

NO. R-06-88

BY: COUNCILMEMBERS SAPIR, BATT, WILLARD-LEWIS AND GILL PRATT

GENERAL ORDER

ON CORPORATE RESTRUCTURING REQUIREMENTS

WHEREAS, pursuant to the constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans ("Charter"), the Council of the City of New Orleans ("Council") is the governmental body with the power of supervision, regulation and control over public utilities providing service within the City of New Orleans; and

WHEREAS, Entergy New Orleans, Inc. ("ENO") provides gas and electric service to all of New Orleans, except the Fifteenth Ward ("Algiers"); and

WHEREAS, Entergy Louisiana, Inc. ("ELI" or "Company") provides electric service to Algiers; and

WHEREAS, in April 1922 the Council granted to ENO's predecessor, New Orleans Public Service, Inc. ("NOPSI") an indeterminate permit to operate gas, electric, and railway systems in New Orleans, under Ordinance Nos. 6822 and 7068; and

WHEREAS, similarly the Council granted ELI's predecessor, Louisiana Power & Light, Company, an indeterminate permit with respect to the provision of electric service in Algiers; and

WHEREAS, other regulatory bodies, including the Louisiana Public Service Commission ("LPSC"), have issued orders of general applicability regarding the process and requirements for seeking approval of corporate restructurings and asset transfers. The LPSC's rules are contained in its March 18, 1994 General Order, In re: Commission Approval Required of Sales, Leases, Mergers, Consolidations, Stock Transfers, and All Other Changes of Ownership or Control of Public Utilities Subject to Commission Jurisdiction ("General Order"). That General Order provides that affirmative Commission action of approval or non-opposition must occur before a regulated utility or common carrier, subject to the Commission's jurisdiction, enters into a contract, a combination of related contracts, or conveys, leases or acquires assets of any kind or incurs any obligation or merges or combines with another utility or common carrier or divides into two or more utilities or common carriers, where the value involved exceeds 1% of the gross assets of such regulated utility or common carrier; and

WHEREAS, ambiguity about the Council's approval process exists because no general order has been issued by the Council concerning the approvals necessary before a corporate reorganization or any other transfer of assets takes place; now therefore:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,
THAT:

The following general order is adopted by the Council of the City of New Orleans:

1. No utility subject to the jurisdiction of the Council shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control or ownership of any of the assets, common stock or other

indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated entity or any other entity, where the values involved in such action exceed one percent (1%) of the gross assets of such regulated utility or common carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right, interest, asset, obligation, stock ownership, or control, involved in such action without prior full disclosure of the prior intent and plan of such utility or common carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Council. This section is intended to apply to any transfer of ownership and/or control of public utilities and common carriers regardless of the means used to accomplish that transfer.

2. In determining whether to approve any such transfer of ownership or control the Council shall take into account the following factors:

- a. Whether the transfer is in the public interest.
- b. Whether the purchaser is ready, willing and able to continue providing safe, reliable and adequate service to the utility's ratepayers.
- c. Whether the transfer will maintain or improve the financial condition of the resulting public utility or common carrier.
- d. Whether the proposed transfer will maintain or improve the quality of service to public utility or common carrier ratepayers.
- e. Whether the transfer will provide net benefits to ratepayers in both the short term and the long term and provide a ratemaking method that will ensure, to the fullest extent possible, that ratepayers will receive the forecasted short and long term benefit.
- f. Whether the transfer will adversely affect competition.
- g. Whether the transfer will maintain or improve the quality of management of the resulting public utility or common carrier doing business in the City.
- h. Whether the transfer will be fair and reasonable to the affected public utility or common carrier employees.
- i. Whether the transfer would be fair and reasonable to the majority of all affected public utility or common carrier shareholders.
- j. Whether the transfer will be beneficial on an overall basis to City and local economies and to the communities in the area served by the public utility or common carrier.
- k. Whether the transfer will preserve the jurisdiction of the Council and the ability of the Council to effectively regulate and audit the public utility's or common carrier's operations in the City.
- l. Whether conditions are necessary to prevent adverse consequences which may result from the transfer.

- m. The history of compliance or noncompliance that the proposed acquiring entity or principals or affiliates have had with regulatory authorities in this City or other jurisdictions.
- n. Whether the acquiring entity, persons, or corporations have the financial ability to operate the public utility or common carrier system and maintain or upgrade the quality of the physical system.
- o. Whether any repairs and/or improvements are required and the ability of the acquiring entity to make those repairs and/or improvements.
- p. The ability of the acquiring entity to obtain all necessary health, safety and other permits.
- q. The manner of financing the transfer and any impact that may have on encumbering the assets of the entity and the potential impact on rates.
- r. Whether there are any conditions which should be attached to the proposed acquisition.

3. The entity seeking acquisition or control of a public utility or common carrier subject to the Council's jurisdiction, or any other action described herein, shall have the burden of proving that the requirements of this Order have been satisfied.

4. Any transfer accomplished without Council approval is void.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS:Clarkson, Gill Pratt, Hedge-Morrell, Sapir, Thomas, Willard-Lewis - 6

NAYS:0

ABSENT:Batt - 1

THE RESOLUTION WAS ADOPTED.