

RESOLUTION

NO. R-16-330

CITY HALL: August 11, 2016

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

**APPLICATION OF ENTERGY NEW ORLEANS, INC.
FOR APPROVAL TO RESTRUCTURE**

**RESOLUTION AND ORDER ESTABLISHING A PERIOD OF INTERVENTION
AND OTHER PROCEDURAL REQUIREMENTS FOR THE CONSIDERATION OF
THE APPLICATION OF ENTERGY NEW ORLEANS, INC. FOR APPROVAL TO
RESTRUCTURE**

DOCKET NO. UD-16-03

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" or "Company"), 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 operating company subsidiary of Entergy Corporation ("Entergy"). The other four operating companies are Entergy Arkansas, Inc. ("EAI"), Entergy Louisiana, LLC ("ELL"), Entergy Mississippi, Inc. ("EMI"), and Entergy

Texas, Inc. (“ETI”). These five operating companies are referred to collectively as the (“Operating Companies”); and

WHEREAS, on July 22, 2016, ENO filed an Application for Approval of a Proposed Internal Restructuring and for Related Relief ("Application"); and

WHEREAS, ENO's Application seeks Council approval of an internal restructuring of ENO (“Restructuring”) that will enhance the separation between ENO’s regulated utility business and Entergy Corporation’s unregulated business. In addition to providing more separation from the unregulated business, which has a fundamentally different risk profile and liquidity requirements than ENO’s regulated utility business, the Restructuring could provide an additional source of potential equity financing for ENO; and

WHEREAS, in addition to a finding that the Restructuring is in the public interest in accordance with, and satisfies all applicable requirements of, Council Resolution R-06-88, ENO also requests approval of a procedural schedule to permit all necessary Council approvals by December 31, 2016 so as to allow for the Restructuring to close by December 31, 2017 and that the Restructuring satisfies the standards and requirements set forth in any other applicable Council Resolution or Ordinance; and

WHEREAS, the Company asserts that in addition to the public interest benefits inherent in the nature of the Restructuring, contingent solely on Council approval of the Application by December 31, 2016,¹ ENO will guarantee customer credits of \$5 million in 2016, \$5 million in 2017, and contingent solely on the further approval of the Restructuring by the Federal Energy Regulatory Commission (“FERC”) by December 31, 2018, ENO will guarantee customer credits

¹ ENO notes that in order for customers to receive the credits in 2016, Council approval would need to be obtained sufficiently in advance of the first December billing cycle to implement the credit on customers’ December bills. If approval is received in 2016, but not in sufficient time to implement the credit on customers’ December bills, ENO will work with the Council and its Advisors to determine the appropriate method and timeline for flowing the credits applicable to 2016 through to customers.

of \$5 million in 2018, \$5 million in 2019, and \$5 million in 2020, with such credits being permanent and at the Company's cost, and with the possibility of additional benefits in future years; and

WHEREAS, in its pursuit of the Restructuring, ENO intends to use the merger provisions of the Texas Business Organizations Code (sometimes referred to as the Texas merger-by-division ("MBD") statute),² to transfer³ substantially all of its assets and liabilities to a newly-created subsidiary, Entergy New Orleans Power, LLC ("ENO Power"), a Texas limited liability company ("LLC").⁴ Thereafter, ENO would contribute its membership interests in ENO Power to an intermediate holding company named Entergy Utility Holding Company, LLC ("EUH"), also a Texas LLC. Once under EUH, ENO Power would be renamed Entergy New Orleans, LLC ("ENOL"). Under this corporate structure, EUH would provide additional separation between ENO's utility business and Entergy Corporation's unregulated business; and

WHEREAS, the Company notes that Entergy Louisiana, LLC ("ELL") is already a subsidiary of EUH and that comparable restructurings could be undertaken in the future by the remaining Entergy Operating Companies through which the resulting utilities would become EUH subsidiaries; and

WHEREAS, in support of its Application, the Company submitted the Direct Testimonies of Charles L. Rice, Jr., and Kenneth F. Gallagher; and

² Texas Business Organizations Code, §§ 1.002(55) & 10.001 et seq.

³ For clarity, ENO notes that certain assets and liabilities of a company may be described in its Application as being transferred or assigned to another company as a result of the merger that occurs in the transaction steps, even though the applicable merger statute states that such merger does not result in a transfer or assignment.

⁴ In connection with the Restructuring, ENO would redeem its outstanding preferred stock. That redemption, including an expected call premium of approximately \$819,000, is estimated to cost approximately \$21 million, plus any accrued dividends. ENO expects to fund the redemption from cash, from operations and/or lines of credit and/or through an issuance of long-term debt. ENO's redemption of its outstanding preferred stock will result in the cost of that preferred stock being excluded from ENO's weighted-average cost of capital ("WACC"), while the cost of any additional long-term financing would be included in the WACC for ratemaking purposes in the future. The redemption and related funding are not expected to materially affect ENO's WACC or to have any material future adverse effect on rates.

WHEREAS, ENO asserts in its Application that the Restructuring will have no anticipated material future adverse effects on rates, and little to no effect on ENO’s customers, operations, or employees; and

WHEREAS, the Company states that the Council would not lose any jurisdiction over the regulated utility business as a result of the Restructuring. The new utility - ENOL - would be subject to all of the orders that ENO is currently subject to and all other rules and regulations of the Council and the Code of the City of New Orleans; ~~and~~.

WHEREAS, ENO further notes that the Council would continue to have jurisdiction over the Company’s long-term financings and securities issuances; however, FERC would also have jurisdiction over those matters; and

WHEREAS, the Company states that the proposed Restructuring will have no anticipated material future adverse effect on rates, and little to no effect on ENO’s customers, operations, or employees.⁵ Specifically, ENO asserts that its current senior executives would become employees of ENOL thus maintaining the Company’s quality of management. Similarly, ENO’s employees will also become employees of ENOL, so the same employees would be providing service to ENO’s customers both immediately before and immediately after the Restructuring occurs; and

WHEREAS, according to ENO, the Restructuring should not affect generation, transmission, or distribution operations or customer service. Customers will not see any change in the metering and billing processes; customer contact centers will continue to be available; and

⁵ If the Restructuring is approved, ENOL (and not ENO) would be the utility providing services in Orleans Parish. Accordingly, if the Restructuring is approved, ENOL would need to revise ENO’s rate schedules/tariffs/ riders/terms of service to reflect that ENOL is the utility in New Orleans. The Company would accomplish this by making a compliance filing that attaches the “revised” rate schedules/tariffs/riders/terms of service that, but for the name of the utility on those documents, should be identical to ENO’s existing rate schedules/tariffs/riders/terms of service.

customers will continue to be able to use an Entergy website to view and pay bills on-line, update their account information, check the status of work orders and permits, and view outage maps; and

WHEREAS, ENO notes that it will also need to obtain the following prior authorizations from the FERC under Federal Power Act (“FPA”) Sections 203 and 204 in order to effectuate the Restructuring:

- An application will be filed seeking FPA Section 203 authorization of a proposed change in control of FERC-jurisdictional assets;
- An application will be filed to establish FPA Section 204 authorization for ENO to undertake any issuances of securities and assumptions of liabilities that would occur during the intermediate steps of the Restructuring and in addition, ENOL will apply to FERC to establish FPA Section 204 authority to issue securities and to assume liabilities effective on and after the Restructuring closing date when ENOL becomes a public utility; and

WHEREAS, the Company states that ENO and/or ENOL also would make filings with FERC pursuant to FPA Section 205, including a market-based rate application to establish authority for ENOL to make wholesale market-rate sales of capacity, energy, and ancillary services effective as of the date of the Restructuring consummation, and post-consummation notices of succession for ENOL to succeed to the FERC-jurisdictional tariffs and rate schedules that it would acquire from ENO; and

WHEREAS, if the Restructuring includes a payment of dividends by a public utility (ENO and/or ENOL if it is a public utility at time of distribution), it may be necessary to obtain a FERC declaration that the Restructuring does not violate FPA Section 305(a), which prohibits

dividend payments out of the paid-in capital account of a public utility. The Company notes that the payment of dividends by a public utility currently is not anticipated to occur before the Restructuring closes; and

WHEREAS, the Company proposes the following procedural schedule in order to facilitate a December 2016 decision by the Council:

15-Day Intervention Period Begins	August 11, 2016
15-Day Intervention Period Ends	August 26, 2016
Intervenor Direct Testimony Due	September 26, 2016
Advisor Direct Testimony Due	October 7, 2016
ENO Rebuttal Testimony Due	October 17, 2016
Hearing	October 25, 2016
Certification of Record	October 31, 2016
Council Decision	November 2016

WHEREAS, ENO requests that the Council grant the following approvals and relief:

1. Find that the proposed Restructuring (including the transfer of substantially all of the Company’s assets and liabilities to ENOL and all the corporate restructuring steps necessary to consummate the transaction) is in the public interest, and satisfies the standards and requirements provided in Council Resolution No. R-06-88, and Council Resolution No. R-01-676;
2. Approve all steps that will be undertaken to accomplish the Restructuring, including for ENOL to operate as a new legal entity at the conclusion of the Restructuring under an intermediate holding company, EUH, with ENOL subject to the Council’s jurisdiction as a public utility;
3. Find that the proposed Restructuring either satisfies the requirements of all other Resolutions, Ordinances and other requirements of the Council that may be applicable to the Restructuring or is exempted therefrom;

4. Declare that ENOL's status as a disregarded entity for Federal and Louisiana income tax purposes does not obviate the need for ENOL to collect, in its rates, the expected Federal and Louisiana income tax expense associated with its regulated utility operations; and, that ENOL will be allowed to collect, in its rates, said Federal and Louisiana income tax expense associated with its regulated utility operations;
5. Approve the substitution of ENOL for ENO as the member of the Special Purpose Entity under the Financing Order,⁶ if necessary;
6. Grant any other approvals or authorizations that may be required by the Council to lawfully consummate the Restructuring;
7. Take official action to grant approval of the Restructuring;
8. Declare that Ordering Paragraph No. 7 of Council Resolution R-01-676, which sets forth the "Code of Conduct" applicable to ENO, ELL and their respective affiliates, is not implicated by the Restructuring, or, alternatively, to the extent deemed applicable, that the requirements of said provision are waived under the circumstances of this Restructuring;
9. Extend the applicability of the Council's approval in Council Resolution R-16-188 of ENO's anticipated level of debt financing through June 30, 2018 to ENOL as a new legal entity at the close of the Restructuring;
10. Approve, by Ordinance, the extension, transfer or assignment of any ENO franchise rights/indeterminate permits and/or of any amendments that may be required to ENO's existing franchises/indeterminate permits to effect the Restructuring and to allow ENOL to operate as a public utility in Orleans Parish;
11. Authorize ENOL to operate as an electric and gas public utility that is subject to Louisiana and Council utility statutes, regulations, resolutions, franchises/indeterminate permits and/or ordinances applicable to a utility;
12. Declare that on the closing date of the Restructuring, (a) ENOL, on behalf of itself and its successors and assigns, will assume, undertake to perform and be solely responsible for (i) all laws, rules and regulations of the Council that applied to ENO and the operation of its business as a public utility subject to regulation by the Council immediately prior to the closing date of the Restructuring, (ii) all final, non-appealable orders, settlements, certifications, franchises, agreements issued or approved by the Council to which ENO is a party or subject to and which are the obligations in force and effect immediately prior to the closing date of the Restructuring, and (iii) all pending dockets and reporting requirements that are or may be created in final, non-appealable orders, settlements, certifications,

⁶ Council Resolution R-15-193 dated May 14, 2015.

agreements issued or approved by the Council for ENO before the Council (collectively, the "Council Obligations"), and (b) ENO and its successors (other than ENOL and its successors and assigns) and assigns, will be fully, finally, unconditionally, irrevocably and forever released and discharged from any and all claims, liabilities, causes of action, rights of action and actions, demands, suits, proceedings, franchises, damages, costs, fees and expenses, and any and all claims, demands, liabilities whatsoever, of every name and nature, both at law and in equity, whether known or unknown, suspected or unsuspected arising out of or related to the Council Obligations, all of which shall be assumed by, undertaken by, and be the sole responsibility of ENOL as of the closing date of the Restructuring;

13. Direct any and all procedural steps necessary to ensure that a decision on the Application may be made by the Council no later than December 31, 2016;
14. Direct that notice of all matters in these proceedings be sent to Gary E. Huntley, Timothy S. Cragin, Brian L. Guillot, and Harry M. Barton as representatives of the Company; and
15. Grant ENO all general and equitable relief that the law and the nature of the case may permit; and

WHEREAS, the Council's desire to establish a procedural schedule that will allow the parties to this proceeding to rigorously investigate the Application, conduct discovery, file testimony and otherwise establish a record upon which the Council may use to render a decision regarding ENO's Application; **NOW THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS

THAT:

1. The Company's Application shall be reviewed in a new docket designated as Docket Number UD-16-03.
2. Notice of all matters in these proceedings directed to ENO shall be sent to Gary E. Huntley, Timothy S. Cragin, Brian L. Guillot, and Harry M. Barton as representatives of the Company.
3. The Company's proposed procedural schedule is GRANTED.

4. The Honorable Jeffrey Gulin is appointed as Hearing Officer to preside over the proceedings in this docket and shall rule on procedural disputes, including motions and discovery, and shall certify the record of the proceedings to the Council without recommendation.
5. ENO and the Council's Advisors are designated parties to these proceedings. Additionally, a period of 15 days from the adoption of this Resolution is established for interventions in this docket. Persons desiring to intervene shall do so by filing an intervention request and the required fee with the Clerk of Council, with a copy submitted to Director, Council Utilities Regulatory Office ("CURO"), Room 6E07 City Hall, 1300 Perdido Street, New Orleans, LA 70112. The Council's requirements for motions to intervene may be found in the City Code (which is available on the Council's website) at sections 158-236, 158-240, 158-286, 158-287, 158-322, and 158-324. Objections to intervention requests shall be filed within 5 days of such requests. Timely-filed intervention requests not objected to within that time period shall be deemed GRANTED.
6. A period of discovery is established herein, and it shall extend from the date of the adoption of this Resolution through 8 days prior to the date of the Evidentiary Hearing. Discovery requests must be made in time that responses may be received prior to the close of the discovery period. Responses to data requests shall be made on a rolling basis and shall be due in hand within 7 calendar days of receipt. Parties are encouraged to submit their data requests and responses electronically, where appropriate. Objections to data requests shall be filed within 5 days of receipt. The parties are encouraged to attempt to resolve their discovery disputes amicably prior to seeking the intervention of the Hearing Officer or appealing to the Council.
7. To the extent technical conferences or settlement negotiations are required, they are to be arranged by the parties with the assistance of the Hearing Officer, if necessary.
8. It is anticipated that during discovery, the parties may be required to produce documents or information that is deemed confidential and/or highly sensitive and, accordingly, the Council adopts for use in this docket its Official Protective Order adopted by Resolution R-07-432, a copy of which can be obtained from the Council Utilities Regulatory Office.
9. To the extent that the City Clerk's office closes before 5:00 pm on the date of any deadline contained therein, the deadline shall be extended to the next business day.
10. Direct Testimony of Intervenors shall be filed not later than September 26, 2016.
11. Direct Testimony of Advisors and Intervenors shall be filed not later than October 7, 2016.

12. Rebuttal Testimony of Applicants shall be filed shall be filed not later than October 17, 2016.
13. A one-day evidentiary hearing shall commence on October 25, 2016.
14. The Hearing Officer is to certify the record of these proceedings to the Council not later than October 31, 2016.
15. For good cause shown and as required by the circumstances of the proceedings and as discussed herein, the Hearing Officer shall have the authority to change or amend the dates established herein.

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.