

**RESOLUTION**

**NO. R-15-542**

**CITY HALL: November 19, 2015**

**BY: COUNCILMEMBERS  WILLIAMS, HEAD, GUIDRY, BROSSETT AND GRAY**

**SUPPLEMENTAL AND AMENDING APPLICATION  
OF ENTERGY NEW ORLEANS, INC. FOR APPROVAL TO PURCHASE  
POWER BLOCK 1 OF THE UNION POWER STATION, FOR COST RECOVERY AND  
REQUEST FOR TIMELY RELIEF**

**DOCKET NO. UD-15-01**

**RESOLUTION AND ORDER APPROVING AGREEMENT IN PRINCIPLE**

**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**, pursuant to its powers of supervision, regulation and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities; and

**WHEREAS**, Entergy New Orleans, Inc. (“ENO”), effective September 1, 2015, is a public utility providing electric and natural gas service to all of New Orleans; and

**WHEREAS**, ENO is a wholly-owned subsidiary of Entergy Corporation (“Entergy”). The other four operating companies are Entergy Arkansas, Inc. (“EAI”), Entergy Louisiana, LLC

("ELL"),<sup>1</sup> Entergy Mississippi, Inc. ("EMI"), and Entergy Texas, Inc. ("ETI"). The five operating companies are referred to collectively as the ("Operating Companies"); and

**WHEREAS**, on December 9, 2014, Entergy announced that EAI, EGSL, and ETI had signed an agreement to acquire the Union Power Station; and

**WHEREAS**, Entergy stated that the Union Power Station is a highly-efficient, natural gas-fired electric generating facility that entered commercial service in 2003 and that the plant is being purchased at \$948.0 million (\$497/kW), subject to adjustments, which is approximately half the cost to build a comparable new combined-cycle gas turbine ("CCGT") electric generation facility; and

**WHEREAS**, EGSL intended to acquire Power Blocks 3 and 4 and related assets of the Union Power Station in Union County, near El Dorado, Arkansas from Union Power Partners, L.P. ("UPP") and such units would provide approximately 990 megawatts of modern, combined-cycle turbine capacity and energy; and

**WHEREAS**, on February 9, 2015 ENO sought Council approval of a cost-based power purchase agreement ("PPA") with EGSL, priced pursuant to Master Service Schedule MSS-4 of the Entergy System Agreement (or its FERC-approved successor), entitling ENO to twenty percent (20%) of the capacity and related energy generated by Power Blocks 3 and 4 at Union

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<sup>1</sup> ELL is the successor in interest to Entergy Gulf States, Louisiana, L.L.C. ("EGSL"). On September 14, 2015, the Louisiana Public Service Commission ("LPSC") issued Order No. U-33244-A (the "Order") formally approving the business combination of EGSL and Entergy Louisiana, LLC ("Old ELL"), through which EGSL and Old ELL requested to combine substantially all of their respective assets and liabilities into a single operating company, ELL. On October 1, 2015 (the "Effective Date") the business combination was consummated. The Stipulation Term Sheet that was attached to and approved by the Order provides that upon the Effective Date, Old ELL and EGSL would each "no longer be a public utility that provides electric generation, transmission, distribution, and electric power service to retail and wholesale customers in Louisiana ..." and "shall no longer be subject to regulation by the LPSC." [Attachment A to Order, pp. 43-44.] The Order further provides that at the Effective Date, ELL "will assume, undertake to perform and be solely responsible for ... (iii) all pending dockets and reporting requirements that are or may be created in final, non-appealable orders, settlements, certifications, agreements issued or approved by the LPSC for EGSL and [Old] ELL before the LPSC ...". [*Id.* at p. 45.]

Power Station on a life-of-unit basis, through a filing styled “Application of Authorization from the Council to Enter into a Contract for the Purchase of Capacity and Energy from Power Blocks 3 and 4 at Union Power Station, for Cost Recovery, and Request for Timely Relief” and accompanying Direct Testimony ("Union PPA Application"); and

**WHEREAS**, as a result of the proposed allocation, ENO was to be allocated approximately 200 MW of capacity and energy from Power Blocks 3 and 4; and

**WHEREAS**, on April 9, 2015, by Resolution No. R-15-134, the Council established Docket No. UD-15-01 to examine and consider ENO's Union PPA Application and issued a procedural schedule setting certain deadlines, including a period for interventions; and

**WHEREAS**, on May 29, 2015, the Council's Advisors filed their Direct Testimony raising several important issues discovered as a result of a thorough review of ENO's Union PPA Application; and

**WHEREAS**, subsequent to the filing of the Advisors' Direct Testimony, ENO and the Advisors agreed to engage in settlement negotiations in an attempt to resolve all outstanding issues related to ENO's Union PPA Application; and

**WHEREAS**, on June 12, 2015, ENO and the Advisors did, in fact, reach an agreement and executed an Agreement in Principle ("Union Power PPA AIP") settling all issues in this docket and recommending approval of ENO's Union PPA Application subject to certain terms and conditions; and

**WHEREAS**, on June 18, 2015, in Resolution No. R-15-258, the Council found that the Union Power PPA AIP is just, reasonable and in the public interest and approved ENO's request for authorization to enter into a contract for the purchase of twenty percent (20%) of the capacity

and related energy from Power Blocks 3 and 4 at Union Power Station on a life-of-unit basis; and

**WHEREAS**, on July 17, 2015, together with the other parties in a proceeding before the Public Utility Commission of Texas ("PUCT"), ETI filed a motion to dismiss its application requesting a Certificate of Convenience and Necessity for one of the four 495 MW generating units at the Union Power Station near El Dorado, Arkansas ("Power Block 1"); and

**WHEREAS**, in anticipation of the PUCT's dismissal of ETI's application, ENO announced that it intended to acquire Power Block 1 at an unadjusted purchase price of \$237.0 million, subject to the approval of the Council and the satisfaction of other conditions to close the transaction ("Power Block 1 Purchase"); and

**WHEREAS**, on August 21, 2015, ENO filed a "Supplemental and Amending Application Of Entergy New Orleans, Inc. For Approval To Purchase Power Block 1 Of The Union Power Station, For Cost Recovery And Request For Timely Relief" ("Supplemental Application") in Council Docket Nos. UD-15-01 seeking, among other things, a Council determination that the proposed acquisition of the 495 MW Power Block 1 is in the public interest; and

**WHEREAS**, if the Council approves ENO's Power Block 1 Purchase, such approval will be in lieu of and will supersede the 200 MW PPA previously approved by the Council in Resolution No. R-15-258; and

**WHEREAS**, the Supplemental Application also states, and the Council's Advisors agree in their testimony, that the proposed acquisition of Power Block 1 is intended to assist in meeting the future energy needs of New Orleans and help offset the generation deactivations expected to occur in 2016; and

**WHEREAS**, according to ENO, Power Block 1 is expected to generate more than \$100 million in net benefits for customers over the assumed remaining life of Power Block 1; and

**WHEREAS**, ENO seeks recovery of ENO's non-energy related, non-Long Term Service Agreement ("LTSA") costs to own and operate Power Block 1 through the Purchased Power and Capacity Acquisition Cost Recovery ("PPCACR") Rider, as presented in ENO Exhibit PBG-SD-4, from Legacy ENO customers, which will replace the current Purchased Power Agreement Capacity Cost Recovery Rider ("PPA Rider"); and

**WHEREAS**, the Supplemental Application proposes, that for the purpose of calculating the revenue requirement associated with ENO's investment in Power Block 1 and recovered through the PPCACR Rider, ENO's common equity portion of total capital be capped at 50 percent; and

**WHEREAS**, the Supplemental Application seeks recovery of ENO's energy-related revenues and expenses and LTSA expenses related to Power Block 1 through ENO's Fuel Adjustment Clause ("FAC") from all ENO customers; and

**WHEREAS**, the Council issued Resolution R-15-436 on September 3, 2015, establishing a further procedural schedule in Docket No. UD-15-01 to examine and consider ENO's Supplemental Application and setting a procedural schedule, including a period for interventions; and

**WHEREAS**, no parties have intervened in Docket UD-15-01 during the intervention period following Council adoption of Resolution R-15-436; and

**WHEREAS**, on October 5, 2015, the Council's Advisors filed their Supplemental Direct Testimony; and

**WHEREAS**, no other party filed Supplemental Direct Testimony in this phase of Docket No. UD-15-01 as established in Resolution R-15-436; and,

**WHEREAS**, subsequent to the filing of the Advisors' Supplemental Direct Testimony, ENO and the Advisors agreed to engage in settlement negotiations in an attempt to resolve all outstanding issues related to ENO's Supplemental Application; and

**WHEREAS**, on November 6, 2015, ENO and the Advisors did, in fact, reach an agreement and executed an Agreement in Principle ("Union Power Purchase AIP") settling all issues in this docket and recommending approval of ENO's Supplemental Application subject to certain terms and conditions; and

**WHEREAS**, the Union Power Purchase AIP is attached to this resolution and is incorporated herein and made a part hereof; and

**WHEREAS**, based on the recommendations of ENO and the Council's Advisors, the Council makes the following findings:

1. Based on the Initial Application, the Supplemental Application, ENO's testimony, and the Council's Advisors' testimony submitted in this proceeding, ENO's proposed purchase of [Power Block 1 in lieu of the UPS PPA is prudent and in the public interest;
2. ENO's costs, including LTSA costs, associated with owning and operating Power Block 1 are deemed eligible for contemporaneous recovery by ENO; and
3. This approval supersedes and renders moot those provisions of Resolution R-15-258 pertaining to approval of the UPS PPA; and

**WHEREAS**, the Council's Advisors have recommended that the Council's approval of the Supplemental Application be subject to the following conditions:

1. ENO shall close its purchase of [Power Block 1] by April 30, 2016, unless the Council extends its approval beyond that date;
2. ENO shall advise the Council in writing of any developments that might reasonably prevent the close of its purchase of [Power Block 1] by year end 2015;

3. If ENO's purchase of [Power Block 1] Power Block 1 is not consummated by year-end 2015, ENO shall advise the Council in writing of any developments that might reasonably prevent the close of that acquisition by April 30, 2016;
4. If it becomes clear that ENO will not close its purchase of [Power Block 1] by April 30, 2016, ENO shall make a supplemental filing in Council Docket UD-15-01 fully explaining the causes and effects of such delay and seeking appropriate relief;
5. Consistent with Paragraph 12 of the May 7, 2015 Agreement in Principle settling Council Docket No. UD-14-02 (Algiers Transaction AIP), ENO shall implement a credit to its FAC payable to Legacy ENO Customers in recognition of expenses that will be avoided as a result of the deactivation of Michoud Units 2 and 3 and which expenses are currently recovered through base rates, as set forth below in Paragraph 10;
6. ENO shall provide the Council with documentary evidence that Union Power Station has been granted or will be granted 2,000 MW of Network Resource Interconnection Service ("NRIS") for Union Power Station (including at least 500 MW of NRIS per power block) within a reasonable period of time after MISO has granted, or UPP has obtained a commitment from MISO to receive, such NRIS. Should there be any material change in the ability to obtain such NRIS, ENO shall notify the Council in writing explaining the causes and effects of such change, and, if appropriate after discussions with the Council's Advisors, make a supplemental filing seeking appropriate relief; and
7. ENO ratepayers shall not be responsible for costs related to any transmission upgrade costs required to obtain adequate NRIS for the UPS facility, unless such costs are appropriately billed to ENO by Midcontinent Independent System Operator, Inc.; and

**WHEREAS**, the Union Power Purchase AIP also includes the following ratemaking provisions related to the recovery of costs associated with the Union Power Purchase:

1. ENO shall be allowed to recover from Legacy ENO Customers its prudently incurred non-energy related, non-LTSA costs related to Power Block 1 through the mechanisms presented in the PPCACR Rider on an interim basis until such time as the Council may establish new rates as part of the Combined Rate Case. Effective with the first billing cycle of the month following the close of the [Power Block 1] transaction, ENO shall commence collection of the initial estimated monthly revenue requirement associated with [Power Block 1] in the PPCACR Rider in the amount of one-twelfth of \$53.968 million annually, subject to true-up and annual redetermination as set forth in the PPCACR Rider.

2. The weighting of common equity employed in the PPCACR Rider's calculation of the revenue requirement related to ENO's investment in [Power Block 1] shall be the lesser of ENO's actual common equity capital weighting or 50 percent.
3. Effective with monthly bills rendered on and after the first billing cycle of the first calendar month following Council approval of this Agreement in Principle, ENO shall realign the recovery of the Capability Payments associated with the Ninemile 6 PPA from the existing PPACCR Rider to the PPCACR Rider for recovery from Legacy ENO Customers.
4. The PPACCR Rider shall terminate the first billing cycle of the first calendar month following Council approval of this Agreement in Principle. ENO and the Council's Advisors agree that any rights ENO has or may have under Section VII of the PPA Rider are deemed satisfied through the Council's approval of the PPCACR Rider, as discussed herein.
5. ENO shall continue to be allowed to recover from both Algiers customers and Legacy ENO Customers through its FAC its share of the LTSA costs associated with the Ninemile 6 PPA until such time that the Council effects some other method of recovery in the Combined Rate Case. The Council, the Advisors, and ENO reserve their rights to take any position and raise any arguments with respect to the method of recovery of these costs in the Combined Rate Case described in Paragraph 8 of the Algiers Transaction AIP.
6. (a) Effective the first billing cycle of the first calendar month following the close of the PB1 transaction, ENO shall be allowed to recover from Legacy ENO Customers LTSA costs and energy-related revenues and expenses associated with [Power Block 1] (e.g., MISO Market Settlements revenues and expenses in the categories of Ancillary Services, Uplift, Losses, Energy and Congestion) until such time that the Council effects some other method of recovery in the Combined Rate Case. Recovery of LTSA costs associated with [Power Block 1] and [Power Block 1] energy-related revenues and expenses shall be accomplished through a Geographically-Specific Legacy ENO adjustment to the FAC that ensures recovery of these categories of costs/revenues from Legacy ENO customers only as authorized herein. Similarly, MSS-1-related effects of the PB1 acquisition shall be attributable to Legacy ENO customers only and shall also be the subject of a Geographically-Specific Legacy ENO adjustment to the FAC until such time that the Council effects some other method of recovery in the Combined Rate Case.



(b) On or before December 1, 2015, ENO shall file with the Council for review the proposed revision to the FAC and associated workpapers required to demonstrate the methodology that will be used to assign [Power Block 1] energy-related revenues and expenses to Legacy ENO customers (“PB1 FAC Methodology Workpapers”). The [Power Block 1] FAC Methodology Workpapers shall form the basis upon which the FAC Rider rates will be calculated effective for the first operations month following the close of the Union transaction and each month thereafter until such time as the Council effects some other method of recovery in the Combined Rate Case. In the development of the December 1, 2015 filing, ENO shall work with the Council’s Advisors to assure their agreement prior to December 1, 2015. The filing shall be deemed approved by the Council unless the Advisors file an objection with the Council by December 7, 2015. In the event that the Council or its Advisors identify any deficiency(ies) in the [Power Block 1] FAC Methodology Workpapers filing, the Company agrees to work with the Council’s Advisors to correct such deficiency(ies) and reflect the effects of such correction(s) no later than the filing of the FAC Rider rates for the second month following implementation of the revised FAC.

(c) Notwithstanding provisions 6(a) and 6(b) above, the Council's Advisors, and ENO reserve their rights to take any position and raise any arguments with respect to the method of recovery of these costs in the Combined Rate Case described in Paragraph 8 of the Algiers Transaction AIP.

7. Should ENO deactivate Michoud Units 2 and 3 prior to a final decision in the Combined Rate Case described in Paragraph 8 of the Algiers Transaction AIP, then pursuant to paragraph 12 of the Algiers Transaction AIP, and in recognition of the expenses that ENO will avoid as a result of the unit deactivations, ENO shall credit to Legacy ENO Customers each month through ENO’s FAC one-twelfth of \$4.8 million, that is, \$400,000. Such credit to the FAC shall commence the first billing cycle of the calendar month following the calendar month in which the unit or units are deactivated. Such credit shall cease the calendar month prior to the calendar month that rates from the Combined Rate Case become effective. In connection with the Combined Rate Case required by the Algiers Transaction AIP, ENO shall reflect in its test year cost of service the ongoing effects of the deactivation of Michoud Units 2 and 3 for a determination of the appropriate level of revenue requirements to be reflected in rates on a prospective basis; and.

**WHEREAS**, the Union Power Purchase AIP contains several miscellaneous provisions including, but not limited to, the following:

1. This Agreement in Principle reflects a compromise, settlement, and accommodation among the signatories and the terms and conditions herein are interdependent. All actions by the signatories contemplated or required by this Agreement in Principle are conditioned upon the entry of the Council of a Resolution consistent with the terms of this Agreement in Principle.
2. Nothing contained in this Agreement in Principle shall be precedential with respect to any issue in any other proceeding or except as specifically stated herein or specifically stated in any of the Exhibits submitted as part of this Agreement in Principle; and
3. This Agreement in Principle can be modified by a subsequent written agreement between the Council's Advisors and ENO provided that (a) ENO obtains approval from its Board of Directors and (b) the Council adopts a Resolution implementing the terms of the subsequent written agreement; and

**WHEREAS**, ENO plans to present and recommend the adoption of the Union Power AIP to its Board of Directors. The Council's Advisors recommend the Council's adoption of the Union Power AIP. The Union Power Purchase AIP is non-binding, and cannot be implemented without (1) ENO obtaining approval from its Board of Directors and (2) the Council adopting a Resolution implementing the terms of the Union Power Purchase AIP; and

**WHEREAS**, the Council finds that the proposed Power Block 1 Purchase is intended to help meet the future energy needs of New Orleans and help offset the Michoud plant retirements expected to occur in 2016; and

**WHEREAS**, the Council also finds that the costs incurred in connection with the Power Block 1 Purchase are outweighed by the expected savings resulting therefrom and therefore, the Power Block 1 Purchase will produce long term economic net benefits to New Orleans ratepayers; and

**WHEREAS**, the Council further finds that the conditions set forth in the Council's Advisors' Supplemental Direct Testimony are necessary and reasonable to protect the interests of New Orleans ratepayers; and

**WHEREAS**, on the basis of the record before the Council and the agreement between ENO and the Council's Advisors, the Council wishes to approve the Union Power Purchase AIP including all terms and conditions included therein; now therefore:

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

1. The Union Power Purchase AIP filed by ENO on November 6, 2015 in Docket No. UD-15-01 is supported by the only parties to the proceeding, ENO and the Advisors, and therefore, on the basis of the record before us, we find that it is just, reasonable and in the public interest. Accordingly, the Union Power Purchase AIP is approved without modification; and
2. ENO's request for authorization to purchase Power Block 1 is hereby approved subject to all terms and conditions included in the Union Power Purchase AIP attached hereto.
3. The ratemaking provisions related to the recovery of costs associated with the Power Block 1 Purchase that are set forth in the Union Power Purchase AIP are just and reasonable.

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

**YEAS:**

**NAYS:**

**ABSENT:**

**AND THE RESOLUTION WAS ADOPTED.**