



February 24, 2021

By Electronic Mail:

Ms. Lora Johnson,
Clerk of Council
Room I E09, City Hall
1300 Perdido Street
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RE: RESOLUTION NO. R-21-37 RESOLUTION AND ORDER TO INITIATE A COMMENT PERIOD IN RESPONSE TO THE ALLIANCE FOR AFFORDABLE ENERGY AND SIERRA CLUB'S MOTION TO INSTITUTE PRUDENCE REVIEW TO EXAMINE THE COSTS ASSOCIATED WITH THE DESIGN AND CONSTRUCTION OF THE NEW ORLEANS POWER STATION

DOCKET NO. UD-18-07

Dear Ms. Johnson:

Please find enclosed 350 New Orleans' comments related to Resolution R-21-37 and Dockets UD-18-07 and UD-16-02. Please file the attached communication and this letter in the record of the proceeding and return one time stamped copy to our courier, in accordance with normal procedures when the conditions permit with regards to safety precautions related to the COVID-19 pandemic affecting in person submission of physical copies of the following comments. If you have any questions, please do not hesitate to contact me.

Thank you for your consideration.

Best Regards,

Andrew S Kowalczyk

Andy Kowalczyk
Chair of Just Transition Group
350 New Orleans

Before

The Council of the City of New Orleans

In Re: Resolution and Order to Initiate a Comment Period in Response to the Alliance for Affordable Energy and Sierra Club's Motion to Institute Prudence Review to Examine The Costs Associated With the Design And Construction of The New Orleans Power Station

R-21-37 | DOCKET UD-18-07

February 24, 2021

350 New Orleans, (“350 NO”) respectfully submits the following comments to the Council of the City of New Orleans (“the Council”) to support The Alliance for Affordable Energy (“AAE”) and the Sierra Club’s (“SC”) Motion to Institute Prudence Review to Examine The Costs Associated With the Design And Construction of The New Orleans Power Station.

On December 11, 2020, the “AAE and SC filed a Motion to Institute Prudence Review (“the Motion”) requesting that the Council "1) institute a prudence review to investigate all aspects of the design and construction of NOPS and 2) contract with an independent auditor to conduct a full examination of the NOPS design and construction expenditures;". On January 28th, 2021, the Utility Telecommunications and Technology Committee (“UCTTC”) of the Council issued Resolution R-21-37, which establishes a period of 30 days for registered intervenors in docket UD-18-07 to provide comments related to the MIPR submitted by AAE and SC.

As a registered intervenor in UD-18-07 and UD-16-02 (ENO NOPS Cost Recovery), 350 NO has standing for comment on R-21-37. 350 NO is a 501(c)(3) non-profit organization located in Louisiana that serves as an advocate of zero emission electricity from affordable resources for electric service ratepayers of Louisiana (“LA”) and the City of New Orleans (“CNO”). 350 NO places a priority on equity, diversity and inclusion in this pursuit and prioritizes efforts aimed at environmental justice and equity for residential and small commercial customers. 350 NO is dedicated to supporting equitable, affordable, environmentally responsible energy policy for the citizens of CNO and LA.

350 NO is a formal intervenor in other dockets considering electric and gas infrastructure owned by Entergy New Orleans, LLC (“ENO”), as well as other dockets considering energy resource planning, including all prior Integrated Resource Planning (“IRP”) dockets.

350 NO also receives electricity service from ENO. There is no other party representing the interests of 350 NO and its members.

350 NO Supports the Motion of AAE and SC to Request the Council Institute a Prudence Review

350 NO, as an intervenor on UD-18-07 fully supports this motion to investigate the prudence of costs recovered related to NOPS that were considered and approved in UD-18-07, the combined rate case for ENO. As it was cited numerous times throughout AAE and SC's motion; at many junctures throughout regulatory proceedings related to NOPS, it was stated that ENO would be entitled to recover *prudently* incurred fixed costs related to the project.

As it was also pointed out in the motion, there was a proposal early in UD-16-02 from ENO to seek a 'contemporaneous exact cost recovery rider' which would commence on the day that NOPS began commercial operation. This proposal was correctly dismissed by intervenors and the Advisors to the Council and both parties urged the Council to do the same. As stated by AAE and SC's motion, 'reasonable opportunity to recover investment and a fair return is not a guarantee of dollar-for-dollar cost recovery'.

This initial proposal offered by ENO could be considered a demonstration of a desire to pursue cost allocation beyond the 'used and useful principle' related to cost recovery for utility expenses, and established by law. Also there was ENO's appeal of the Council's rate decision, that was subsequently dismissed through the terms of the Agreement in Principle approved by the Council on October 15, 2020. This is not the impetus, however, for a prudence investigation.

At the heart of a prudence review is the question of whether or not the utility acted prudently in incurring expenses related to utility infrastructure that would be passed on to ratepayers. This does not inherently imply whether or not imprudent action was engaged in purposefully on behalf of the utility. Although that may be the case, a prudence review has a very important function in service of good governance and regulatory practice for the Council.

As it was cited in argument 18 in the Motion¹, the decision of the New York Public Service Commission related to Shoreham Nuclear Generating Facility stated "that a company be held to account if it fails to respond adequately to changing circumstances or to new challenges that may arise as a project progresses." and that "Ratepayers are entitled to protection from the consequences of unresponsive or inept management." 350 NO supports the Motion not just on the merits of exploring whether or not the utility has engaged in purposeful inflation of costs to be borne by ratepayers, but on the basis that is a necessary part of good governance in the regulation of ENO on behalf of the regulator, the Council.

Furthermore, there is established precedent for the context in which prudence is considered in Louisiana cited in arguments 19 and 21² related to Gulf States Utilities Co. v. Louisiana Pub. Serv. Commission. It is critically important to consider the unique nature of a utility's relationship to its customer base. The

¹ *Alliance for Affordable Energy and Sierra Club's Motion to Institute Prudence Review, Earthjustice, December 11th 2020, pg 9*

² *Id.*, pg 9-10

decisions made by the utility that lead to imprudent costs, whether intentional, or not, does not leave it in the hands of the customer to take their business elsewhere. The customer is stuck with any costs incurred imprudently, without the choice of other power providers, if there is not a prudence review.

Argument 23 outlines precedent related to the construction of a nuclear power plant that were found to be imprudent first partially by the Council, and then, fully, by the Louisiana 4th Circuit Court of Appeals³. There are a number of issues outlined in arguments 24-29⁴ which bear scrutiny in the context of the Council's regulatory authority of ENO. It requires action and the authority of the Council in initiating a prudence review for a range of issues related to the appropriateness of affiliate contracts that may benefit the utility more than the ratepayer, a high percentage of EPC related to the cost of the chosen RICE turbines that were not weighed against possible other identical RICE turbine alternatives in a public and transparent proceeding, and perhaps most alarming, a discrepancy in monthly typical bill impact, which rose when ENO's ROE was lowered. This last point is perhaps the hardest to explain, and that is why the burden of proof on why this increased cost, in addition to the preceding items, is on ENO.

What is not mentioned, in the arguments of the Motion, is the prudence of costs related to NOPS in the event that it is no longer an economic option in power markets. This is the cost of climate inaction on behalf of the Council. With the rapid pace of industry transformation, and the integration of, and access to renewable energy technologies, there will likely be more affordable, reliable options that limit the utilization of ENO assets like NOPS.

Between 2005 and 2019 the energy resource mix has changed dramatically in the Midcontinent Independent Service Operator ("MISO") footprint, of which ENO is a part of along with its affiliates in Arkansas, Louisiana, Texas and Mississippi. This market transformation will continue, and while MISO's projections through their Electric Generation Expansion Analysis System ("EGEAS") show growth in gas generation, it also shows significant expansion of renewable energy, demand response, distributed energy resources, and energy storage over the next 18 years. To put into context, this is considering the entire 17 state footprint encompassed by MISO.

This is a fraction of the payback time for NOPS, and when competing with other resources in the wholesale market, this could create stranded costs. Paired with market transformation, is the possibility of future federal or state action that requires a greater share of zero carbon resources in the state.

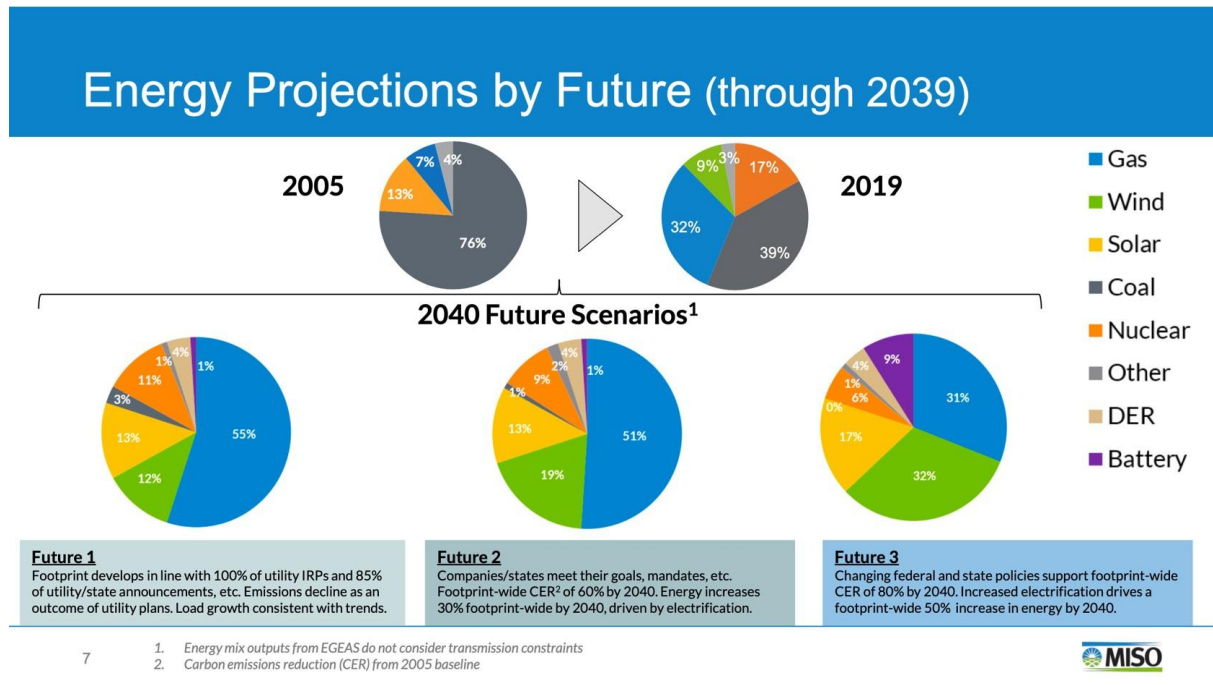
Additionally changes in federal regulation that shape electricity markets like FERC Order 2222⁵ will provide access to wholesale markets for distributed resources, that could provide some of the same services as NOPS. Where and when they are economical, they could present a challenge to the economic utilization of a power plant that ratepayers are paying for. The private company Voltus, which offers demand response services, has already begun demand response product offerings to the City of New

³ *Alliance for Affordable Energy and Sierra Club's Motion to Institute Prudence Review, Earthjustice, December 11th 2020, pg 11*

⁴ *Id.*, pg 10-13

⁵ <https://www.ferc.gov/news-events/news/ferc-opens-wholesale-markets-distributed-resources-landmark-action-breaks-down>

Orleans as of November 2018⁶. The potential for aggregated resources could be significant, as implied in all three of MISO’s MTEP21 Future Scenarios outlined in a recent Planning Advisory Committee meeting. Thereby, it could impact the utilization of NOPS. These are forecasts, but if there is any certainty around the resource mix in MISO, it is that it *will* likely change over the 50 year depreciation period for NOPS. Without a similar forecasting, or reference to a forecast of how the energy mix could change, it is hard to weigh the benefits of NOPS versus its cost.



MISO: Futures Resource Expansion & Siting, Planning Advisory Committee, October 14, 2020

The term ‘carbon stranding’, refers to costs that are not paid off when a fossil fuel resource is no longer competitive or economical. This term is explored at great length in a recent report by Energy Transition Institute which explores the fossil fuel generation portfolio of the major investor owned utility (IOU) Duke Energy. As the report quotes from the Regulatory Assistance Project, ‘To fulfill their end of the regulatory compact, regulators carefully review the revenue requirement, and the depreciating investments included, to determine if it is in the public interest. These regulators must strike a careful balance: If the revenue requirement is too low, utilities might not be able to recover enough revenue to replace key equipment and pay off debts. But because investor-owned utilities have an obligation to shareholders and the return on investment is dependent on how much utilities invest in grid equipment, utilities also have a bias toward investing in new equipment and therefore increasing their revenue requirement.’⁷

⁶<https://www.prnewswire.com/news-releases/voltus-breaks-ground-on-125-mw-virtual-power-plant-in-new-orleans-300755052.html>

⁷ ‘Shiple, J., (2018, January). *Traditional Economic Regulation of Electric Utilities. Regulatory Assistance Project.* Retrieved at: https://www.raponline.org/wpcontent/uploads/2018/12/rap_shiple_pucs_regulation_overview_2018_dec_17.pdf.

This obligation to shareholders can result in imprudent decisions regarding power generation that is rendered uneconomic in future markets with lower cost alternatives. Without the intentional review of the prudence of costs related to NOPS raised in the Motion, there is danger of ENO setting the precedent for cost recovery, rather than the regulator, which could have damaging effects on future regulatory proceedings related to cost recovery for power plants that are no longer economical.

Currently in other markets, we are witnessing the exploitation of ratepayer funds on behalf of coal power generation in many markets by IOU's. Researcher Joe Daniel of the Union of Concerned Scientists explained in an interview with Forbes magazine, that 'self-committing uneconomic coal costs consumers an estimated \$1 billion dollars a year in the regions I evaluated. But I also found that not all coal plant owners engage in this inefficient practice. Rather, the worst offenders are vertically integrated utilities that can lose money in the competitive market and then recover those losses on the backs of retail customers, including those most economically vulnerable to higher electricity costs. Customers of vertically integrated utilities are "captive"—they have no choice but to accept these costs.'⁸ Although we are not referring to cost recovery for the operation of a coal generating resource in the case of NOPS, there are signs that this can be a growing issue related to natural gas power generating facilities for the largest IOU in the country, Duke Energy.

The table below outlines a number of risks related to Duke's portfolio of resources over time, that carry a number of different risk profiles. It is important to consider that these are not risks borne just by shareholders, but the customers of the IOU, and that the largest portion of stranded assets in Duke's portfolio analyzed by the Energy Transition Institute are natural gas power generation assets.⁹

⁸ 'The Billion-Dollar Coal Bailout Nobody Is Talking About: Self-Committing In Power Markets' By Joe Daniel of Union of Concerned Scientists, *Forbes, Energy Innovation*, May 2019

⁹ 'Carbon Stranding: Climate Risk and Stranded Assets in Duke's Integrated Resource Plan' By Tyler Fitch, Contributing Editor: Tyler H. Norris January 2021, *Energy Transition Institute*; <https://energytransitions.org/carbon-stranding>, pg 10

Table ES-1. Summary of Climate-related Risks for Duke Energy's Companies in the Carolinas

Type of Risk	Duke Energy Exposure in Carolinas
Physical	2020 North Carolina Climate Science Report found that “large changes in North Carolina’s climate, much larger than at any time in the state’s history, are <i>very likely</i> .” ¹ A Moody’s analysis found Duke among the most at-risk utilities to flooding. ²
Financial	BlackRock, Duke Energy Corporation’s third-largest shareholder, claims climate risks are driving a “fundamental reshaping of finance.” ³ The firm voted against boards of directors 55 times during 2019-2020 due to lack of climate progress. ⁴ Increased focus on environmental, social, & governance (ESG) issues are driving Duke investor attention. ⁵
Economic	Renewable energy technologies are outcompeting conventional fossil-fueled generation, even on a subsidy-free basis. ⁶ Expert analysis finds that portfolios of clean energy resources could economically out-compete existing fossil generation by the mid-2020s. ⁷
Regulatory	North Carolina’s Clean Energy Plan contemplates future policies to decarbonize the electric power sector, including accelerated coal retirements, market-based carbon reduction programs, clean energy standards, or a combination of these standards. ⁸
Reputational	Duke Energy’s existing decarbonization goals are a public commitment, and the corporation’s reputation and social license could be damaged if the commitment is not upheld. In a recent survey, Deloitte found that “the math doesn’t add up” for Duke’s decarbonization plan. ⁹

Table courtesy of *Carbon Stranding: Climate Risk and Stranded Assets in Duke's Integrated Resource Plan* By Tyler Fitch, Contributing Editor: Tyler H. Norris January 2021, Energy Transition Institute; <https://energytransitions.org/carbon-stranding>

Furthermore, the value of natural gas power could be called into question as it relates to the Winter Storm Uri. As it was relayed by the Louisiana Public Service Commission, the scarcity of supply was an issue for not only electricity from natural gas power generation assets that were compromised by the storm, but also the natural gas which supplied them¹⁰. If there is no access to electricity from a power plant that is compromised by extreme weather, how is it that costs related to this asset are deemed prudent? Clearly there is a negative impact on customers relying on power plants that *do not* provide power when it’s needed and the precedent has been set throughout February 15th through the 19th.

Today in fact, natural gas peaker plants like NOPS are uneconomical in many parts of the country, and globally.¹¹ With increased attention being paid to federal climate action in the US, including the stated goal of the Biden administration to reach a target of 100% clean energy 2035, it is increasingly likely that the issue of stranded costs related to NOPS will be a major issue in the next 10-15 years, at a minimum, let alone throughout the 50 year asset payback period. To protect ratepayers in New Orleans, in the likely scenario that NOPS costs are stranded, whether due to market pressure, or policy action, it is critical that the Council protect the ratepayers who are captive to the monopoly and its market power. As more

¹⁰ ‘Why Louisiana regulators are investigating the weather-related rolling blackouts’ Mark Ballard, *The Advocate* https://www.theadvocate.com/baton_rouge/news/politics/article_2e4e0036-7176-11eb-9e8e-1f5a23f3707a.html

¹¹ ‘LAZARD’S LEVELIZED COST OF ENERGY ANALYSIS—VERSION 14.0’, <https://www.lazard.com/media/451419/lazards-levelized-cost-of-energy-version-140.pdf>, pg 11

economic power generation alternatives are available in the future, it is an absolute necessity that the Council investigate the prudence of expenditures related to NOPS today.

Respectfully Submitted, *Andrew S Kowalczyk*

I hereby certify that I have this 24th Day of February 2021, served the required number of copies of the foregoing correspondence upon all other known parties of this proceeding, by USPS or electronic mail.

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