

May 16, 2019

Lora W. Johnson, CMC, LMMC  
Clerk of Council  
Room 1E09, City Hall  
1300 Perdido Street  
New Orleans, LA 70112

Re: *Revised Application of Entergy New Orleans, LLC for a Change in Electric and Gas Rates Pursuant to Council Resolutions R-15-194 and R-17-504 and for Related Relief*  
Council Docket No. UD-18-07

Dear Ms. Johnson:

On behalf of Entergy New Orleans, LLC ("ENO" or the Company), please find enclosed for your further handling an original and three copies of Entergy New Orleans, LLC's Reply to Advisors' Opposition to Motion to Strike Portions of Advisors' Surrebuttal Testimony, which I would appreciate your filing into the record of this proceeding. Please file an original and two copies into the record in the above referenced matter, and return a date-stamped copy to our courier.

Should you have any questions regarding the above/attached, please do not hesitate to contact me.

With kindest regards, I am


Sincerely,



Alyssa Maurice-Anderson

AMA/amb  
Enclosures

cc: Official Service List via email

RECEIVED  
MAY 16 2019  
BY: 

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

<b>REVISED APPLICATION OF</b>	)	
<b>ENTERGY NEW ORLEANS, LLC FOR</b>	)	
<b>A CHANGE IN ELECTRIC AND GAS</b>	)	
<b>RATES PURSUANT TO COUNCIL</b>	)	<b>DOCKET NO. UD-18-07</b>
<b>RESOLUTIONS R-15-194 AND R-17-</b>	)	
<b>504 AND FOR RELATED RELIEF</b>	)	

**ENTERGY NEW ORLEANS, LLC'S REPLY TO ADVISORS' OPPOSITION TO  
MOTION TO STRIKE PORTIONS OF ADVISORS' SURREBUTTAL TESTIMONY**

NOW, BEFORE THE COUNCIL OF THE CITY OF NEW ORLEANS, comes Entergy New Orleans, LLC ("ENO" or the "Company") and files this reply to the opposition filed by the Advisors to the Council of the City of New Orleans (the "Advisors") to ENO's Motion to Strike Portions of Surrebuttal Testimony of Advisors' Witnesses James M. Proctor and Victor M. Prep. In their opposition, the Advisors do not dispute that the testimony regarding a Capital Asset Pricing Model ("CAPM") analysis performed by Goldman, Sachs & Company ("Goldman") is offered to prop up the opinion Mr. Proctor offered in his direct testimony regarding a just and reasonable return on equity ("ROE") and therefore could have been presented on direct. Nor do the Advisors deny that ENO is unduly prejudiced by the Advisors withholding such testimony until their surrebuttal case.

Also, the Advisors do not dispute that Mr. Proctor had the opportunity to but did not comment on the facts included in the Private Letter Rulings in his direct testimony, and they do not show where Mr. Roberts commented on the facts in his rebuttal testimony. Additionally, the Advisors do not explain why Mr. Proctor ignored ENO's projection of the Prepaid Pension Asset and did not propose and quantify his adjustment in his direct testimony. Finally, Pages 11 and 12 of Mr. Prep's Direct Testimony do not contain the words "comply" or "compliance"; compliance

with Resolution R-17-504 is a new subject being raised at the eleventh hour. As more fully set forth in detail in ENO's motion and below, the objected-to portions of Mr. Proctor's and Mr. Prep's testimony are not proper rebuttal testimony and should be stricken from the record.

**A. Evidence regarding Goldman's CAPM analysis is an improper and untimely attempt to bolster Mr. Proctor's direct testimony and results in unfair prejudice to ENO.**

The Advisors in their opposition take the position that because Mr. Hevert opined that Mr. Proctor's recommended ROE is not a reasonable estimate of ENO's cost of equity, Mr. Proctor should be allowed to offer additional evidence of other ROE analyses as support for his recommendation. To the contrary, evidence of analyses or studies that an expert contends support or offer a basis for his or her opinion must be disclosed on direct and is not the proper subject of when such opinion and its bases are challenged by an opposing party.

Advisors admit that Mr. Proctor offers testimony regarding both the factual details and the results of the Goldman CAPM analysis in response to Mr. Hevert's opinions regarding the reasonableness of Mr. Proctor's ROE recommendation, use of historical estimates of the market risk premium, and conclusions on returns based on low-beta coefficients.<sup>1</sup> Offering facts regarding the Goldman CAPM analysis, purportedly in response to Mr. Hevert's *opinions*, is not proper rebuttal testimony.<sup>2</sup> Mr. Proctor's testimony may have been acceptable surrebuttal evidence had Mr. Hevert testified in his rebuttal that neither ENO nor any other Entergy entity had employed the CAPM analysis to estimate ROE; however, it is not appropriate in response to Mr. Hevert's

---

<sup>1</sup> See Advisors' Opposition to Entergy New Orleans, LLC's Motion to Strike Portions of Advisors' Surrebuttal Testimony ("Advisors' Opposition") at 1-3.

<sup>2</sup> *State v. Bagwell*, 519 So.2d 875, 881 (La. App. 2d Cir. 1988); *State v. Dayton*, 445 So.2d 76 (La. App. 2d Cir. 1984); see also *State v. Franklin*, 956 So.2d 823, 837 (La. App. 2d Cir. 2007) ("'Rebuttal evidence' is that which is offered to explain, repel, counteract or disprove *facts* given in evidence by the adverse party: . . .") (emphasis added).

opinion testimony regarding the reasonableness of Mr. Proctor's CAPM analysis and ROE recommendation.

Moreover, rebuttal evidence is evidence that has become relevant or important *only* due to evidence introduced by an opposing party.<sup>3</sup> Rebuttal evidence is to be confined to *new matters* adduced by the defense.<sup>4</sup> The reasonableness of Mr. Proctor's CAPM analysis and resulting ROE recommendation, and the bases and support for his opinion, became an issue as soon as he offered testimony on the topic in his direct. Whether Mr. Proctor used appropriate methodology to develop a sound opinion on direct did not become relevant only because of Mr. Hevert's rebuttal testimony questioning its reasonableness. An expert's methodology must be explained and supported on direct before any opinion is admissible, regardless of any rebuttal on the issue. The analyses that Mr. Proctor contends support his CAPM study and ROE recommendation are not new matters adduced by ENO on rebuttal; they are facts that he was bound to disclose on direct as part of his initial opinion. By waiting until Mr. Proctor's surrebuttal to offer evidence of the Goldman CAPM analysis as support for Mr. Proctor's opinion, the Advisors effectively attempted to reserve a portion of their case-in-chief until the close of prefiled testimony, so that ENO has no reasonable opportunity to offer responsive evidence. Such an attempt is "contrary to statute, to ancient jurisprudence, and to rules of fair play."<sup>5</sup>

The Advisors do not dispute that Mr. Proctor's surrebuttal testimony regarding the Goldman CAPM analysis is intended to bolster Mr. Proctor's testimony on direct regarding his ROE recommendation; instead, they reiterate that the testimony concerning the Goldman CAPM

---

<sup>3</sup> See *State v. Widenhouse*, 582 So.2d 1374, 1386 (La. App. 2d Cir. 1991), *State v. Turner*, 337 So.2d 455, 458 (La. 1976).

<sup>4</sup> See *Dean Classic Cars, L.L.C. v. Fidelity Bank and Trust Co.*, 978 So.2d 393, 401, n. 1 (La. App. 1 Cir. 2007); *Capel v. Langford*, 734 So.2d 835, 847 (La. App. 3 Cir. 1999).

<sup>5</sup> *State v. Hatfield*, 155 So.3d 572, 595 (La. App. 4 Cir. 2014), citing *Turner*, 337 So.2d at 458 (La. 1976).

analysis shows that Mr. Proctor's ROE recommendation is consistent with that of Goldman and shows the reasonableness of Mr. Proctor's use of the CAPM to estimate ENO's cost of equity.<sup>6</sup> This is exactly the type of evidence that could and should have been offered on direct, and the Advisors make no argument in their opposition that the testimony could not have been part of Mr. Proctor's direct.

Perhaps most importantly, the Advisors in their opposition do not deny that ENO will be unduly prejudiced by the timing of Mr. Proctor's testimony regarding the Goldman CAPM analysis. As explained in detail in its motion, ENO is put at an unfair advantage given the restricted procedural schedule and the upcoming hearing and the resulting lack of sufficient time to adduce the evidence and information properly required to explain why the Goldman CAPM analysis is wholly inapplicable to Mr. Proctor's methodology and ROE opinion. At this juncture, it is not "practicable to mitigate the prejudice to" ENO resulting from the Advisors' failure to appropriately present the Goldman CAPM analysis on direct as purported support and justification for Mr. Proctor's recommendation.<sup>7</sup>

Therefore, because it is undisputed that (a) Mr. Proctor's surrebuttal testimony regarding the Goldman CAPM analysis is offered to bolster the reasonableness of the ROE opinion he offered on direct; (b) the testimony could have been presented on direct; and (c) ENO does not have "sufficient opportunity to respond" and is therefore unfairly prejudiced due to presentation of the evidence on surrebuttal, such testimony should be stricken.<sup>8</sup>

---

<sup>6</sup> Advisors' Opposition at 2.

<sup>7</sup> Memorandum and Order of April 16, 2019, at 4.

<sup>8</sup> *Id.* at 5.

- B. The Advisors do not dispute that Mr. Proctor had the opportunity to but did not comment on the facts included in the Private Letter Rulings in his direct testimony, and they do not show where Mr. Roberts commented on the facts in his rebuttal testimony.**

The Advisors do not dispute that Mr. Proctor had the Private Letter Rulings prior to the filing of his direct testimony and could have commented on them in his direct testimony. They provide no explanation for why he did not do so. Furthermore, the Advisors did not identify a single comment by Mr. Roberts on rebuttal regarding the facts included in the Private Letter Rulings to which Mr. Proctor's comment in his surrebuttal testimony is responsive.<sup>9</sup> Moreover, had Mr. Proctor provided his comment earlier in this proceeding, the Company could have explored ways to address it. Accordingly, the Hearing Officer should strike the one question and answer regarding the Private Letter Rulings that is at issue.<sup>10</sup>

- C. The Advisors do not explain why Mr. Proctor ignored ENO's projection of the Prepaid Pension Asset and did not propose and quantify his adjustment in his direct testimony, and the referenced data request responses are irrelevant.**

The Advisors do not dispute that Mr. Proctor is offering a new basis for his recommended Prepaid Pension Asset adjustment in his surrebuttal testimony. Instead, they contend the new basis is justified by the timing of ENO's responses to Advisors 12-2 and 12-3. The Advisors are incorrect.

Mr. Proctor could have proposed his recommended adjustment and quantified the five-year average in his direct testimony by using ENO's projection of the Prepaid Pension Asset. Indeed, the Company provided the basis for this projection in its response to Advisors 3-35 on November 26, 2018 (*i.e.*, prior to the filing of Advisors' direct testimony in February 2019). Furthermore,

---

<sup>9</sup> *E.g.*, Proctor Surrebuttal at 49 ("It is apparent to me from reading the PLRs the IRS relied on misinformation provided by the utilities seeking the PLRs.").

<sup>10</sup> The Company does not contest the Advisors' ability to argue that the Private Letter Rulings are not precedent pursuant to the Internal Revenue Code.

that response shows that the year-to-year change in the balance of the Prepaid Pension Asset is the difference between the Company's cash pension contributions and its pension expense. That response also shows that the change in the balance of the Prepaid Pension Asset during 2018 does not depend on the market value of the pension plan assets at the end of 2018, although Mr. Proctor incorrectly thinks it does.<sup>11</sup> Mr. Proctor's apparent failure to understand these dynamics does not entitle him to file supplemental direct testimony. Thus, the Hearing Officer should strike Mr. Proctor's new basis for his recommended Prepaid Pension Asset.

**D. Pages 11 and 12 of Mr. Prep's direct testimony do not contain the words "comply" or "compliance"; compliance with Resolution R-17-504 is a new subject being raised at the eleventh hour.**

Pages 11 and 12 of Mr. Prep's direct testimony explain Mr. Prep's approach to developing a cost of service and quotes from Resolution R-17-504 to support why he used such approach in developing his cost of service studies. Nowhere on pages 11 and 12 does Mr. Prep opine that ENO did not comply with Resolution R-17-504. Furthermore, Mr. Klucher does not discuss Resolution R-17-504 or its requirements in his rebuttal testimony. Rather, he explains why ENO used its approach in developing its cost of service studies and his concerns with Mr. Prep's approach to developing a cost of service; for example, the potential for double recovery of costs. Thus, compliance with Resolution R-17-504 is a new subject that should not be raised for the first time in surrebuttal testimony.

Moreover, ENO has not received a notice of deficiency, and the Advisors do not articulate any harm from the alleged non-compliance. At this point in the proceeding, allegations of non-compliance on what is, at best, an issue of presentation and not of substance are not helpful. The

---

<sup>11</sup> Proctor Direct at 68; Proctor Surrebuttal at 68.



surrebuttal testimony in question is interposed for an improper purpose and irrelevant at this stage of the proceeding, and the Hearing Officer should strike the surrebuttal testimony in question.

**E. Conclusion**

For all these reasons, and those set forth in the motion itself, ENO's Motion to Strike Portions of Surrebuttal Testimony of Advisors' Witnesses James M. Proctor and Victor M. Prep should be granted.

Respectfully submitted,

BY: 

Timothy S. Cragin, LSBN 22313  
Alyssa Maurice-Anderson, LSBN 28388  
Harry M. Barton, LSBN 29751  
ENTERGY SERVICES, LLC  
639 Loyola Avenue  
Mail Unit L-ENT-26E  
New Orleans, Louisiana 70113  
Telephone: (504) 576-6523  
Facsimile: (504) 576-5579

Stephen T. Perrien, LSBN 22590  
TAGGART MORTON, L.L.C.  
1100 Poydras Street, Suite 2100  
New Orleans, Louisiana 70113  
Telephone: (504) 599-8500  
Facsimile: (504) 599-8501

John F. Williams, TX Bar No. 21554100  
Scott R. Olson, TX Bar No. 24013266  
James F. McNally, Jr., TX Bar No. 13815680  
DUGGINS WREN MANN & ROMERO, LLP  
One American Center  
600 Congress Avenue, Suite 1900  
Austin, Texas 78701  
Telephone: (512) 744-9300  
Facsimile: (512) 744-9399

**ATTORNEYS FOR ENTERGY NEW ORLEANS, LLC**



**CERTIFICATE OF SERVICE**

I hereby certify that I have this 16<sup>th</sup> day of May, 2019, served the required number of copies of the foregoing pleading upon all other known parties of this proceeding individually and/or through their attorney of record or other duly designated individual, by:  electronic mail,  facsimile,  hand delivery, and/or by depositing same with  overnight mail carrier, or  the United States Postal Service, postage prepaid.

Lora W. Johnson, CMC, LMMC  
Clerk of Council  
Council of the City of New Orleans  
City Hall, Room 1E09  
1300 Perdido Street  
New Orleans, LA 70112

Erin Spears, Chief of Staff  
Connolly A. F. Reed  
Bobbie Mason  
Council Utilities Regulatory Office  
City of New Orleans  
City Hall, Room 6E07  
1300 Perdido Street  
New Orleans, LA 70112

Andrew Tuozzolo  
CM Moreno Chief of Staff  
1300 Perdido Street, Rm 2W40  
New Orleans, LA 70112

David Gavlinski  
Council Chief of Staff  
New Orleans City Council  
City Hall, Room 1E06  
1300 Perdido Street  
New Orleans, LA 70112

Sunni LeBeouf  
Michael J. Laughlin  
Mary Katherine Kauffman  
City Attorney Office  
City Hall, Room 5th Floor  
1300 Perdido Street  
New Orleans, LA 70112

Norman White  
Department of Finance  
City Hall – Room 3E06  
1300 Perdido Street  
New Orleans, LA 70112

Hon. Jeffrey S. Gulin  
3203 Bridle Ridge Lane  
Lutherville, MD 21093

Clinton A. Vince, Esq.  
Presley R. Reed, Jr., Esq.  
Emma F. Hand, Esq.  
Dentons US LLP  
1900 K Street NW  
Washington, DC 20006

Basile J. Uddo  
J.A. "Jay" Beatmann, Jr.  
c/o Dentons US LLP  
650 Poydras Street, Suite 2850  
New Orleans, LA 70130

Joseph W. Rogers  
Victor M. Prep  
Byron S. Watson  
Legend Consulting Group  
6041 South Syracuse Way  
Suite 105  
Greenwood Village, CO 80111

Errol Smith  
Bruno and Tervalon  
4298 Elysian Fields Avenue  
New Orleans, LA 70122

Brian L. Guillot  
Vice-President, Regulatory Affairs  
Entergy New Orleans, LLC  
Mail Unit L-MAG-505B  
1600 Perdido Street  
New Orleans, LA 70112

Polly S. Rosemond  
Seth Curcington  
Keith Woods  
Derek Mills  
Kevin T. Boleware  
Entergy New Orleans, LLC  
1600 Perdido Street  
Mail Unit L-MAG-505B  
New Orleans, LA 70112

Tim Cragin  
Alyssa Maurice-Anderson  
Harry Barton  
Entergy Services, LLC  
Mail Unit L-ENT-26E  
639 Loyola Avenue  
New Orleans, LA 70113

Joe Romano, III  
Suzanne Fontan  
Therese Perrault  
Entergy Services, LLC  
Mail Unit L-ENT-4C  
639 Loyola Avenue  
New Orleans, LA 70113

Renate Heurich  
1407 Napoleon Ave, #C  
New Orleans, LA 70115

Andy Kowalczyk  
1115 Congress St.  
New Orleans, LA 70117

Logan Atkinson Burke  
Sophie Zaken  
Alliance for Affordable Energy  
4505 S. Claiborne Avenue  
New Orleans, La 70125

Susan Stevens Miller  
Earthjustice  
1625 Massachusetts Ave., NW, Ste. 702  
Washington, DC 20036

Katherine W. King  
Randy Young  
KEAN MILLER LLP  
400 Convention Street, Suite 700 (70802)  
Post Office Box 3513  
Baton Rouge, LA 70821-3513

Carrie R. Tournillon  
KEAN MILLER LLP  
900 Poydras Street, Suite 3600  
New Orleans, LA 70112

Mark Zimmerman  
720 I Hamilton Blvd.  
Allenton, PA 18195-1501

Maurice Brubaker  
Air Products and Chemicals, Inc.  
16690 Swingly Ridge Road  
Suite 140  
Chesterfield, MO 63017

Myron Katz, PhD  
Building Science Innovators, LLC  
302 Walnut Street  
New Orleans, LA 70118

John H. Chavanne  
111 West Main St., Suite 2B  
P.O. Box 807  
New Roads, LA 70760-8922

Brian A. Ferrara  
Yolanda Y. Grinstead  
Sewerage and Waterboard of New Orleans  
Legal Department  
625 St. Joseph St., Rm 201  
New Orleans, Louisiana 70165

Luke F. Piontek  
Christian J. Rhodes  
Shelley Ann McGlathery  
Roedel, Parsons, Koch, Blache,  
Balhoff & McCollister  
1515 Poydras Street, Suite 2330  
New Orleans, LA 70112

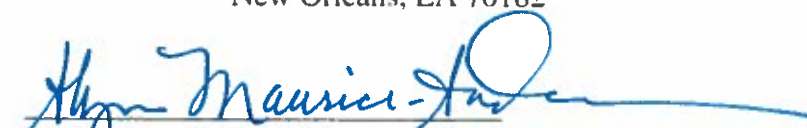
Lane Kollen  
Stephen Baron  
Randy Futral  
Richard Baudino  
Brian Barber  
J. Kenney & Associates  
570 Colonial Park Dr., Suite 305  
Rosewell, GA 30075

Rev. Gregory Manning  
Pat Bryant  
Happy Johnson  
Sylvia McKenzie  
c/o A Community Voice  
2221 St. Claude Avenue  
New Orleans, LA 70117

Grace Morris  
Sierra Club  
4422 Bienville Ave  
New Orleans, LA 70119

Dave Stets  
Sierra Club  
2101 Selma St.  
New Orleans, LA 70112

Julie DesOrmeaux Rosenweig  
Sierra Club  
PO Box 8619  
New Orleans, LA 70182

  
Alyssa Maurice-Anderson