

April 25, 2019

BY HAND DELIVERY

Ms. Lora W. Johnson
Clerk of Council
Council of the City of New Orleans
City Hall, Room IE09
1300 Perdido Street
New Orleans, LA 70112

In Re: *Resolution Directing ENO to Investigate and Remediate Electric Service Disruptions and Complaints and to Establish Minimum Electric Reliability Performance Standards and Financial Penalty Mechanisms*, CNO Docket No. UD-17-04

Dear Ms. Johnson:

Enclosed please find an original three (3) copies of the *Advisors' Comments on ENO's Response to ENO Filing in Prudence Investigation* in the above referenced docket, which we are requesting that you file into the record along with this letter in accordance with your normal procedure.

Sincerely,



Jay Beatmann
Counsel

JAB/dpm
Enclosures

cc: Official Service List for UD-17-04

**BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS**

**RESOLUTION DIRECTING ENTERGY)
NEW ORLEANS, INC. TO INVESTIGATE)
AND REMEDIATE ELECTRIC SERVICE)
DISRUPTIONS AND COMPLAINTS AND)
TO ESTABLISH MINIMUM ELECTRIC)
RELIABILITY PERFORMANCE)
STANDARDS AND FINANCIAL PENALTY)
MECHANISMS)**

DOCKET NO. UD-17-04

**ADVISORS' COMMENTS ON ENO'S RESPONSE
TO ENO FILING IN PRUDENCE INVESTIGATION**

INTRODUCTION

The Advisors are of the opinion that ENO's Response has not met the burden of demonstrating that its prior actions over several years related to maintaining and improving its distribution system were prudent.

The Advisors have reviewed the Entergy New Orleans L.L.C ("ENO") Response to Prudence Investigation ("Response") filed on January 10, 2019 pursuant to Council Resolution No. R-18-475, as extended, including the Supplemental Direct Testimony of Tad S. Patella, P.E. and Direct Testimony of William L. Sones. The Advisors have also reviewed the Direct Testimony of Melonie Stewart filed June 2018 and referenced in the Response. The Advisors have also reviewed additional materials submitted by ENO, transcripts of meetings of the Utility, Cable, Telecommunications and Technology Committee ("UCTTC") held on June 28, 2018 and July 19, 2018, and other relevant materials.

Based upon the factual background that led to the adoption of the resolution and considering the information provided in ENO's Response, and considering the Direct Testimony

of Mr. Joseph W. Rogers, P.E.,¹ the Advisors believe that the evidence of ENO's failure to properly maintain and improve its electric distribution system, its inaction and omissions in mitigating and remediating the resulting electric service disruptions, and its general unacceptable reliability performance supports a finding that ENO did not act prudently.

BACKGROUND

No regulator, including the Council, is responsible for directing a utility to operate in a specific manner with respect to distribution reliability. Every utility, including ENO, is required to operate prudently in all aspects of its operations. ENO has an independent and indisputable responsibility to maintain and operate a reliable distribution system. As well stated by the U.S. Fourth Circuit Court of Appeals: "One of the most important duties of a public utility, inherent in its franchise to serve the public, is the *duty to take the initiative in* proposing reasonable rates and *rendering adequate services*, taking into account changing conditions; and the utility is not relieved from this duty because its activities are subject to governmental regulation, for a regulatory commission is not clothed with the responsibility or qualified to manage the utility's business."²

The Council initiated this proceeding in response to significant customer complaints regarding declining reliability on ENO's system. ENO's failure to maintain reliability on its system is directly contrary to the rights held by its customers pursuant to Sections 158-1044 and 158-1045(a) of the New Orleans City Code, which "set forth the rights that, at a minimum, must be provided ratepayers by utilities operating in the city," including "[t]he right to safe and reliable service in accordance with industry standards."

¹ Mr. Rogers testimony and exhibits are attached hereto as "Exhibit A."

² *Pennsylvania. Water and Power Co. v. Consolidated Ga, Elec. Light & Power Co.*, 184 F.2d 552, 567 (4th Cir. 1950). (Emphasis added.)

ENO's degradation in distribution system reliability was evident in the increasing number of complaints received by the Council and in the high number of fair weather outages experienced during 2016/2017 and into 2018. The increasing number of complaints and outages led to Councilmember Jared Brossett's June 8, 2017 letter to ENO's then-President and CEO, Charles L. Rice, Jr., expressing his extreme concerns with the unacceptable situation. Clearly, ENO was in the best position to know that this problem existed, was on the rise, and was not limited to one Council district, and yet, ENO failed to take sufficient corrective action in a timely manner.

At the June 28, 2017 UCTTC meeting, the Committee strongly voiced its concerns regarding reliability issues and posed numerous questions to ENO concerning these issues, which led to the adoption of Resolution No. R-18-427, establishing Docket No. UD-17-04. Numerous distribution outages continued to occur with unacceptable frequency leading to growing customer complaints to the Council.

At the June meeting, Councilmembers learned that ENO had cut distribution system funding just prior to the decline in reliability. Ms. Melonie Stewart, ENO Vice President of Customer Service, appeared at the meeting. Ms. Stewart admitted that "[a]s we [ENO] backed off on funding slightly, we did see the reliability go in the wrong direction."³ The "slight" reduction in funding was \$1 million in 2014 alone according to Ms. Stewart.⁴

Councilmember Jason Williams reflected the reaction of the Committee: "...I struggle with the fact that today you say you realize that you are not investing enough and you are falling short. You said that, but the reaction to that again seems delayed, and I am certain that shareholders of

³ Transcript, UCTTC meeting, June 28, 2018 at 75.

⁴ Transcript, UCTTC meeting, June 28, 2018 at 76-77.

Entergy did not suffer during those times....Businesses, people, citizens, ratepayers suffered during those times. Why wasn't there a quicker reaction to reinvesting in that grid?"⁵

At the July 19, 2018 UCTTC meeting, the Council expressed serious concern about ENO's inability to answer basic questions regarding the status of its distribution equipment and the overall condition of its assets, which raised the concern that ENO was not giving the necessary attention to the reliability problems.

ENO's presentation at that meeting raised doubts as to whether ENO even properly understood its own system. Chair Helena Moreno pointed out "this is a serious matter, that we need to understand just the overall condition of your assets, and I am not quite understanding your asset management process or if you really have one that's fully vetted out or that...you can't even come to the table and explain to us the very basics of what your assets look like."⁶

Councilmembers also expressed frustration in finding that ENO's routine explanations for outages—Mylar balloons or squirrels—were not supported by the facts, facts which laid blame on ENO equipment failures.

Councilmember Joseph Giarrusso, addressing Entergy executives said: "So I added up based on your top ten outage causes-equipment failures... and I got 5,065 from 2013 to 2018.... If you divide that by six years, you get 845 per year, which means 2.3 times a day we are having an equipment failure right now."⁷ Chair Moreno summarized: "Well, at the end of the day, you still have the majority of the outages for Entergy being caused by equipment failures."⁸

In response to these revelations and independent of other actions to ameliorate reliability deficiencies, the Council adopted Resolution No. R-18-475 initiating a prudence investigation

⁵ Transcript, UCTTC meeting, June 28, 2018 at 77.

⁶ Transcript, UCTTC meeting July 19, 2018 at 17.

⁷ Transcript, UCTTC meeting July 19, 2018 at 39.

⁸ Transcript, UCTTC meeting July 19, 2018 at 31.

regarding ENO's decisions and actions relating to service disruptions and complaints. The resolution directed ENO to "file...such testimony, evaluations, analyses, work papers, and other information, as the Company believes will be of assistance to the Council in this prudence investigation."⁹

The resolution also provided that "[i]ntervenors, if they choose, shall file their testimony responsive to ENO's filing."¹⁰ The Advisors were directed to file this response on the same date. The date for the Advisors' response was subsequently revised to April 25, 2019.

ADVISORS' RESPONSE TO ENO'S ARGUMENTS

As noted in the Direct Testimony of Advisor expert Joe Rogers, two of the indices commonly utilized by electric utilities to measure their reliability performance are the System Average Interruption Frequency Index (SAIFI) and the System Average Interruption Duration Index (SAIDI). SAIFI measures the average number of interruptions of all customers over a defined period of time, usually a year. SAIFI is calculated by dividing the number of customer interruptions by the number of customers served. An upward trend in SAIFI generally indicates a reduction in reliability.

SAIDI measures the average length of interruptions, usually in minutes, experienced by all customers served over a defined period of time, usually a year. SAIDI is calculated by dividing the total hours of interruption by total customers served. Like SAIFI, an upward trend in SAIDI generally indicates a reduction in reliability. A table provided by ENO witness Tad S. Patella confirms ENO's decline in reliability since 2013.

⁹ Resolution No. R-18-475 at 14, dated October 31, 2018

¹⁰ *Id.*

Table 1:¹¹

ENO's SAIDI and SAIFI (2013-2017)					
	2013	2014	2015	2016	2017
SAIDI	92	121.3	128	167.9	179.8
SAIFI	1.04	1.209	1.234	1.61	1.584

Subsequent to Councilmember Brossett's June 8, 2017 letter requesting detailed information on the specific problems and causes of outages, data was provided to the Council and Advisors detailing outages during the period June 1, 2016 through May 31, 2017.

The Advisors initial review of the data provided by ENO indicated that the majority of the outages were not occurring during adverse weather conditions, but rather during fair weather conditions.

Weather Condition	Number of Outages	Percent of Total Outages
Fair	1,462	56%
Cold	53	2%
Fog	7	0.3%
Heat	73	3%
Rain	127	5%
Thunder	726	28%
Tornado	106	4%
Wind	45	2%
Total	2,599	100%

Further, the Advisors' preliminary analyses revealed that of the total 2,599 outages from all causes that occurred in ENO's distribution system during the June 1, 2016 - May 31, 2017 period, more than one-third were the result of equipment failures. Because these equipment

¹¹ Direct Testimony of Tad S. Patella, Docket UD-17-04, June 6, 2018, at 14.

¹² Report of Technical Advisors Docket No. UD-17-04, October 31, 2017, at 3.

failures occurred mostly during fair weather conditions, the condition of ENO's distribution system equipment was implicated as a primary cause.

The equipment failure-related nature of ENO's outages and reliability performance was also observed by Quanta Technology, LLC ("Quanta"), the consultant ENO engaged in August of 2018 to perform an assessment of ENO's reliability performance and improvement plans and actions.¹³

Quanta noted that that Customers Interrupted (CI) and Customer Minutes of Interruption (CMI) are used as proxies for SAIFI and SAIDI and that ENO focuses on CI and CMI as the primary operating metrics to track reliability internally. In reviewing ENO outage data from 2013 to 2017 with respect to the CI and CMI indices, Quanta observed:

Analysis of ENO outage records indicates that 64% of the CI increase between 2013 and 2017 is due to three cause codes: equipment (41%), conductor (12%), and vegetation (11%). The same cause codes contributed 61% of the CMI increase between 2013 and 2017: equipment (42%), conductor (12%), and vegetation (7%).¹⁴

Quanta noted some improper coding by ENO,¹⁵ meaning proper outage code reporting is another area where ENO can and should improve. Nonetheless, the data clearly concluded that equipment failure was the overwhelming contributor to decreased reliability performance over the 2013 to 2017 period.

ENO's Response suggests that its "now-aging infrastructure present(s) increasing reliability challenges" and asserts that "Quanta also confirmed our belief - and strongly emphasized - that given our legacy distribution construction and infrastructure, we will need grid

¹³ The Advisors note that ENO's decision to contract Quanta for this assessment was not a self-motivated or proactive effort to improve reliability; rather, as the Quanta Report's "Executive Summary" explains, ENO contracted Quanta "to cooperate with the City Council's resolution" issued in Docket UD-17-04.

¹⁴ Quanta Report, page 20-21

¹⁵ Quanta Report, page 22

modernization and distribution automation to see significant progress in distribution reliability.”¹⁶ As Advisor expert Rogers says “[t]hese comments are excuses, not substantive responses or evidence of prudent conduct.”

As witness Rogers further testified “[l]egacy construction, no matter how aged, in and of itself is not unreliable if adequately maintained on an ongoing and prudent basis. Numerous electric utilities throughout the country operate systems that have aging legacy construction, but still achieve acceptable levels of reliability. ENO’s assertion that its reliability problems stem from its legacy construction simply highlights ENO’s failure to maintain and improve its system over time.” ENO failed to take steps to correct and improve its infrastructure promptly, consistently, and as a long-term program, acting only after being forced to do so by the Council.

Expert Rogers also notes a series of additional failings of ENO’s Response as paraphrased below:

ENO’s Response largely ignores the essential question of whether ENO prudently maintained its system and made the necessary capital and operation and maintenance (“O&M”) investments, relying instead on recent improvements that unquestionably resulted from the series of actions by the Council to force an effective remediation plan to urgently improve reliability, including the Council’s show cause Resolution R-18-98 in April 2018.

ENO’s Response fails to address why it decreased distribution system maintenance spending as reported by Ms. Melonie Stewart, or why ENO did not initiate an accelerated distribution capital spending program when its reliability performance subsequently declined and before the Council forced action.

¹⁶ Supplemental Direct Testimony of Tad S. Patella at 7.

ENO's Response fails to address why it did not investigate or adopt the use of best distribution maintenance practices to improve reliability performance of its distribution system when problems started and before the Council forced action.

ENO's Response fails to address why it did not take proactive measures to mitigate the number and duration of outages before the Council forced action.

ENO's Response fails to address why it did not engage Quanta when the reliability problems began rather than in 2018 after the Council forced action.

ENO's Response fails to address why in communications with the Council and Advisors it consistently blamed outages on causes other than equipment failures until forced to accurately account for causes by Council direction.

The *prima facie* imprudence of these decisions is manifest in ENO's Response, which relies on the fact that the majority of its remedial efforts are programs prompted by the instant docket. Clearly, the remediation work being accomplished by ENO in its Reliability Plans in 2018 and 2019 was only in response to the Council forcing ENO's hand in this docket and has no bearing on the underlying prudence issue.

As witness Rogers concludes "[r]eaction to significant regulatory pressure is not prudence. ENO's reactive remediation work does not relieve ENO of its preexisting and ongoing obligation to maintain and improve its distribution system to avoid the declining reliability that prompted Council action. ENO unilaterally chose not to adequately maintain its distribution system for several years, instead reducing distribution investment and O&M spending."

LEGAL STANDARD

The prudence standard “essentially applies an analog of the common law negligence standard...”¹⁷ Accordingly, the utility must demonstrate that it “went through a reasonable decision making process to arrive at a course of action and, given the facts as they were known or should have been known at the time, responded in a reasonable manner.”¹⁸

“[T]he focus in a prudence inquiry is not whether a decision produced a favorable or unfavorable result, but rather, whether the process leading to the decision was a logical one, and whether the utility company reasonably relied on information and planning techniques known or knowable at the time.”¹⁹

In addition, prudence is an ongoing obligation of the utility and “the inquiry encompasses a public utility's *continuation* of an investment as well as its decision to enter into that investment, and requires the utility to respond prudently to changing circumstances or new challenges that arise as a project progresses.”²⁰

Moreover, when *serious doubt* about prudence is raised, as it was here, “the burden shifts to the utility...”²¹ “A ‘doubt’ is created if the challenge raises a question the answer to which is not arguably in favor of prudence. A doubt is ‘serious’ if there appears at least a possibility that, upon due investigation, the answer to the question will lead to a finding against prudence.”²²

¹⁷ *Gulf States Utilities Co. v LPSC*, 578 So. 2d 71 at 85 (La. 1991) citing *Appeal of Conservation Law Foundation*, 127 N.H. 606, 507A 2d 652, 673 (1986).

¹⁸ *Id.* citing *Re Cambridge Electric Light Co.*, 86 P.U.R. 4th 574 (Mass. D.P.U. 1987).

¹⁹ *Id.* citing *Metzenbaum v. Columbia Gas Transmission Corp.*, Opinion No. 25, 4 FERC 161,277.

²⁰ *Id.* citing *Re Vermont Public Service Corp.*, 83 P.U.R.4th 532 (Vt.Pub.Serv.Bd.1987), and citing *In Re Long Island Lighting Co.*, 71 P.U.R.4th 262, 1985 WL 258217 (N.Y.Pub.Serv.Comm'n, 1985).

²¹ *Id.* citing *Union Electric Co.*, 40 F.E.R.C. 61,046 (FERC 1987); *Long Island Lighting Co. v. Public Serv. Comm'n of New York*, 134 A.D.2d 135, 523 N.Y.S.2d 615 (3d Dept.1987); *Re Central Vermont Pub. Serv. Comm'n Corp.*, 83 P.U.R.4th 532 (Vt.P.S.B.1987).

²² *Alliance. for Affordable Energy, Inc. v. Council of City of New Orleans*, 578 So. 2d 949, 958 (La. Ct. App.), *writ granted sub nom. Alliance. for Affordable Energy, Inc. v. The Council of the City of New Orleans*, 585 So. 2d 554 (La. 1991), and *writ granted*, 585 So. 2d 555 (La. 1991), and *vacated sub nom. Alliance. for Affordable Energy v. Council of City of New Orleans*, 588 So. 2d 89 (La. 1991) citing *New England Power Co.*, 27 FERC # 63,037, at 65,157 (1984), *rev'd on other grounds*, 31 FERC # 61,047 (1985).

ENO's declining performance, and lack of any voluntary reasonable or deliberative response, raised this "serious doubt," shifting the burden of proof to ENO to demonstrate that it acted prudently.

In addition, ENO's failure to maintain the reliability of its distribution system is a violation of both the Code of the City of New Orleans, and the Council's utility regulations. Code Section 158-1045 addresses the enumerated rights of ENO's customers:

Among the rights that are more fully set forth in the council-adopted customer service regulations governing the provision of utility services in New Orleans, customers shall have the following rights:

- (a) The right to safe and reliable service in accordance with industry standards.

Similarly, Section 10 of the Service Regulations Applicable to Electric and Gas Service by ENO ("Service Regulations") provides:

The Company shall use Prudent Utility Practice to provide safe, adequate and continuous Service but shall not be responsible for loss or damage caused by the failure or other defects of Service when such failure is not reasonably avoidable or due to unforeseen difficulties or causes beyond its control.

Section 2(W) of the Service Regulations defines "Prudent Utility Practice" as: "The practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts (including but not limited to practices, methods and acts engaged in or approved by a significant portion of the utility industry) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition."

As expert Rogers states: "**There is no evidence of any decision-making process, just references to actions taken much after the fact and in response to the Council's insistence.**" (Emphasis added).

As such, ENO clearly had a pre-existing obligation to engage in practices, methods and acts typically engaged in or approved by a significant portion of the utility industry for the purpose of meeting its obligation and to provide safe and reliable service in accordance with industry standards.

PENALTIES

Section 10 of the Service Regulations is particularly relevant for purposes of imposing a fine and/or penalty, because Section 10 provides specific circumstances under which ENO “shall not be responsible for loss or damage caused by the failure or other defects of Service.” The logical corollary of this clause is necessarily a counterfactual circumstance under which ENO *shall be responsible* for loss or damage caused by the failure or other defects of Service.

Specifically, pursuant to Section 10, ENO shall be responsible for loss or damage caused by the failure or other defects of Service when such failure is reasonably avoidable, and due to foreseeable difficulties or causes within ENO’s ability to control. These standards -- reasonably avoidable, foreseeable, and ability to control -- are objective measures of Prudent Utility Practice.

Accordingly, ENO has pre-existing reliability standards that it must either meet, or face the consequences for failing to do so. In this regard, Section 3-130(7) of the Home Rule Charter provides:

The orders of the Council shall be enforced by the imposition of such reasonable penalties as the Council may provide. . . .

The Council adopted the Service Regulations discussed above in Resolution No. R-17-228, and, in so doing, the Council thereby ordered ENO’s compliance with Section 10’s continuity of service obligations. To enforce ENO’s compliance with those reliability obligations, Section 3-130(7) instructs that the Council may impose reasonable penalties.

Additionally, ENO has been on notice since at least 1999 that inadequate distribution system reliability could result in penalties under Section 3-130(7). In 1999, the Council reacted comprehensively to a previous decline in reliability with Resolution No. R-99-433, which established parish-wide remediation standards and a “performance penalty mechanism.” The resolution placed ENO “on notice” that failure to complete the remediation plans could result in the imposition of “financial penalties, which penalties shall be in an amount the Council deems sufficient to constitute reasonable penalties and which assure the ultimate achievement by ENO of a reliable electric distribution system.”

A 2011 Order of the Maryland Public Service Commission is highly instructive on determining an appropriate penalty in similar circumstances.²³

The Maryland commission imposed a \$1 million civil penalty on Potomac Electric Power Company (“Pepco”) for failing “to satisfy its legal obligation to provide its customers with reliable service.”²⁴ The investigation was in response to “an unusually large number of customer complaints about chronic electric outages,”²⁵ which the commission found was a result of poor vegetation management. The commission further found that “the utility’s failure to maintain its system properly subjected ratepayers to an excessively large number of power outages of long duration, both during storms and on fair weather days.... Pepco’s imprudent mistake was in not committing adequate resources to vegetation management in order to attain an acceptable level of reliability.”²⁶

The Maryland commission rejected Pepco’s argument that SAIDI and SAIFI standards are not reliable because of “unique” tree canopy issues, not unlike ENO’s legacy infrastructure

²³ *In re: Potomac Electric Power Company*, 102 Md.P.S.C. 408, 2011 WL 7164366 (Md.P.S.C.), 295 P.U.R.4th 373.

²⁴ WL 7164366 at 4.

²⁵ *Id.* at 3.

²⁶ *Id.* at 4-5.

argument. The commission responded that “as a matter of policy, each utility has an obligation to provide reliable service based on the particular circumstances and characteristics of its service territory.”²⁷ The commission noted that if a utility is presented with a unique challenge like an extensive tree canopy, “it should be more active than other utilities in executing tree trimming...it is not perpetually relieved from the obligation of maintaining a reliable system.”²⁸

Significantly, the commission rejected Pepco’s argument that “the Commission may only penalize a utility pursuant to a regulatory standard with an objective metric...,” even though the commission was concurrently engaged in rulemaking related to establishing standards.²⁹

The commission found that Pepco acted imprudently and imposed a civil penalty of \$1 million. “After consideration of the substantial decline in reliability resulting from Pepco’s inadequate vegetation management practices, and the significant costs, both economic and non-economic, imposed on the Company’s Maryland ratepayers, we have determined that a penalty is appropriate in this case. In establishing the appropriate amount of any civil penalty, PUA §13-201(d) requires us to consider (i) the number of any other previous violations, (ii) the gravity of the current violation, (iii) the violator’s good-faith efforts in attempting to achieve compliance after notification of the violation, and (iv) any other appropriate and relevant matters.”³⁰

Similarly, the New York Public Service Commission examined whether, and to what extent, it should penalize two investor-owned utilities for reliability issues that were identified by ratepayers and documented in a staff report, including violations related to “inadequate vegetation management, a reactive approach to storm events, late damage assessments, nonexistent, vague or inaccurate power restoration estimates, badly prioritized and coordinated restoration work,

²⁷ *Id.* at 13.

²⁸ *Id.*

²⁹ *Id.* at 22-24.

³⁰ *Id.* at 22.

excessively long outages, and an inability to timely provide ‘make-safe’ services to first responders.”³¹

The case was ultimately resolved through a joint settlement under which the utilities agreed to make non-ratepayer funded investments of up to \$3.9 million that were designed to increase resiliency and improve emergency response.³² In its order accepting the settlement agreement, the N.Y. PSC found that “the approximately \$4 million settlement is reasonable” given that “if each and every one of the twelve alleged violations was fully litigated and the Commission determined that the maximum penalty was warranted for each violation, the financial penalty could have been approximately \$6 million.”³³

What constitutes a “reasonable penalty” is intentionally left to the Council, consistent with general regulatory principles:

We do not agree that the term “reasonable level” is susceptible of only one interpretation. “Reasonable level” is a vague term, and its presence in an administrative statute such as the Public Service Commission Law suggests that the General Assembly intended to entrust the formulation of specific standards to the technical expertise of those charged with enforcing the statute.³⁴

Given the facts as discussed by witness Rogers, including ENO’s failure to prudently maintain its distribution system with proper capital and O&M investments, failure to investigate or adopt best practices, failure to take proactive measures to mitigate the number and duration of outages, failure to proactively engage Quanta, and failure to act generally until after the

³¹ See Case 17-E-0594, *Proceeding on Motion of the Commission to Investigate the March 2017 Windstorm, Related Power Outages, and Rochester Gas and Electric and New York State Electric & Gas Restoration Efforts*, Order Adopting Terms of Joint Proposals, at n.6 (N.Y. PSC Apr. 18, 2019).

³² *Id.* at Attachment B.

³³ *Id.* at 12-13.

³⁴ *Baltimore Gas and Elec. Co. v. PSC of Maryland*, 501 A. 2d 1307, 1314 (Md. 1986) citing *See Springfield Ed. Ass'n v. Springfield, Etc.*, 290 Or. 217, 621 P.2d 547, 555–57 (1980); *Brix v. City of San Rafael*, 92 Cal.App.3d 47, 50–51, 154 Cal.Rptr. 647 (Cal.Ct.App.1979); *Roberts v. Police & Firemen's Retirement, Etc.*, 412 A.2d 47, 50 (D.C.1980); *Kopp v. State*, 100 Idaho 160, 595 P.2d 309, 312 (1979); *WIPE v. Illinois Pollution Control Bd.*, 55 Ill.App.3d 475, 13 Ill.Dec. 149, 152, 370 N.E.2d 1176, 1179 (Ill.App.Ct.1977)

intervention of the Council, the Advisors recommend that a reasonable financial penalty is between \$1.5 million and \$2 million, especially in light of the fact that ENO's actions, inactions and delayed reactions caused adverse impacts on tens of thousands of ratepayers, both commercial and residential.

CONCLUSIONS

ENO witness Tad Patella admits in his testimony that "we [ENO] knew that our reliability metrics had slipped in recent years and suspected that they would not match up favorably with the reliability metrics of high performing utilities selected by Quanta for benchmarking analysis."³⁵ ENO took insufficient actions in response to these deficiencies until after the Council demanded explanations and action in June 2017. In fact, while ENO takes credit for engaging Quanta that did not occur until August 2018, well after the Council's demands.³⁶

Because there is "serious doubt" that ENO's actions in largely ignoring the rising reliability deficiencies until forced to do so by the Council could be considered prudent, ENO bears the burden of proving it acted prudently in this regard, especially since the problems were overwhelmingly caused by equipment failures and at a time when ENO was actually reducing reliability expenditures.

Nothing submitted by ENO meets the "common law negligence standard" required to show prudent conduct. Therefore, the Advisors are of the opinion that ENO's Response has not met the burden of demonstrating that its prior actions over several years related to maintaining and improving its distribution system were prudent. Accordingly, the Advisors recommend that the Council find that ENO was imprudent for the reasons stated above and that a financial penalty as

³⁵ Supplemental Direct Testimony of Tad S. Patella at 6.

³⁶ Supplemental Direct Testimony of Tad S. Patella at 5.

recommended above be assessed, with the penalty, and the costs of these proceedings incurred by the Council, to be excluded from ratepayer recovery.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon "The Official Service List" via electronic mail and/or U.S. Mail, postage properly affixed, this 25th day of April, 2019.



J. A. "Jay" Beatmann, Jr.

**BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS**

**RESOLUTION DIRECTING ENTERGY)
NEW ORLEANS, INC. TO INVESTIGATE AND)
REMEDiate ELECTRIC DISRUPTIONS) DOCKET NO. UD-17-04
AND COMPLAINTS AND TO ESTABLISH)
RELIABILITY PERFORMANCE STANDARDS)
AND FINANCIAL PENALTY MECHANISMS)**

**DIRECT TESTIMONY
OF
JOSEPH W. ROGERS, P.E.
ON BEHALF OF
THE ADVISORS TO THE
COUNCIL OF THE CITY OF NEW ORLEANS**

APRIL 25, 2019

PREPARED DIRECT TESTIMONY

OF

JOSEPH W. ROGERS, P.E.

1 **I. INTRODUCTION**

2 **Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION.**

3 **A.** My name is Joseph W. Rogers. My business address is 6041 S Syracuse Way, Suite 105,
4 Greenwood Village, Colorado. I am a registered Professional Engineer in the States of
5 Colorado and Louisiana and I am an Executive Consultant with the firm, Legend
6 Consulting Group Limited (“Legend”).

7 **Q. ON WHOSE BEHALF DO YOU APPEAR IN THIS PROCEEDING?**

8 **A.** I am presenting testimony on behalf of the Advisors to the Council of the City of New
9 Orleans (“Council”). The Council regulates the rates, terms, and conditions of electric and
10 gas service of Entergy New Orleans, LLC (“ENO”).¹ Entergy Corporation is the direct
11 and indirect holder of the common membership interests of Entergy Utility Holding
12 Company, LLC, which is the sole holder of the common membership interests of ENO.

¹ The Entergy Operating Companies (“EOCs”), as of the preparation of this testimony, are Entergy Arkansas, LLC (“EAL”), Entergy Mississippi, LLC (“EML”), Entergy Louisiana, LLC (“ELL”), ENO, and Entergy Texas, Inc. (“ETI”). Any reference to the EOCs or an individual EOC should include any successor organization.

1 **Q. PLEASE SUMMARIZE YOUR RELEVANT EDUCATIONAL BACKGROUND**
2 **AND TESTIMONY EXPERIENCE.**

3 **A.** Exhibit No. ____ (JWR-2) provides a summary of my relevant education and professional
4 experience, and Exhibit No. ____ (JWR-3) lists my previous testimony.

5 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?**

6 **A.** My testimony today addresses the Council's prudence investigation established by Council
7 Resolution No. R-18-475 to determine whether ENO's inaction and omissions in mitigating
8 and remediating electric service disruptions and complaints and addressing the
9 performance of the distribution system were imprudent. My testimony covers system
10 reliability during the time period of approximately 2013-2018.

11 **Q. WHAT MATERIALS DID YOU REVIEW IN CONNECTION WITH THIS**
12 **TESTIMONY?**

13 **A.** In addition to ENO's, January 10, 2019, Response [to] Prudence Investigat[i]on Submitted
14 Pursuant to Council Resolution R-18-475 ("ENO's Response"), I have reviewed: (1)
15 Councilmember Brossett's letter dated June 8, 2017 regarding numerous complaints from
16 ENO customers with respect to the ongoing occurrence of unplanned outages and electric
17 service disruptions; (2) ENO's response to Councilmember Brossett's letter dated June 8,
18 2017, filed July 10, 2017; (3) ENO's original Reliability Plan, filed on November 10, 2017;
19 (4) ENO's Response to the Show Cause Resolution, filed on June 6, 2018; (5) Transcript
20 of the June 28, 2018 Utility, Cable, Telecommunications and Technology Committee
21 meeting; (6) ENO's Revised Reliability Plan, with Exhibits, filed on July 5, 2018; (7)

1 Quanta Technology, LLC's Assessment of ENO's Distribution Reliability Improvement
2 Initiatives, filed on October 31, 2018; (8) ENO's Reliability Progress Report as of October
3 31, 2018, filed on November 30, 2018; (9) ENO's Response to Comments of the
4 Intervenors and the Council Advisors on the Quanta Technology Report, filed on
5 December 27, 2018, and; (10) ENO's responses to Discovery in this proceeding.

6 **Q. PLEASE SUMMARIZE YOUR MAJOR CONCLUSIONS BASED UPON YOUR**
7 **EXAMINATION AND EVALUATION OF THE MATERIALS REVIEWED.**

8 **A.** Based upon the materials reviewed, including ENO's Response, ENO has failed to
9 demonstrate that it has acted prudently in its maintenance of its distribution system, and in
10 its response to the decline of reliability of its distribution system. It is clear, through ENO's
11 annual filings with the U.S. Energy Information Administration ("EIA"), the frequency of
12 fair-weather outages and the need for restoration from those outages, and statements by
13 ENO's witnesses that ENO was aware of the decline in reliability. ENO indicated that they
14 reduced funding in the distribution system at the start of the period of declining reliability,
15 2014, and subsequently noticed the reliability decline. While ENO did increase funding in
16 2016, it was too late to mitigate the outages ENO and its customers experienced in 2016
17 and 2017. ENO has not presented convincing evidence that it responded swiftly and
18 adequately to mitigate the decline in reliability. Further, it was only after numerous
19 outages, complaints, and the Council establishing this docket to investigate the outages
20 that, in August of 2018, ENO proceeded to hire a third-party consultant to perform an
21 assessment of ENO's reliability performance and improvement plans and actions.

1 **II. BACKGROUND**

2 **Q. PLEASE IDENTIFY THE CIRCUMSTANCES THAT CAUSED THIS**
3 **INVESTIGATION TO BE INITIATED.**

4 **A.** An increasing number of distribution system outages were being brought to the attention
5 of Councilmembers during the latter part of 2016. The outages were especially notable
6 because they were generally unrelated to any adverse weather conditions and were
7 describable as "fair weather" outages.

8 In early 2017 Councilmember Jared Brossett consulted with the Technical Advisors
9 concerning the high number of complaints he was receiving from constituents about power
10 outages. As a result of that consultation, Councilmember Brossett sent a letter to ENO's
11 then president and CEO, Charles L. Rice, Jr. on June 8, 2017 expressing his extreme
12 concerns with the unacceptable level of fair weather outages and requesting detailed outage
13 information, including identification of specific feeders that had failed, times, duration, and
14 causes of all outages. Councilmember Brossett also requested information regarding
15 ENO's remediation activities and future plans.

16 On July 10, 2017, ENO responded to Councilmember Brossett's letter with data covering
17 June 1, 2016 - May 31, 2017. Subsequently, on August 10, 2017 the Council opened
18 Docket No. UD-17-04, for the Council's investigation into outages, and reliability issues
19 in Orleans Parish in general, ENO's level of distribution O&M staffing and scheduling, and
20 to consider the establishment of minimum reliability performance standards for all of the
21 utilities under the Council's jurisdiction including the establishment of financial penalty

1 mechanisms for failure to meet such minimum reliability performance standards as
2 established by the Council.

3 On April 5, 2018, the Council adopted Resolution No. R-18-98 directing ENO to show
4 cause within 30 days why ENO's inaction and omissions in mitigating and remediating
5 electric service disruptions and complaints and unacceptable reliability performance
6 should not be presumed imprudent. On June 6, 2018, ENO filed its response to Resolution
7 No. R-18-98.

8 At the June 28, 2018 Utility, Cable, Telecommunications and Technology Committee
9 ("UCTTC") meeting the committee members also voiced concerns to ENO regarding the
10 ongoing outages and reliability issues and posed numerous questions to ENO
11 representatives, who were unable to answer many of the questions.

12 On October 31, 2018, the Council adopted Resolution R-18-475 triggering this prudence
13 review to determine whether ENO's inaction and omissions in mitigating and remediating
14 electric service disruptions and complaints and addressing the performance of the
15 distribution system were imprudent and whether financial and/or other penalties should be
16 imposed by the Council.

17 **III. ENO'S DISTRIBUTION RELIABILITY AND OUTLAYS**

18 **Q. HOW IS DISTRIBUTION RELIABILITY MEASURED?**

19 **A.** Two of the indices commonly utilized by electric utilities to measure their reliability
20 performance are the System Average Interruption Frequency Index ("SAIFI") and the

1 System Average Interruption Duration Index (“SAIDI”). SAIFI measures the average
2 number of interruptions of all customers over a defined period of time, usually a year.
3 SAIFI is calculated by dividing the number of customer interruptions by the number of
4 customers served. An upward trend in SAIFI generally indicates a reduction in reliability.

5 SAIDI measures the average length of interruptions, usually in minutes, experienced by all
6 customers served over a defined period of time, usually a year. SAIDI is calculated by
7 dividing the total hours of interruption by total customers served. Like SAIFI, an upward
8 trend in SAIDI generally indicates a reduction in reliability.

9 **Q. HAVE YOU REVIEWED THE RELEVANT SAIFI AND SAIDI NUMBERS FOR**
10 **ENO?**

11 **A.** Yes. A table provided by ENO witness Tad S. Patella in June of 2018, clearly shows
12 ENO’s decline in reliability since 2013:

Table 1²					
ENO’s SAIDI and SAIFI (2013-2017)					
	2013	2014	2015	2016	2017
SAIDI	92	121.3	128	167.9	179.8
SAIFI	1.04	1.209	1.234	1.61	1.584

² Direct Testimony of Tad S. Patella, Docket UD-17-04, June 6, 2018, page 14.

1 **Q. HOW DOES ENO’S RELIABILITY COMPARE WITH THAT OF OTHER**
2 **UTILITIES?**

3 **A.** ENO provides SAIDI and SAIFI data to the to the U.S. Energy Information Administration
4 (“EIA”) as part of an annual response submitted in Form EIA-861. Tables 2 and 3 present
5 ENO’s reported SAIDI and SAIFI in comparison with other utilities that filed in
6 accordance with Form EIA-861. I note that ENO’s SAIDI and SAIFI indices as recorded
7 by EIA are different than the numbers ENO has reported to the Council; however, I have
8 not yet identified why the numbers are different. A review of EIA data by separating the
9 reporting utilities into quartiles shows that ENO’s reliability, as measured by SAIFI and
10 SAIDI in comparison with other utilities, has dropped from second quartile performance
11 in 2013 to third and then fourth quartile performance in the following years.

1

Table 2
System Average Interruption Frequency Index (“SAIFI”) without Major Event Days
2013-2017 ⁽¹⁾

	2013 ⁽²⁾	2014	2015	2016	2017
1 st Quartile Highest SAIFI	.739	.690	.700	.677	.680
2 nd Quartile Highest SAIFI	1.045	1.076	1.077	1.073	1.069
3 rd Quartile Highest SAIFI	1.653	1.503	1.580	1.560	1.519
Average # of Utilities in Each Quartile	121	132	142	154	164
Entergy New Orleans LLC Indices	1.032	1.222	1.413	1.816	1.796
	2nd Quartile	3rd Quartile	3rd Quartile	4th Quartile	4th Quartile
⁽¹⁾ Data sourced from US Energy Information Administration Form EIA-861					
⁽²⁾ EIA began collecting and including SAIDA and SAIFI data in Form EIA-861 in 2013					

2

Table 3
System Average Interruption Duration Index (“SAIDI”) without Major Event Days
2013-2017 ⁽¹⁾

	2013 ⁽²⁾	2014	2015	2016	2017
1 st Quartile Highest SAIDI	46.000	46.280	53.419	54.830	54.130
2 nd Quartile Highest SAIDI	88.000	92.409	100.610	102.000	94.450
3 rd Quartile Highest SAIDI	145.100	141.350	164.210	166.800	160.900
Average # of Utilities in Each Quartile	135	144	155	169	177
Entergy New Orleans LLC Indices	90.300	117.400	135.800	190.200	192.900
	3rd Quartile	3rd Quartile	3rd Quartile	4th Quartile	4th Quartile
⁽¹⁾ Data sourced from US Energy Information Administration Form EIA-861					
⁽²⁾ EIA began collecting and including SAIDA and SAIFI data in Form EIA-861 in 2013					

1 **Q. WHEN DID ENO BECOME AWARE OF ITS DECLINE IN RELIABILITY**
2 **PERFORMANCE?**

3 **A.** ENO's best reliability performance since 2010, as measured by its reported SAIDI and
4 SAIFI indices was in 2013³. ENO reports these indices annually to the U.S. Energy
5 Information Administration. ENO was definitely aware of its decline in reliability
6 performance by May of 2015, when its report to EIA was due. However, while not aware
7 of the exact calculable annual SAIDI and SAIFI numbers for 2014, ENO either was or
8 should have been aware of its decline in late 2014 based upon the increased need to respond
9 to customer outages as compared to 2013. ENO witness, Melonie Stewart at the June 28,
10 2018, UCTTC meeting indicated that "[w]e are always monitoring the performance of our
11 entire system to ensure that we are spending the dollars in the right places."⁴ At that same
12 UCTTC meeting, Ms. Stewart indicated that "In 2013 we had outstanding distribution
13 reliability, and we did back off slightly on our funding because we didn't want to spend
14 money on a system that was performing extremely well."⁵ Ms. Stewart went on to indicate
15 that "As we backed off on that funding slightly, we did see the reliability go in the wrong
16 direction."⁶ When questioned further about the reduction in funding, Ms. Stewart clarified
17 that ENO reduced its investment in the distribution system by about one million dollars.

³ ENO Response to DR AAE 2-7

⁴ Transcript of June 28, 2018 UCTTC meeting at 78

⁵ Transcript of June 28, 2018 UCTTC meeting at 74

⁶ Transcript of June 28, 2018 UCTTC meeting at 75

1 In 2014, ENO was both aware of the decline in system reliability and the relationship
2 between investment in the distribution system and the resulting system reliability.

3 **Q. IN RESPONSE TO DECLINING RELIABILITY, DID ENO INCREASE ITS**
4 **DISTRIBUTION OPERATION AND MAINTENANCE EXPENSE IN 2015?**

5 **A.** No. Based on a review of FERC Form 1 Data, ENO recorded a decrease in distribution
6 operation and maintenance (“O&M”) expense from 2014 to 2015 of approximately \$1.1
7 million. ENO’s 2015 distribution O&M expense of \$10.5 million was slightly higher than
8 the 2009-2013 five-year average for distribution O&M expense of \$10.1 million. While
9 ENO’s 2016 distribution O&M expense was approximately \$2.5 million more than the
10 2009-2013 five-year average, ENO did not report remarkable increases in distribution
11 O&M expense until 2017 and 2018. Table 4 shows ENO’s distribution O&M expense.

Table 4						
ENO Distribution O&M						
(\$ in millions)						
	Five-Year Average 2009-2013	2014	2015²	2016	2017	2018
Distribution O&M Expense ⁽¹⁾	\$10.1	\$11.7	\$10.5	\$12.6	\$16.9	\$20.8
Dollar Difference from Five-Year Average	-	\$1.6	\$0.4	\$2.5	\$6.8	\$10.7
Percent Difference from Five-Year Average	-	15.8%	4.0%	24.8%	67.3%	105.9%
⁽¹⁾ Source: FERC Form 1, page 322, line 156 for the years 2009-2018.						
⁽²⁾ On September 1, 2015, ELL transferred electric operations in Algiers to ENO. ELL stated that its annual distribution O&M expense in Algiers was \$1.4 million prior to this transfer (YE 6/30/2012). As such, post transaction, annual distribution O&M could be expected to increase by roughly \$1.4 million due to the Algiers Transaction apart from other factors.						

1 **Q. IN RESPONSE TO DECLINING RELIABILITY, DID ENO INCREASE ITS**
 2 **DISTRIBUTION CAPITAL ADDITIONS IN 2015?**

3 **A.** No. Based on a review of FERC Form 1 Data, ENO recorded a decrease in the amount of
 4 distribution capital additions from 2014 to 2015 of approximately \$20.8 million to \$10.5
 5 million, roughly 35 percent of the 2009-2013 five-year average distribution capital
 6 additions of \$29.3 million. ENO's distribution capital additions for 2016 of \$30.7 million
 7 were only marginally higher than the 2009-2013 five-year average. ENO did not report
 8 remarkable increases in distribution capital expenditures until 2017 and 2018. Table 5
 9 presents ENO's distribution capital additions.

Table 5						
ENO Distribution Capital Additions						
(\$ in millions)						
	Five-Year Average 2009-2013	2014	2015	2016	2017	2018
Distribution Capital Additions ⁽¹⁾	\$29.3	\$31.3	\$10.4	\$30.7	\$43.9	\$48.3
Dollar Difference from Five-Year Average	-	\$2.0	\$(18.9)	\$1.4	\$14.6	\$19.0
Percent Difference from Five-Year Average	-	6.8%	-64.5%	4.8%	49.8%	64.8%
⁽¹⁾ Source: FERC Form 1, page 322, sum of lines 61-69 for the years 2009-2018.						

10

11 **Q. IN RESPONSE TO DECLINING RELIABILITY, DID ENO INVESTIGATE OR**
 12 **ADOPT THE UTILIZATION OF BEST DISTRIBUTION PRACTICES TO**
 13 **MITIGATE THE NOTED DECLINE IN RELIABILITY?**

1 A. No, not immediately. It was only after numerous outages, complaints, and the Council
2 establishing this docket to investigate the outages that, in August of 2018, ENO proceeded
3 to hire a third-party consultant to perform an assessment of ENO's reliability performance
4 and improvement plans and actions.

5 **IV. COMMENTS ON ENO'S RESPONSE**

6 **Q. IS IT YOUR OPINION THAT ENO HAS ADEQUATELY RESPONDED TO THE**
7 **PRUDENCE INQUIRY BY ITS TESTIMONY, EVALUATIONS, ANALYSES,**
8 **WORK PAPERS, AND OTHER INFORMATION PRESENTED?**

9 A. No. ENO's Response fails to address the critical timeframe leading up to the increase in
10 outages and complaints that led to the Council's direct involvement in mid-2017. The
11 majority of the testimony focuses on actions being taken currently, after the Council
12 initiated its investigation into outages and reliability issues. For example, Mr. Patella
13 discusses remedial actions started by ENO in April 2018, long after the problems were
14 recognized and allowed to persist. The actions touted by Mr. Patella resulted from the
15 filing of a revised reliability plan in response to Advisor criticism. In addition, the
16 engagement of Quanta Technology, LLC, which is incorporated in ENO's Response by
17 reference, did not occur until August 2018, again long after the Council intervened and
18 compelled ENO to act.

19 Mr. Patella, in his testimony, possibly provides some insight as why ENO might have
20 delayed in engaging Quanta Technology, LLC proactively when the reliability problem
21 first surfaced. He testifies: "In many ways, Quanta's review and conclusions confirmed

1 what we already knew or suspected about ENO's distribution system. For instance, we
2 knew that our reliability metrics had slipped in recent years and suspected that they would
3 not match up favorably with the reliability metrics of high performing utilities selected by
4 Quanta for benchmarking."⁷ ENO knew it had a problem, yet avoided thoroughly
5 addressing it until forced to do so by the Council, which, in my opinion, is not
6 demonstrative of prudent or reasonable conduct.

7 **Q. DO OTHER ENO WITNESSES PROVIDE TESTIMONY THAT**
8 **DEMONSTRATES THAT ENO ACTED PRUDENTLY IN ADDRESSING THE**
9 **DECLINING PERFORMANCE OF THE DISTRIBUTION SYSTEM?**

10 **A.** No. ENO's only other witness who provided testimony in response to the prudence
11 investigation, was Mr. William L. Sones. Mr. Sones' testimony addresses only
12 transmission reliability and the transmission related contribution to SAIDI and SAIFI.
13 With respect to transmission reliability efforts and results, Mr. Sones lists transmission
14 projects completed from 2013 to 2018 to "...address compliance with NERC⁸ reliability
15 standards, to adhere to MISO's planning process, and to reliably serve customers."⁹
16 However, in the next breath, Mr. Sones admits that the projects he just identified "...do not
17 specifically address the causes of the outages recently experienced by ENO..."¹⁰.

⁷ Supplemental Direct Testimony of Tad. S. Patella at 6.

⁸ North American Electric Reliability Corporation (NERC).

⁹ Direct Testimony of William L. Sones at 12.

¹⁰ Direct Testimony of William L. Sones at 14.

1 **Q. WOULD STORM HARDENING WORK BE CONSIDERED DISTRIBUTION**
2 **SYSTEM RELIABILITY WORK?**

3 **A.** No. Ms. Stewart makes that argument in testimony incorporated by reference. Storm
4 hardening is a separate issue, which relates to the resiliency of the system in storms and
5 hurricanes. It seeks to mitigate damage to the system and facilitate recovery. It does not
6 address the day-to-day operation of the distribution system, even though there can be some
7 carryover benefit.

8 The storm hardening referred to by Ms. Stewart was also the result of other dockets in
9 which the Council initiated action and caused ENO to make such upgrades and
10 improvements. Moreover, the storm hardening work was not in response to declining
11 reliability and did not start until well into 2017.

12 **Q. WAS THERE ANY TESTIMONY THAT ADDRESSED THE PRUDENCE**
13 **QUESTION DIRECTLY?**

14 **A.** No. There is simply no discussion of what, if any, reasonable decision-making process
15 informed the decision to reduce investment in the distribution system. Nor is there any
16 testimony that explains why ENO was not immediately proactive in mitigating the decline
17 in reliability performance. ENO's Response relies heavily on what they are doing currently
18 to improve reliability, not on any prudent internal process or decision-making process.

19 **Q. SECTION 10 OF THE SERVICE REGULATIONS APPLICABLE TO ELECTRIC**
20 **AND GAS SERVICE BY ENTERGY NEW ORLEANS, LLC REQUIRES ENO TO**
21 **USE PRUDENT UTILITY PRACTICE, TO PROVIDE SAFE, ADEQUATE, AND**

1 **CONTINUOUS SERVICE, AND SECTION 2(W) DEFINES “PRUDENT UTILITY**
2 **PRACTICE.” ARE YOU FAMILIAR WITH THIS DEFINITION?**

3 **A.** Yes. Section 2(W) of the Service Regulations defines “Prudent Utility Practice” as: “The
4 practices, methods and acts, which, in the exercise of reasonable judgment in light of the
5 facts (including but not limited to practices, methods and acts engaged in or approved by a
6 significant portion of the utility industry) known at the time the decision was made, would
7 have been expected to accomplish the desired result at the lowest reasonable cost consistent
8 with reliability, safety and expedition.”

9 **Q. HAS ENO DEMONSTRATED THROUGH ITS RESPONSE THAT IT USED**
10 **PRUDENT UTILITY PRACTICE CONSISTENT WITH THIS DEFINITION?**

11 **A.** No. In my opinion, as an expert in the utility industry, a prudent utility would be able to
12 demonstrate that it had an active capital project and O&M program in place to maintain
13 system reliability. Further, a prudent utility would have been able to demonstrate that once
14 it realized that its capital project and O&M program was failing to maintain reliability that
15 it took immediate steps correct the reliability issues. ENO has failed to demonstrate that it
16 used prudent utility practice.

17 **Q. DOES THE FACT THAT ENO HAS AN “AGING INFRASTRUCTURE” EXCUSE**
18 **ITS UNACCEPTABLE DECLINE IN DISTRIBUTION SYSTEM RELIABILITY?**

19 **A.** No. ENO’s Response suggests that its “now-aging infrastructure present(s) increasing
20 reliability challenges” and asserts that “Quanta also confirmed our belief - and strongly
21 emphasized - that given our legacy distribution construction and infrastructure, we will

1 need grid modernization and distribution automation to see significant progress in
2 distribution reliability.”¹¹ These comments appear to be excuses rather than substantive
3 responses or evidence of prudent conduct.

4 Legacy construction, no matter how aged, in and of itself is not unreliable if adequately
5 maintained on an ongoing and prudent basis. Numerous electric utilities throughout the
6 country operate systems that have aging legacy construction, but still achieve acceptable
7 levels of reliability. ENO’s assertion that its reliability problems stem from its legacy
8 construction simply highlights ENO’s failure to maintain and improve its system over time.

9 Simply put, ENO failed to take steps to correct and improve its infrastructure promptly,
10 consistently, and as a long-term program.

11 **Q. AS A RESULT OF ENO’S FAILURE TO DO THESE THINGS DID THE**
12 **RELIABILITY PROBLEMS PERSIST INTO 2018 WITH DISRUPTION TO**
13 **THOUSANDS OF CUSTOMERS?**

14 **A.** Yes. Some examples of outages in 2017 and 2018 are:

15 March 15, 2017 - Mid City-Carrolton 14,000 customers affected

16 June 12, 2017 - Algiers 3,000 customers affected

17 June 15, 2017 - Algiers 3,000 customers affected

¹¹ Supplemental Direct Testimony of Tad S. Patella at 7.

- 1 June 21, 2017 - Orleans Parish-wide 4,700 customers affected
- 2 August 25, 2017 - Gentilly 7,500 customers affected
- 3 January 1, 2018 - Algiers 2,400 customers affected
- 4 February 21, 2018 - Mid-City, Navarre, Hollygrove 5,000 customers affected
- 5 February 27, 2018 - Mid-City, Treme 4,000 customers affected
- 6 March 2, 2018 - Mid-City 1,900 customers affected and LSU Medical Education
- 7 Building
- 8 March 3, 2018 - Gentilly 432 customers affected
- 9 March 4, 2018 - New Orleans Metro Area 2,427 customers affected
- 10 May 15, 2018 - Uptown 23,700 customers affected
- 11 June 5, 2018 - Uptown 1,000 customers affected
- 12 July 2, 2018 - Uptown 2,300 customers affected
- 13 September 17, 2018 - Uptown 7,500 customers affected
- 14 September 25, 2018 - Bywater 2,000 customers affected
- 15 September 30, 2018 - Bywater, Lower Ninth Ward 2,000 customers affected

16 As I noted previously, even ENO witness Patella acknowledged that ENO “knew that our
17 reliability metrics had slipped in recent years and suspected that they would not match up

1 favorably with the reliability metrics of high performing utilities selected by Quanta for
2 benchmarking purposes.” What Mr. Patella and the other ENO witnesses fail to explain is
3 why it took the intervention of the Council to correct a problem they knew existed.

4 **Q. WHAT OTHER RELEVANT ISSUES DID ENO FAIL TO ADDRESS IN ITS**
5 **RESPONSE?**

6 **A.** ENO’s response largely ignores the essential question of whether ENO prudently
7 maintained its system and made the necessary capital and O&M investments, relying
8 instead on recent improvements that unquestionably resulted from the series of actions by
9 the Council to force an effective remediation plan to urgently improve reliability, including
10 the Council’s show cause Resolution R-18-98 in April 2018.

11 ENO’s response also fails to address why it decreased distribution system maintenance
12 spending as reported by Melonie Stewart, Vice President of Customer Service, or why
13 ENO did not initiate an accelerated distribution capital spending program when its
14 reliability performance subsequently declined and before the Council initiated an
15 investigation.

16 Similarly, ENO’s response fails to address why it did not investigate or adopt the use of
17 best distribution maintenance practices to improve reliability performance of its
18 distribution system when problems started and before the Council initiated an
19 investigation.

20 ENO also fails to address why it did not take proactive measures to mitigate the number
21 and duration of outages or why it did not engage Quanta Technology, LLC when the

1 reliability problems began rather than in mid-2018, well after the Council initiated an
2 investigation.

3 Finally, ENO's response fails to address why in communications with the Council and
4 Advisors, and in public statements, it never accurately noted equipment failures, but
5 consistently blamed outages on other causes, like Mylar balloons and squirrels, until forced
6 by Council direction to accurately account for causes.

7 **Q. AS YOU KNOW, THE ACCEPTED PRUDENCE STANDARD IN LOUISIANA IS**
8 **WHETHER THE UTILITY ACTED REASONABLY AND "WENT THROUGH A**
9 **REASONABLE DECISION-MAKING PROCESS TO ARRIVE AT A COURSE OF**
10 **ACTION ... GIVEN THE FACTS AS THEY ARE KNOWN OR SHOULD BE**
11 **KNOWN AT THE TIME." IS THERE ANYTHING IN THE RECORD THAT**
12 **SUPPORTS THAT ENO FOLLOWED THIS STANDARD IN THIS MATTER?**

13 **A.** No. ENO has not even addressed the issue of prudence as it relates to its failure to take
14 any remedial action once it became aware of a decline in distribution reliability. There is
15 no evidence of any decision-making process, just references to actions taken much after
16 the fact and in response to the Council's insistence.

17 Moreover, the actions ENO references were direct results of Council action, not ENO
18 prudence. The remediation plan touted by ENO only came as a result of Council insistence
19 and took several iterations before the Advisors found it an acceptable effort to address the
20 problems.

1 Similarly, engaging Quanta Technology, LLC did not occur until August 2018, long after
2 these proceedings had begun. ENO gives no explanation as to why this was not done sooner
3 when the decline in reliability was first observed.

4 Reaction to significant regulatory pressure is not prudence. ENO's reactive remediation
5 work does not relieve ENO of its preexisting and ongoing obligation to maintain and
6 improve its distribution system to avoid the declining reliability that prompted Council
7 action. ENO unilaterally chose not to adequately maintain its distribution system for
8 several years, instead reducing distribution investment and O&M spending. ENO
9 independently chose not to engage Quanta Technology, LLC sooner. ENO unilaterally
10 chose not to be candid about equipment failures being a primary cause of fair-weather
11 outages, not balloons or animals. ENO unilaterally chose not to be proactive and swift in
12 the face of declining reliability and dramatic increases in outages. There is no evidence of
13 any reasonable deliberative process behind any of these decisions, much less evidence of
14 prudent conduct.

15 **Q. IN YOUR OPINION DID ENO ACT PRUDENTLY?**

16 **A.** Based on the evidence presented by ENO, I cannot conclude that ENO acted prudently,
17 and consistently with industry practices. I believe the reduction in distribution capital
18 additions, lack of evidence of a reasonable decision-making process, decline in reliability
19 and the failure to timely respond to mitigate that decline is evidence supportive of a Council
20 determination of imprudence.

1 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

2 **A.** Yes.

AFFIRMATION

STATE OF COLORADO)
)
COUNTY OF ARAPAHOE)

I, Joseph W. Rogers, am the person identified in the attached Testimony and such testimony was prepared by me or under my direct supervision; the answers and information set forth therein are true to the best of my knowledge and belief, and if asked the questions set forth therein, my answers thereto would, under oath, be the same.

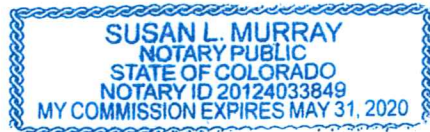


Joseph W. Rogers

Subscribed and sworn to before me
this 23rd day of April 2019.



NOTARY PUBLIC



EDUCATIONAL BACKGROUND AND PROFESSIONAL EXPERIENCE

OF

JOSEPH W. ROGERS

Mr. Rogers graduated from the University of Nebraska, Lincoln in 1990 with the degree of Bachelor of Science in Mechanical Engineering. He is a registered Professional Engineer in the states of Kansas, Colorado, and Louisiana.

Since 2001, Mr. Rogers has been with Legend Consulting Group Limited and is currently an Executive Consultant. Mr. Rogers has more than twenty-six years of domestic and international consulting experience in the electric utility industry, and in engineering related to industrial utility facilities. Mr. Rogers' experience includes strategic planning, modeling, economic analysis, conceptual design, detailed design, construction, commissioning/start-up, and the performance of due diligence reviews of generating plants for project finance purposes.

In 2000 and 2001, while working for Kiewit Industrial Company, Mr. Rogers was the Lead Mechanical Start-Up Engineer for a 550 MW, natural gas-fired, combined cycle power plant. In this position he was responsible for the initial check out and start-up of equipment, start-up procedures, chemical cleaning, steam blow, and various other system commissioning activities.

From 1990 to 1998, Mr. Rogers was employed by Black & Veatch, consulting engineers. While in their employ, he was responsible for construction completion and mechanical commissioning activities for a 660 MW natural gas-fired combined-cycle power plant in Argentina, and 1300 MW of coal-fired conventional steam thermal units in Indonesia. In this capacity, he directed construction activities to support project commissioning, including the performance of engineering necessary to accomplish design modifications. Mr. Rogers has developed commissioning procedures for major generating plant systems and has supervised plant start-up and commissioning activities.

In 1996, Mr. Rogers transferred to the mechanical design department of Black & Veatch in Raleigh, NC. In this position, he performed studies and participated in design projects for utility and non-utility clients. Projects included cogeneration technology screening assessments, a review of existing powerhouse ancillary systems for an industrial client, and the review of piping drawings and completion of miscellaneous piping design issues for a new 50 MW combustion turbine and a 450,000 lb/hr heat recovery steam generator.

From 1990 through 1995, Mr. Rogers was assigned to the Power System Planning and Technical Analysis Group with Black & Veatch in Kansas City, Missouri. In this position, he conducted various system planning and feasibility studies for domestic and international clients. Activities included: technology screening and selection studies, development of utility generation expansion plans, generating system production cost simulation and analysis, and Monte Carlo reliability/availability assessments to predict plant availability and improvements attributable to proposed plant design changes.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-18-07	2019	City of New Orleans	Testimony regarding the examination and review of the utility’s application for a change in electric and gas rates. Testimony included: general ratemaking principals; recommendations on the requested change in rates; recommendations on the necessity of utility proposed riders; corrections and changes to proposed riders, and the utility’s community solar offering.
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-16-02	2017	City of New Orleans	Testimony regarding an application to construct a peaking power plant in New Orleans. Issues addressed in testimony included capacity need, economic analyses, operational flexibility, and issues relating to prices in the Midcontinent Independent System Operator, Inc. (“MISO”) capacity market.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Arkansas River Power Authority	Prowers County District Court	Case No.: 14cv30031	2016	City of Lamar Colorado (Allen Vellone Wolf Helfrich & Factor P.C.)	Affidavit and Expert Report regarding general system planning and the utility's decision to repower an existing natural gas fired boiler with a coal-fired boiler.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-15-01	2015	City of New Orleans	Testimony regarding the utility’s proposed cost-based power purchase agreement (“PPA”) for 20 percent of the capacity and related energy from Power Blocks 3 and 4 of Union Power Station (“UPS”) and the utility’s subsequent revised application of for the acquisition of Power Block 1 of UPS. Testimony included: a review and revision of the utility’s net benefit analyses; the acquisition price of UPS; the consistency of the acquisition with the utility’s IRP process; opinions on the potential benefits and risks associated with the proposed acquisition; concerns with the utility’s proposed method of recovery of UPS energy related costs and Long Term Service Agreement (“LTSA”) costs; and recommendations to the Council.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc. and Entergy Louisiana, LLC	Council of the City of New Orleans	UD-14-02	2015	City of New Orleans	Testimony regarding sale of electric utility operations and certain assets serving the fifteenth ward of the City of New Orleans. Testimony specifically regarding the proposed “slice-of-system” purchase power agreement, proposed form of combined fuel adjustment clause, and proposed environmental adjustment clause rider.
Entergy New Orleans, Inc. and Entergy Louisiana, LLC	Council of the City of New Orleans	UD-11-01	2014	City of New Orleans	Testimony regarding the treatment of Midcontinent Independent System Operator, Inc. related revenues and expenses for which the utilities requested recovery in their respective Fuel Adjustment Clause mechanisms, the configuration of Transmission Pricing Zones for the Entergy Operating Companies, and the current status of the Entergy System Agreement.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc. and Entergy Louisiana, LLC	Council of the City of New Orleans	UD-12-01	2013	City of New Orleans	Testimony regarding the proposed divestiture of the Entergy Operating Companies' transmission assets to ITC Holdings Corp. Specifically related to the transmission pricing zone configuration.
Entergy Corporation	Federal Energy Regulatory Commission	EL09-61-002	2013	City of New Orleans	In FERC Opinion No. 521, the Commission determined that Entergy violated the Entergy System Agreement. Provided testimony regarding separate estimates of damages and associated calculation methods proposed by both Entergy Services, Inc. and the Louisiana Public Service Commission, a discussion of the Commission's findings in Opinion No. 521, and a review of each of the calculation methods and their conformance with the Commission's findings.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc. and Entergy Louisiana, LLC	Council of the City of New Orleans	UD-11-01	2012	City of New Orleans	Testimony regarding the proposed transfer by Entergy New Orleans, Inc. and Entergy Louisiana, LLC of functional control of Transmission assets to the Midwest Independent Transmission System Operator regional transmission organization. Testimony issues included: factors which could significantly impact the estimated net benefits, the allocation of Auction Revenue Rights, potential revisions to the Entergy System Agreement, the determination of transmission pricing zones, the treatment of Qualifying Facilities, the potential impacts of environmental regulations, the proposed capacity market in MISO, and conditions of approval regarding the Council's public interest determination.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-11-03	2011	City of New Orleans	Testimony regarding Entergy New Orleans, Inc. participation in Unit 6 at Ninemile Point Station through a power purchase agreement. Testimony issues included regional requirements and the need for new generating capacity in Amite South, critique of the cost/benefit analyses, estimated capital costs, and the treatment of the long term service agreement associated with maintenance of the proposed facility.
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-11-02	2011	City of New Orleans	Testimony regarding the appropriate amount of charges recoverable from ENO ratepayers as a result of the re-pricing of two power purchase agreements pursuant to FERC Opinion Nos. 485 and 485-A. Identification of calculation errors and the incorrect application of applicable testimony in the related FERC proceeding relating to the development of the amounts requested by the utility as a result of the re-pricing.

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-08-03	2008, 2009	City of New Orleans	A revised fuel adjustment clause rate formula that removes a majority of the non-fuel costs associated with ENO's allocated share of Grand Gulf Nuclear Station and eliminates recognized inadequacies in the current fuel adjustment clause rate formula
Entergy Corporation	Federal Energy Regulatory Commission	ER03-583-000, et. al.	2004	City of New Orleans	The allocation of certain purchase power wholesale contracts among the Entergy Operating Companies is correct and the benefits should be preserved by the FERC
Entergy New Orleans, Inc.	Council of the City of New Orleans	UD-01-04 and UD-03-01	2003	City of New Orleans	The Council's approval of proposed supply contracts results in fuel diversity and a just and reasonable approach. The proposed settlement should be approved to effectuate ratepayer savings

REPRESENTATIVE LISTING
TESTIMONY EXPERIENCE OF JOSEPH W. ROGERS

Utility Company	Regulatory Agency	Docket No.	Date Filed	Client Represented	Testimony Issues
Entergy Corporation	Federal Energy Regulatory Commission	EL01-88-000	2002	City of New Orleans	The implementation of a FERC approved tariff has resulted in inequitable cost-sharing among the parties. The tariff cost sharing mechanisms, as written, cannot guarantee reasonable results in the current utility environment