "...The difference in the exchange transaction could be considered an **unintentional appropriation** to the Communications System [LUS Fiber]..."
6. The LPSC Staff found that:

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1. <sup>3</sup> "Whether a **criminal** misappropriation of funds or assets occurred,
  2. Whether a **criminal** destruction of public records occurred, and,
  3. Whether an alleged "**illegal subsidization**" between LUS and LUS Fiber occurred, and whether such was a **criminal** violation or an **administrative** violation.", page 4 herein.

- a. "...there is **the appearance of self-dealing that clearly benefitted the Fiber Utility...**"
- b. "...**The reporting relationships and span of responsibilities within the organizational structure of LUS further contributes to the appearance of inappropriate self-dealing** concerning the billings for the unused services..."
- c. "**The Water, Wastewater, and Electric Divisions of LUS report to the Utilities Director.**"
- d. "**The Communications System also reported to the Utilities Director.**"
- e. "**The approval of Division Budgets and the on-going management and oversight of both the Utilities Divisions and the Communications System is ultimately the responsibility of the Utilities Director...**"
- f. "**LCG and LUS have internal controls in place to prevent the misappropriation of funds and to optimize the use of resources...**"
- g. "**However, the internal controls were not sufficient**"
- h. The LPSC Staff agreed that **these findings "at best, call into question LUS internal control procedures..."**
- i. The LPSC Staff concluded that **"the Utilities Director's oversight of Water, Wastewater, and Electric Divisions, as well as the Communications System, may have weakened the strength of the internal controls..."**
7. "...LUS is taking measures to strengthen its internal controls going forward in order to mitigate the possibility that such transactions go undetected in the future..."
8. Finally, **LPSC Staff recommended that the funds transferred by LUS Fiber be retained by LUS.**

As of our meeting of February 18, 2020, the foregoing was the only "**evidence**" available to me to determine whether in fact a "crime" may have been committed. Shortly thereafter, we were beset with the pandemic, stay home orders, court closures, etc. On or about May 29, 2020, I received from Greg, an "Interim Report", which contained as it's RE:

"RE: ...**Malfeasance** in office by former LUS Director Terry Huval regarding **illegal pricing** for LUS Fiber Services; and  
 "...Ongoing LCG investigation regarding **destruction of public records and Huval's illegal activity**"

Accompanying the "Interim Report" was copies of an extensive list of **interviews by LCG<sup>4</sup>, and documents<sup>5</sup>**. I also received **copies of a number of emails and other communications<sup>6</sup> exchanged** during a period from October 2010 to 2014, between and among LCG employees. These digital communications specifically discussed the pricing issues between LUS and LUS Fiber which form the basis of your conclusion that Malfeasance was committed thereby. I have not received any evidence that any documents have been destroyed, deleted, or otherwise missing. I have reviewed thoroughly all these interviews and documents and other submissions. Greg's Interim Report, of May 29, 2020, closed with:

"...LCG continues to pursue its investigation regarding both destruction of public

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<sup>4</sup> of Alison Alleman, Antonio Conner, David Demourelle, Donald Delahoussaye, Doug Dawson, Jeff Stewart, Kerney Simoneaux, Teles Fremin, Terry Huval, all employees of LCG.

<sup>5</sup> LEDA POMS Cost Savings Report, LUS Cost Allocation Manual Rev 2, LUS emails and memos and Attest Auditor file regarding POMS, LUS Fiber Affiliate Transaction Internal Review – public version, PSC Cost Allocation and Affiliate Transaction Rules – R-28270, PSC FY 17 Audit Committee Report – public version, Self-Reporting Letters to PSC

<sup>6</sup> Some of which were found by LCG to exist upon further examination after initially suggesting destruction or deletion.

records and the underlying illegal pricing. The COVID 19 situation has obviously slowed progress. Further complicating LCG's investigation is the fact that LUS has a separate computer system from LCG. The investigation continues as we continue to discover additional evidence in every phase. We are now going through an extensive review of Huval's hundreds of thousands of emails and computer files: this is a daunting task for LCG and the resources it has available..."

"...The public corruption and lack of accountability of the illegal POMS scheme is serious, Huval misused millions of dollars of public funds in clear violation of the law. There is sufficient evidence and reason to warrant charges against Huval for malfeasance in office..."

Again, strong rhetoric and advocacy do not supply the necessary proof to warrant criminal charges which must be established beyond a reasonable doubt. While awaiting the results of your continuing investigation for such proof, you continue as well to publicly proclaim your **conclusions**.

## ADDITIONAL EVIDENCE

On or about June 17, 2020, you published through the local media a copy of your letter to LCG, through its Lafayette City Council and Lafayette Parish Council, specifically regarding NewGen Strategies and Solutions, and its services to LCG from 2015 to 2020. You again make reference to the following **conclusions**:

1. "...prior LUS Director Terry Huval carried out a **massive illegal pricing scheme** for services provided to LUS by LUS Fiber..."
2. "...resulted in LUS paying **millions of dollars of improper charges** to LUS Fiber in **violation of the Fair Competition Act, PSC Rules, LUS's own Cost Allocation Manual, and good business practice...**"

In this regard, I have also obtained public copies of the following regarding the review of NewGen Strategies and Solutions, LLC, which make direct reference to your **conclusions** against Terry Huval:

1. Internal Memorandum of Chief Administrative Officer Cydra Wingerter to you, dated June 15, 2020:
  - a. "...former LUS Director **Terry Huval engineered an elaborate pricing structure between LUS Fiber and LUS** as a means of cryptically subsidizing LUS Fiber..."
  - b. "...The matter first came to light in April of 2018 following an incendiary article in 'The Hayride' implying **LUS was improperly propping up LUS Fiber**. In response, an internal investigation was sparked which did in fact uncover **questionable services and rates from LUS Fiber to LUS...**"
  - c. "...Robideaux **and Huval** self-reported to the Public Service Commission (PSC) as a violation of the Fair Competition Act (also a violation of LUS's own internal Cost Allocation Manual), and LUS Fiber promptly repaid LUS the \$1.7M improper affiliate transactions, aka subsidizations..."
  - d. "...Shortly after, Mayor-President Robideaux made **the decision to split LUS and LUS Fiber and Huval somewhat abruptly retired...**"
  - e. "...June of 2019, the PSC issued an audit memorandum on the self-report noting the appearance of "self-dealing" with LUS Fiber as the beneficiary, amounting to a form of subsidy..."
  - f. "...LCG's budget process for Fiscal Year 20. Through those budget meetings, it was revealed that the \$1M annual POMS expense was altogether and unexpectedly eliminated from LUS's budget, further raising questions about the service provided

- by LUS Fiber...”
- g. **“...A deeper dive into the issue demonstrated an evident plan orchestrated for LUS to subsidize LUS Fiber to an even greater extent than the first \$1.7M in improper payments...”**
  2. Letter of Lawrence E. Marino, Oats & Marino, to you, dated June 17, 2020, reviewing the accuracy of the services provided to LUS and LCG by NewGen Strategies and Solutions, LLC, as consulting engineers, as having **“failed for more than five years to detect or report on the massive pricing scheme for LUS Fiber services...”**:
    - a. **“...Former LUS Director Terry Huval illegally subsidized LUS Fiber for years, charging LUS millions of dollars for services that were never used or were overpriced...”**
    - b. **“...Huval directed LUS to illegally subsidize LUS Fiber by paying for services that LUS never received...”**
    - c. **“...Huval directed LUS to illegally subsidize LUS Fiber by paying \$1M per year for the Power Outage Monitoring System service, when the FCA required LUS Fiber to charge only its negligible cost...”**
    - d. **“...Huval directed LUS to illegally subsidize LUS Fiber by overpaying for millions of dollars of other data services...”**
    - e. **“...Despite NewGen’s failure to detect or report Huval’s illegal pricing scheme, LCG is correcting the problem through numerous fiscal and operational improvements, many instituted by Lowell Duhon as LUS Interim Director...”**
    - f. **“...[Lowell] Duhon was appointed LUS Interim Director specifically to address and remedy Huval’s illegal pricing schemes...”**
    - g. **“...Duhon has already achieved substantial improvements to remedy Huval’s illegal pricing scheme, and continues to improve LUS’s management and finances...”**
    - h. **“...NewGen failed to detect or report Huval’s illegal pricing schemes, throughout its six years as LUS’s consulting engineer, despite its responsibility to do so...”**
    - i. **“...NewGen’s due diligence responsibility included detecting and reporting on Huval’ illegal pricing schemes...”**
    - j. **“...NewGen’s failure to detect or report Huval’s illegal pricing schemes failed to satisfy its due diligence responsibility...”**

It is clear from the evidence submitted thus far that there is insufficient proof beyond a reasonable doubt as to the offenses that form the basis of your complaint.

**“MISAPPROPRIATION”**, in the context of your initial “Notice” of February 7, 2020, under La. R.S. 24:523, is not a specific crime. The crime of “Theft”, generally under La. R.S. 14:67 is “the misappropriation or taking of anything of value which belongs to another, either without the consent of the other to the misappropriation or taking, or by means of fraudulent conduct, practices, or representations. An intent to deprive the other permanently of whatever may be the subject of the misappropriation or taking is essential...” Of course, there are many other “thefts” under Louisiana law. However, none have any application to the “facts” as have been presented. There has been presented absolutely no evidence that “Theft” has been committed.

**“DESTRUCTION OF PUBIC RECORDS”**, in the context of your complaint, is specifically “Injuring Public Records”, defined under La. R.S. 14:132, as two specific crimes:

“A. First degree injuring public records is the intentional removal, mutilation,

destruction, alteration, falsification, or concealment of any record, document, or other thing, filed or deposited, by authority of law, in any public office or with any public officer...

“B. Second degree injuring public records is the intentional removal, mutilation, destruction, alteration, falsification, or concealment of any record, document, or other thing, defined as a public record pursuant to R.S. 44:1, et seq and required to be preserved in any public office or by any person or public officer pursuant to R.S. 44:36...”

As previously stated, despite numerous requests, there has not been presented any factual evidence that any documents have been destroyed. Rather, in what has been produced are a number of documents, emails, etc. which have a critical bearing on the further review of your complaint. Of, course, due to the continuing nature of your investigation, should additional evidence become available to you, I will certainly review that evidence as well.

**“VIOLATIONS OF THE FAIR COMPETITION ACT, THE RULES OF THE PUBLIC SERVICE COMMISSION, AND OF THE LUS COST ALLOCATION MANUAL (Adopted by the direction of the Public Service Commission)”**, are not criminal acts defined as a “crime” under Louisiana law. Such “violations” are administrative violations, subjecting the applicable public entity of entities, to the exclusive jurisdiction of the Louisiana Public Service Commission, see footnote 2.

**“MALFEASANCE”**, in the context of your complaint, specifically “Malfeasance In Office”, under La. R.S. 14:134, is defined as:

“...when any public officer or public employee shall:

1. Intentionally refuse or fail to perform any duty lawfully required of him, as such officer or employee; or
2. Intentionally perform any such duty in an unlawful manner; or
3. Knowingly permit any other public officer or public employee, under his authority, to intentionally refuse or fail to perform any duty lawfully required of him, or to perform any such duty in an unlawful manner...”

Criminal intent is an essential element of the offense of malfeasance in office, State v. Kelley, 128 So.2d 18 (La. 1961). Mere inadvertence or negligence, or even criminal negligence will not be a violation of the malfeasance in office statute because the statute specifies the act or failure to act must be intentional, State v. Thompson, App. 2 Cir.2015, 163 So.3d 139, 49,483 (La.App. 2 Cir. 3/18/15), rehearing denied, writ granted 216 So.3d 55, 2015-0886 (La. 2/24/17), reversed 233 So.3d 529, 2015-0886 (La. 9/18/17).

It has been held that the state must prove the existence of a law or statute imposing an **affirmative duty on the defendant as a public officer** and that **the defendant intentionally refused or failed to perform that duty or intentionally performed that duty in an unlawful manner**. The duty must be one **expressly imposed by law on the public officer** because **the public officer is entitled to know exactly what conduct is expected of him** in his official capacity **and what conduct will expose him to criminal charge**. Intent is likewise an essential element of the offense.

**Malfeasance in office does not criminalize all ethical violations and/or general derelictions of duty**. The object of the malfeasance statute is to punish a breach of duty committed with the **required culpable state of mind**. To this end, the statute expressly limits its application to instances in which a public officer or employee *intentionally* refuses or fails to perform or *intentionally* performs in an unlawful manner, any affirmative duty imposed by law upon him in his role as a public servant.

The inclusion in the statute of a criminally culpable state of mind makes it clear that it applies only where the statutorily required *mens rea* is proven beyond a reasonable doubt. Thus, **mere inadvertence or negligence, or even criminal negligence, will not support a violation of the malfeasance statute because the statute specifies the act or failure to act must be intentional.** State v. Pettito, 59 So3rd1245 (La.S.Ct. 2011); State v. Thompson, 233 So3rd 529 (La.S.Ct. 2017).

The Local Government Fair Competition Act, R.S. 45:844.41 et. seq. is intended to provide a framework for local governments to **fairly** compete with private providers and carries out the goal of the legislature to police the local governments' access to their resources of revenues from existing utilities and taxes in such a manner that the use of these resources will not impede **fair competition**. Bellsouth Telecommunications, Inc. v. City of Lafayette, App. 3 Cir.2006, 919 So.2d 844, 2005-1478, 2005-1505 (La.App. 3 Cir. 1/5/06).

“Local government” means any parish, municipality, or other political subdivision of the state and any utility authority, board, branch, department or other unit thereof, including LCG, LUS, and LUS Fiber. **LUS Fiber is a division of LUS, which is itself a division of LCG.** LUS Fiber provides telecommunications services, including internet, television, telephone, and other services to individuals, businesses, LUS, and other LCG agencies, and other public agencies in the Lafayette area. **The Fair Competition Act (FCA) precludes local government from cross-subsidizing the services provided by LUS Fiber using funds from LUS or other LCG agencies. The FCA further precludes LUS from paying a cost of LUS Fiber that is not a direct cost of a service because that would be a prohibited cross-subsidy.**

The FCA requires the Louisiana Public Service Commission (PSC) to adopt rules to define and govern these types of transactions. The FCA subjects LCG, LUS, LUS Fiber to PSC authority to enforce its Rules concerning these types of transactions. **The determination of whether LUS Fiber has made a prohibited cross-subsidy, and thus a violation of the Rules of the FCA and of the PSC is exclusively that of the PSC.** As indicated in your Press Release of February 12, 2020:

**“...The ultimate goal is to identify and correct the administrative and operational weaknesses that have allowed for questionable, financial support and illegal subsidization between LUS and LUS Fiber so that we may transition both entities to lawful and healthy operations...”**

Equally revealing was the observation made in the December 16, 2019 LCG Internal Investigative Report:

**“...it is reasonable to bring these matters to the Public Service Commission’s attention for consideration and determination as to whether they comply with the FCA and the Rules, as interpreted by the PSC, and if not, the appropriate remedy...”**

Still you persist in your complaint as “criminal”.

Despite your strongly worded complaint, the following facts are objectively presented by the documents thus far submitted:

Terry Huval was the former director of both LUS and LUS Fiber. **In October 2010, and again in July 2011, after communications with other LCG administrators, Huval recommended that LUS Fiber charge LUS amounts for services. On July 20, 2011, LCG accounting notified Huval**

that there may be an issue with the method by which Huval made such recommendation, that it might amount to cross-subsidization. On or about August 9, 2011, LCG legal counsel, may have been contacted regarding the issue, and billed LCG for "... legal research and worked on analysis of pricing issues for electric outage services by LUS Fiber to LUS...", which LCG paid.

Though only recommended by Terry Huval, the POMS program and its charges by LUS Fiber to LUS, had to have been ultimately presented to the LCG Mayor-President and administration and to the LCG City-Parish Council during 2011 budget public hearings. The recommendations were authorized for the FY2011-2012 budget, without opposition LCG administration nor any council member. The recommendations made by Huval in 2011 were reviewed by LCG accounting and finance, submitted in annual budget requests thereafter, approved and adopted by LCG, and the **payments made by LUS to LUS Fiber continued from 2010 through 2018**, without any objection. Despite knowing of the issues raised by LCG accounting/finance in 2011, to LCG legal counsel, no follow up on the question was done by LCG.

**Audits were conducted thereafter and throughout, and LCG management did not address the issue raised first by LCG accounting in 2011. From 2015 to 2020, LCG employed NewGen Strategies and Solutions, as a consulting engineer for LUS, to review annually its management practices, financial condition, financial forecasting, and bookkeeping, and did not raise the LUS Fiber-POMS charges, adopted in each budget year, adopted and approved by Mayor-Presidents and Lafayette City-Parish Consolidated Government Councils. In or about 2018-2019, the issue surfaced, and was self-reported to the Louisiana Public Service Commission.**

**In or about 2019, the dual position of Director of LUS and LUS Fiber was severed into two separate positions. In 2018, Terry Huval retired from the employ of LCG, as Director of LUS and LUS Fiber. After the retirement of Terry Huval, steps were taken to separate the directorship of LUS and LUS Fiber. In or about July 2019, then Mayor-President Joel Robideaux reported that the LUS "Power Outage Monitoring System" (POMS) was being eliminated from the LUS budget, coinciding with a Louisiana Public Service Commission staff audit report that highlighted the substantial monthly billings from LUS Fiber to LUS.**

It is the local government itself that "...may not cross-subsidize its covered services with tax dollars, income from other local government or utility services, below- market rate loans from the local government or any other means...", R.S. 45:844:53(2).

In or about July 2019, Robideaux reported that **the LUS Fiber-POMS charges to LUS have been reviewed by LCG accounting/finance, budgeted and approved by LCG, and paid by LUS since November 2010.** Robideaux reported that, by his own investigation, **as early as July 20, 2011,** the method by which Huval recommended the LUS Fiber (POMS) charges to LUS was **questioned by LCG accounting/finance, and apparently addressed by LCG legal counsel on August 9, 2011.** Reference was made by Robideaux to an earlier LCG letter of self-reporting dated April 14, 2018, which confirmed that **"steps have already been taken to prevent improper affiliate charges in the future by separating the directorship of LUS and its Communications Division into two separate positions; and by improving management controls..."**

It appears that several public officials and public employees, knew of the issue of the charges by LUS Fiber to LUS and the possibility that it might violate the Fair Competition Act and the Public Commission Rules, in 2011. However, it also appears that none of these public officials, employees, pursued a documented resolution by the Louisiana Public Service Commission. The charges were

included in proposed budgets in 2011, vetted by LCG administration and the financial office, reviewed in budget hearings, and duly approved by the passage of the annual budget. The charges were paid not as directed by any one person but by the collective administrative and legislative discretion of the Mayor-President and Council. There has not been presented sufficient proof of the criminal intent required to establish Malfeasance in Office. There certainly might be some suggestion of inadvertence or negligence on the part of many; inadvertence, negligence, or even ethical violations and criminal negligence is insufficient to establish the crime of Malfeasance In Office. The issue of whether there are violations of the FCA or the administrative rules of the Public Service Commission and the consequences of the such violations for LUS, LUS Fiber, and/or LCG is within the exclusive jurisdiction of the Louisiana Public Service Commission.

Even if it could be argued that the crime of Malfeasance in Office, by acts committed in 2011, occurred<sup>7</sup>, beyond a reasonable doubt, the filing of the criminal charge of Malfeasance In Office, would be prescribed. The crime of Malfeasance In Office, under the facts presented and as could be argued, must have been instituted, by filing within four years after the 2011 offense had been committed<sup>8</sup>, that is by 2015.

Furthermore, your complaint, as it appears from what has been submitted thus far more, is appropriately governed by the exclusive primary jurisdiction of the Louisiana Public Service Commission. Of course, if and when any further proof or evidence becomes available, I will review.

Respectfully submitted,

Keith A. Stutes  
District Attorney

KAS/

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<sup>7</sup> Ie, that requesting the payment of funds of LUS to LUS Fiber by directors, reviewing the request by accountants, lawyers, auditors, any others, and ultimately LCG approving such a request through budget proceedings, without a prior review by the PSC, and such acts or failures to act were an intentional violation of a statute imposing an affirmative duty, with full understanding and recognition that such would be a crime, punishable by a criminal penalty.

<sup>8</sup> La. C.Cr.P. Art. 572.