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October 11, 2019

**Via Hand Delivery**

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

**Re: *Resolution and Order Opening an Inquiry into Establishing a Smart Cities Initiative for the City of New Orleans and Directing Entergy New Orleans, LLC to Report with Respect to Matter Related to Grid Modernization***  
**Docket No. UD-18-01**

Dear Ms. Johnson:

Please find enclosed an original and three copies of the Entergy New Orleans, LLC's Comments Concerning the Issues Identified for The Council of The City of New Orleans' Information Gathering Process Regarding Electric Vehicles. 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 matter, please don't hesitate to contact me at 504-576-2984. Thank you for your assistance with this matter.

Sincerely,

  
Harry M. Barton

HMB/bkd  
Enclosures

cc: Official Service List (via e-mail)

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

|                                    |   |                            |
|------------------------------------|---|----------------------------|
| <b>IN RE: RESOLUTION AND ORDER</b> | ) |                            |
| <b>OPENING AN INQUIRY INTO</b>     | ) |                            |
| <b>ESTABLISHING A SMART CITIES</b> | ) |                            |
| <b>INITIATIVE FOR THE CITY OF</b>  | ) |                            |
| <b>NEW ORLEANS AND DIRECTING</b>   | ) | <b>DOCKET NO. UD-18-01</b> |
| <b>ENTERGY NEW ORLEANS, LLC TO</b> | ) |                            |
| <b>REPORT WITH RESPECT TO</b>      | ) |                            |
| <b>MATTERS RELATED TO GRID</b>     | ) |                            |
| <b>MODERNIZATION</b>               | ) |                            |

**ENTERGY NEW ORLEANS, LLC’S COMMENTS CONCERNING THE  
ISSUES IDENTIFIED FOR THE COUNCIL OF THE CITY OF NEW ORLEANS’  
INFORMATION GATHERING PROCESS REGARDING ELECTRIC VEHICLES**

NOW, before the Council of the City of New Orleans (“Council”) comes Entergy New Orleans, LLC (“ENO” or “Company”) and, pursuant to Council Resolution No. R-18-537, submits its Comments Concerning the Consensus List of Issues for Consideration in the Council’s Information Gathering Process Regarding Electric Vehicles (“Comments”). The Council initiated Docket UD-18-02, via Resolution No. R-18-100,<sup>1</sup> following a joint recommendation from the Advisors, ENO, and the City’s Environmental Advisory Committee (“EAC”) to address a specific issue that related to the provision of charging services for the public for compensation that the EAC had identified as a potential obstacle to the construction, location, and operation of electric vehicle charging stations in the City. In Resolution R-18-100, the Council resolved the issue and also found that (i) “encouraging the use of electric vehicles is in the public interest,” and (ii) “the construction, location and operation of electric vehicle charging stations on both private and public property should be encouraged.” In addition to making these clear policy statements, the Council also noted that electric vehicles and electric vehicle charging stations present several regulatory

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<sup>1</sup> Resolution No. R-18-536 merged Docket UD-18-02 into Docket UD-18-01. R-18-536, in concert with R-18-537, established concurrent procedural schedules for the development of a Smart City Master Plan and the instant Information Gathering Process related to electric vehicles.

issues and directed the initiation of this Docket “for the gathering of additional information, including public comment, and developing additional proposed actions as are deemed necessary.”

In June 2019, following the receipt of the Parties’ initial comments about the scope of issues that should be considered in this initial phase of the Council’s Information Gathering Process, the Advisors published a proposed list of issues to be considered in this matter. The parties participated in a technical conference on August 23, 2019 to discuss the proposed scope of issues. Consensus was reached at that conference on the need to consider several issues, and the Advisors’ published a list of such issues on September 5, 2019 (the “Consensus Issues List”).

The range of issues covered in this Consensus Issues List is very broad. However, the Resolutions issued by the Council to date in this Docket do not provide a great degree of clarity on the purpose of the comments to be filed at this stage of the proceedings. ENO assumes, given the breadth of the topics covered and the fact that some topics enumerated would require collection of data over statistically significant sample sizes, that the instant stage of the proceeding is not meant to elicit exhaustive comments, data, or information on the items enumerated in the Consensus Issues List. ENO also assumes the Parties will have additional opportunities to gather data and provide information during a subsequent phase of the proceedings, following the filing of the Advisors Report, scheduled for February 2020. Finally, ENO assumes that the Council does not intend to adopt any policies or rules affecting ENO’s operations in this Docket, without first providing adequate notice and an opportunity to address such policies or rules.

As such, ENO provides commentary on a subset of issues for which it possesses sufficient information at this time. ENO’s comments are organized according to the Themes presented in the Consensus Issues List. ENO looks forward to continuing to participate in this Information Gathering Process during subsequent phases of the proceeding.

For the reasons discussed in its initial comments filed on February 28, 2019, and elaborated upon below, ENO is encouraged that the Council is taking the time to gather information in this process, but also not letting this process become an impediment to the implementation of policies and programs designed to further adoption of electric vehicles (“EVs”) and the construction of

necessary charging infrastructure in the City of New Orleans. Electrification of the transportation sector will be a crucial step in achieving the reduction in carbon emissions necessary to effectively respond to climate change, a fact which the City of New Orleans, the City Council and other officials, the Company, and many other parties have publicly acknowledged. The Council is wise not to impede increased use of EVs and implementation of much-needed EV charging infrastructure, even as it conducts this necessary Information Gathering Process.

**I. Theme I: Whether the Council Should Take Action to Encourage EV adoption in New Orleans?**

a. Appropriateness of Continued Council Action to Encourage Adoption.

By finding, in Resolution R-18-100, that (i) “encouraging the use of electric vehicles is in the public interest,” and (ii) “the construction, location and operation of electric vehicle charging stations on both private and public property should be encouraged,” the Council has already taken some action to encourage EV adoption, and ENO has responded to the Council’s clear directives. But additional Council actions will likely be necessary and are warranted. The Council has repeatedly noted the serious, even existential, threat that climate change poses to New Orleans and has committed to continuing policies and supporting investments that help lower carbon emissions to combat this threat.<sup>2</sup> Promotion of EV adoption is an essential component of any comprehensive climate action strategy.<sup>3</sup> The Advisors and the City Administration have documented the emissions reduction potential of electric vehicles. In the Advisors’ Report, recently filed in Docket UD-19-01, the Advisors noted that “electrification of vehicle fleets and energy efficiency both exceed the potential carbon emissions reductions potential of renewable energy.”<sup>4</sup> The City of New Orleans’ Climate Action Plan, issued in 2017, notes that 44% of emissions produced in New Orleans are emitted from the transportation sector.<sup>5</sup> Based on these and other observations, the

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<sup>2</sup> See, e.g., Council Resolution No. R-17-428.

<sup>3</sup> ENO and other parties have documented this fact extensively in Council Docket UD-19-01.

<sup>4</sup> See, Advisors’ Report on Renewable Portfolio Standards, filed September 3, 2019 in Council Docket UD-19-01, at pg. 7.

<sup>5</sup> See, Climate Action Plan at pgs. 18-20.

Climate Action Plan states that “We must dramatically clean the fuel mix of our transit fleet and have several options from renewable diesel to electrification drawing from our cleaner grid.”<sup>6</sup> The Climate Action Plan also recommends expanding access to electric vehicles as an action item towards achieving emissions reductions goals.<sup>7</sup> The City Administration recently announced a commitment to begin transitioning the City’s vehicle fleet to an electric one with an eye toward “helping to cut greenhouse gas emissions that are warming the planet, saving taxpayer money, improving public health, and reducing our nation’s dependency on oil.”<sup>8</sup> In light of these benefits, and the fact that the private market developments have not yet led to accessible public charging infrastructure necessary to spur greater adoption of electric vehicles, ENO believes the Council should engage in additional efforts to promote EV adoption and to promote the installation of much-needed EV-related infrastructure.

To that end, ENO submitted a Pilot for consideration in the 2018 Combined Rate Case wherein ENO proposes to invest \$500,000 in public charging infrastructure to be located on City property at sites identified through a stakeholder process and deemed optimal by the City. As ENO noted in that filing, the Pilot would facilitate the collection of data necessary to consider a variety of issues related to EVs, many of which the Parties to this proceeding have included in the Consensus Issues List under Theme I.<sup>9</sup> ENO discusses the merits of its proposed Pilot and the empirical evidence that demonstrates the necessity of involving utilities in the construction of EV infrastructure further below.

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<sup>6</sup> *Id.* at pg. 42.

<sup>7</sup> *Id.* at pg. 43.

<sup>8</sup> See, <https://nola.gov/mayor/news/june-2019/city-of-new-orleans-announces-partnership-with-climate-mayors-ev-purchasing-collaborative,-one-of-12/>

<sup>9</sup> For example, Issues I.6 and I.7 both involve collection of data on how EV usage will impact ENO’s resource portfolio and the distribution system. Data collected from charging stations deployed as part of ENO’s proposed Pilot would be valuable for informing these issues, and many other relevant considerations.

b. Other Issues for Consideration and Data Sources.

The issues listed under Theme I also seek information on distinctions and opportunities for electrification of various kinds and classes of vehicles, different kinds of charging stations, and the kinds of incentives available and necessary to pursue such electrification opportunities.<sup>10</sup> Information on many of these topics is publicly-available, and ENO assumes the Council, Advisors, and other parties will research and access such information as part of their participation in this proceeding. For example, ENO's customers have local and state EV-related information available to them through an Entergy-sponsored website that was created in 2016.<sup>11</sup> The U.S. Department of Energy ("DOE") also maintains a website on the incentives available at the Federal level and in each state.<sup>12</sup> Basic information on the types of charging stations is available from several sources.<sup>13</sup> The Electric Power Research Institute ("EPRI") also recently updated its Consumer Guide to Electric Vehicles, which provides extensive information on the types of vehicles and chargers available.<sup>14</sup> As this proceeding continues, and the Council narrows its focus on more specific issues, ENO will be glad to assist the Council in obtaining more specific and extensive information.

ENO is also currently operating a program from which information relevant to these issues can be obtained. As was mentioned in ENO's 2018 Rate Case filing, ENO is currently running a beneficial electrification initiative that encourages the adoption of electrically-powered equipment in place of fossil-fuel-powered equipment, through education, awareness, and rebates.<sup>15</sup> To help facilitate the addition of more residential and commercial Level 2 EV chargers in New Orleans and provide a means to gather more information about utilization, ENO, through eTech, offers a

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<sup>10</sup> See, Issues I.1, I.3, and I.4

<sup>11</sup> See, <https://entergypowerdrive.com/>

<sup>12</sup> See, <https://www.energy.gov/eere/electricvehicles/electric-vehicles-tax-credits-and-other-incentives>

<sup>13</sup> For example, Plug In America has published an EV Charging 101 summary, available at [https://s3-us-west-1.amazonaws.com/zappyassets/img/custom/plugstar/PIA\\_EV\\_Charging\\_101\\_Final.pdf](https://s3-us-west-1.amazonaws.com/zappyassets/img/custom/plugstar/PIA_EV_Charging_101_Final.pdf); the DOE also provides a similar resource, at [www.energy.gov/eere/electricvehicles/vehicle-charging](http://www.energy.gov/eere/electricvehicles/vehicle-charging).

<sup>14</sup> See, [http://mydocs.epri.com/docs/public/3002015368\\_Print.pdf](http://mydocs.epri.com/docs/public/3002015368_Print.pdf)

<sup>15</sup> See, <http://entergyetech.com/>

\$250 rebate to qualifying customers to partially offset the costs they incur to install Level 2 EV chargers at their homes or businesses. In return for providing the rebate, ENO requires certain basic information such as paperwork proving the installation was made, including the total installed cost of the Level 2 charger, the make and model of the equipment, and access to verify the EV charger installation. Knowing which of ENO's customers have installed Level 2 EV chargers will allow ENO to periodically get data about impacts on electric load, including hours of the day, and possible frequency of charging. This knowledge and data will help with distribution grid planning and inform how grid modernization can help to accommodate increased penetration of EVs, a concept discussed further below. ENO also hopes to gain a better understanding as to what equipment is available in the market, customer equipment preferences, the range of total installed costs for chargers installed in New Orleans, what hurdles or impediments might need to be addressed, and customers' charging patterns. To date, eTech incentives for Level 2 charger installations in New Orleans have been provided for 28 residential customers and one industrial customer, who installed two charging stations. ENO plans to continue to update the Council and parties on the eTech initiative and the learnings obtained therefrom in conjunction with this proceeding.

## **II. Theme II: What Role Could the Council have in Encouraging EV Adoption?**

### **a. ENO's Proposed Pilot and Necessity of Utility Involvement to Spur Adoption.<sup>16</sup>**

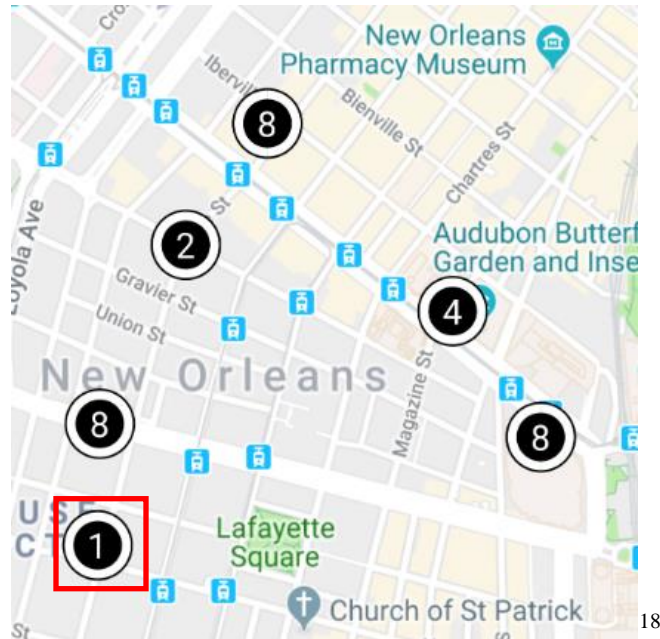
As noted above, based on the Council's strong and clear policy statements from Resolution R-18-100, ENO proposed a Pilot in the 2018 Rate Case for investing \$500,000 in publicly-accessible EV charging stations to be located on City property. ENO's proposal represents a very modest investment (approximately 0.04% of ENO's Net Utility Plant balance as of 12/31/18) and would unquestionably help to further the City's policy goals, particularly with regard to publicly-accessible charging infrastructure.

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<sup>16</sup> See, Issues II.1 and II.4.

The map below shows EV charging locations in the New Orleans Central Business District. Of the 31 individual chargers shown, only 1 (noted by the red box) is actually publicly-accessible, while the other 30 are private locations, which the user must pay the property owner for access.<sup>17</sup>

Figure 1: EV Chargers in New Orleans Central Business District



Clearly, ENO’s proposal represents an important and necessary investment in the currently-lacking network of publicly-accessible charging infrastructure and would help further the city’s policy goals on a front that the market alone has been unable to address. Experience in other jurisdictions that have been able to spur greater EV adoption and the building of necessary infrastructure also shows that ENO’s involvement will be essential for success in helping to spur greater action towards achieving the Council’s goals.

i. Empirical Examples Show the Necessity and Benefits of Utility Involvement in Deploying, and Ownership of, EV Charging Infrastructure.

Across the U.S., as EV adoption rates increase, state regulators and legislators have begun to recognize the clear role for utility involvement and investment in the growth of EV-related

<sup>17</sup> For example, the Ritz-Carlton hotel on Canal Blvd. has eight (8) available charging ports in its parking garage that cover various EV models; however, those eight EV chargers are only accessible by hotel guests.

<sup>18</sup> See, <http://www.chargepoint.com/>.



infrastructure, especially with regard to certain areas that the market alone is unlikely to adequately address. One such example of regulatory acknowledgement of the importance of utilities' role in spurring development of EV adoption was the California Public Service Commission's December 2016 approval<sup>19</sup> of Pacific Gas & Electric's (PG&E) three-year EV pilot program. The utility was approved to deploy and own infrastructure to support up to 7,500 Level 2 EV charging ports, and was approved to own up to 35% of total Electric Vehicle Supply Equipment ("EVSE") ports installed. In the decision, the CPUC asserted that "certain market segments have proven more difficult for private sector providers to penetrate... the Multi-Unit Dwelling ('MUD') market segment is the most difficult for electric vehicle service equipment (EVSE) and electric vehicle (EV) service providers to penetrate."<sup>20</sup> This contention was validated by the settling parties during hearings where, among other things, it was stated:

- "The MUD market is not very well served with EVSE equipment right now, because there are tenant/landlord issues that make it extremely difficult to bring charging infrastructure to those marketplaces."
- "The difficulties associated with deploying MUDs are well known and documented."
- "Residential charging is a virtual necessity. You can't buy a plug-in car if you can't plug in at home... customers that live in MUDs are effectively blocked out of the market."<sup>21</sup>

Other parties identified disadvantaged communities ("DACs") as "another hard to reach market where utility ownership is more appropriate."<sup>22</sup> ChargePoint, a private sector company in the EV charging market, stated, "PG&E can and should help address obstacles currently preventing wider deployment of EV charging infrastructure, especially at MUD locations and DACs." Finally, the Commission found it "appropriate for PG&E to include the EVSE it owns in its rate base, because it will be utility property that is used and useful in rendering utility service."<sup>23</sup>

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<sup>19</sup> See, <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M171/K539/171539218.PDF>.

<sup>20</sup> See, Decision 16-12-065, filed on December 15, 2016 in CPUC Docket 15-02-009, at pg 36.

<sup>21</sup> *Id.* at pg. 37.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at pg. 64.

Another example of explicit recognition of utilities' importance to development of EV infrastructure occurred in Oregon, via state legislation. In 2016, Oregon adopted Senate Bill (SB) 1547,<sup>24</sup> which found that “widespread transportation electrification requires that electric companies increase access to the use of electricity as a transportation fuel, and especially in ‘low[-] and moderate[-]income communities.’”<sup>25</sup> The Oregon legislature also found that the electric companies' role in this effort could achieve “a net benefit for the customers of the electric company” by assisting in “managing the electrical grid, integrating generation from renewable energy resources and improving electric system efficiency and operational flexibility, including the ability of an electric company to integrate variable generating resources.”<sup>26</sup>

Accordingly, in February 2018, the Public Utility Commission of Oregon's Order 18-075<sup>27</sup> allowed the utility PacifiCorp to install, own, and operate publicly-accessible charging stations in its Oregon service territory through a pilot program. In its ruling, the Commission found PacifiCorp's pilot to be “consistent with the legislative findings of SB 1547 and will help increase the use of electricity as a transportation fuel.”<sup>28</sup> It was also stated in the Order that

PacifiCorp will help contribute to that needed investment and make reliable charging infrastructure available to the growing number of EV users. The additional charging stations will also serve to increase awareness of EVs and provide confidence to potential EV users that chargers will be available to them should they decide to make such a purchase. In short, the Public Charging Pilot will make a contribution to increasing access to and awareness of the use of electricity as a transportation fuel.<sup>29</sup>

Furthermore, the Commission was not persuaded by “arguments that PacifiCorp's ownership of the number of additional EV chargers to which the parties stipulated will distort and harm the competitive marketplace. Rather, [they] believe[d] the opposite to be true... ‘creating a highly

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<sup>24</sup> See, <https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/SB1547/Enrolled>.

<sup>25</sup> See, Oregon SB 1547, at pg. 13.

<sup>26</sup> *Id.*

<sup>27</sup> See, <https://apps.puc.state.or.us/orders/2018ords/18-075.pdf>.

<sup>28</sup> See, Order 18-075, filed on February 27, 2018 in PUCO Docket UM-1810, at pg. 7.

<sup>29</sup> *Id.*

visible backbone of fast charging will help drive and support increased electric vehicle sales, which will ultimately be critical to the business model for all EVSE providers.”<sup>30</sup>

Another example occurred earlier this year in Arizona, where the Arizona Corporation Commission in January 2019 issued a policy statement for Electric Vehicles, Electric Vehicle Infrastructure, and the Electrification of the Transportation Sector in Arizona.<sup>31</sup> In the statement, the Commission outlined a number of conclusions regarding the role of utilities, including:

- Public Service Corporations can play a critical and necessary role in the EV market. For instance, deployment of EV charging stations may be appropriate, and their inclusion in rate base to ensure build-out in rural and low-income areas, multi-dwelling units and interstate corridors or highways.<sup>32</sup>
- Public Service Corporations can also, through pilot programs, obtain valuable information on the deployment of charging stations, customer charging patterns, and the need for rate design incentive programs. Pilot programs designed to obtain information relative to deployment of charging stations should be encouraged.<sup>33</sup>

Public utilities like ENO are critical partners for spurring EV adoption.

ENO stands willing and ready to serve as a capable, collaborative partner to the Council, the City, and other stakeholders who have repeatedly acknowledged the benefits of EVs and the urgency with which electrification in the transportation sector is needed. The experience of other progressive regulators, in more fully-developed EV markets, shows that ENO is also a necessary partner for this effort and that ENO’s installation of public charging infrastructure would help, not harm, the competitive market for charging infrastructure, while also providing equitable access to population segments that the competitive market has historically left behind. If the Council and other stakeholders wish to spur the adoption of EVs and the construction of necessary infrastructure in New Orleans in an expeditious and equitable manner, they will embrace ENO’s role and think of creative ways to partner with ENO, rather than engaging in any short-sighted attempts to exclude ENO from these efforts.

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<sup>30</sup> *Id.* at pg. 8.

<sup>31</sup> *See*, <https://docket.images.azcc.gov/0000195197.pdf>.

<sup>32</sup> *See*, Decision No. 77044, in ACC Docket 18-024, at pg. 6.

<sup>33</sup> *Id.*

ii. Concerns Regarding ENO's Proposed Pilot.

ENO is aware of some concerns about its Pilot proposal related to socializing the cost of energy from the approximately 30 to 50 Level 2 charging stations that would be installed. However, evidence submitted in conjunction with ENO's 2018 Rate Case shows that such cost would be *de minimis*, particularly when considering the potential learnings and other benefits enabled by the pilot. Testimony from Byron Watson of the Legend Consulting Firm initially estimated that the annual cost of energy from these charging stations based on a high level of utilization (12 hours per day on average, 7 days a week) would be approximately \$64,400 annually.<sup>34</sup> This conservative estimate assumed that every EV charger will be separately metered when the reality is that some portion of the EV chargers would be located behind existing electric meters, such that the costs of charging would not be socialized. Mr. Watson also later clarified that his estimate "demonstrates the relatively minor harm to ratepayers in general from this socialization of costs."<sup>35</sup> He also stated that the proposal to determine the optimal locations of the proposed charging stations as part of the instant proceeding "is reasonable and mitigates my concerns given the Council's stated interest in promoting environmental benefits, the limited scope of ENO's specific investment proposal, and the **minimal amount of socialized costs.**"<sup>36</sup> Mr. Watson ultimately "recommend[ed] that in the instant proceeding the Council authorize ENO's proposed investment of up-to \$500,000 in public EV charging infrastructure that would provide free EV charging services at roughly 30-50 locations."<sup>37</sup>

Mr. Watson's recommendation that the Council approve the proposed Pilot and his finding that the potential environmental and policy benefits justify the minimal socialization of costs is consistent with prior Council actions and ongoing programs. For example, the Council annually

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<sup>34</sup> See, Rebuttal Testimony of Byron S. Watson, filed on February 1, 2019 in Council Docket UD-18-07, at pgs, 99-100.

<sup>35</sup> See, Sur-rebuttal and Cross Answering Testimony of Byron S. Watson, filed on April 26, 2019 in Council Docket UD-18-07, at pgs. 50-51.

<sup>36</sup> *Id.* at pg. 51 (emphasis added).

<sup>37</sup> *Id.* at pgs. 51-52.

socializes millions of dollars' worth of investments in energy efficiency and demand response to customers to support the Energy Smart program. While cost-effectiveness principles help to ensure that all customers receive some benefits from Energy Smart, it is undeniable that customers who participate in Energy Smart receive more benefits from these investments than those who do not. Yet, the Council finds it appropriate to socialize those costs. Moreover, ENO's proposed Pilot will enable the collection of data that is both relevant to the issues identified in the Consensus Issues List and valuable for the broader goal of spurring greater EV adoption.

Given the enormous potential for the reduction in carbon emissions associated with greater use of EVs, and the nearly universally-accepted fact that reducing carbon emissions rapidly will be necessary to avoid the worst effects of climate change, ENO believes that its Pilot should be approved notwithstanding any minor cost socialization concerns. Further, the Company's modest investment that would result in installing 30 to 50 new Level 2 charging stations on City-owned property will provide much-needed public access, which today is lacking in that very few EV chargers in the City are accessible to the general public. If the Council and other stakeholders believe that socializing the nominal amount of \$64,400 per year is somehow not in the public interest, it can approve the Pilot subject to the requirement that ENO implement a mechanism for charging drivers for the energy used by the EV chargers that are installed. There is no valid reason for the Pilot to be rejected solely because a few parties now expressing concerns about *de minimis* costs being socialized.

b. Interconnection and Logistical Issues.

The Consensus Issues List identifies several items related to logistical considerations for EVs and charging infrastructure.<sup>38</sup> ENO agrees that these issues should continue to be monitored as this Docket progresses, and as EV adoption increases. ENO provides limited input on these issues in these initial comments and looks forward to providing more information in the future.

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<sup>38</sup> See, Issues II.2, II.3, II.5, and II.6.

ENO does not presently have a specific interconnection agreement related to EV chargers; the reality is that most EV chargers are installed at a location with existing electric service and are “behind-the-meter.” When a Level 1 or Level 2 charger is installed behind the meter for an existing customer, ENO may not even know that the charger is being installed unless the customer seeks ENO’s assistance with, or otherwise informs ENO of, the installation. Where a charger would be separately metered, ENO would treat the situation like any request for new service. As EV adoption becomes more prevalent and technology evolves, ENO may consider establishing a standard interconnection agreement should that become necessary.

Similarly, ENO may consider the potential risks and benefits of additional rate structures as adoption becomes more prevalent and as necessary data becomes as available. But if the Council’s goal is to encourage increased use and adoption of electric vehicles, and the emissions reductions and other environmental benefits associated therewith, it may be counter-productive to add new requirements and complications like time-differentiated rate structures to the list of issues a potential EV adopter would need to consider. In any event, designing new rates of this nature would require statistically valid data samples enabled by the deployment of Advanced Meters as well as real-world data on EV charging utilization to create billing factors. ENO believes it is premature, and potentially counter-intuitive, to develop additional rate structures at this time.

c. Regulatory and Legal Issues.

The Consensus Issues List identifies some regulatory and legal issues of interest to the Parties and the Council.<sup>39</sup> The Council has already addressed some of these issues (*i.e.*, the “charge

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<sup>39</sup> See, Issues II.7 and II.8.

for charge” issue) in Resolution No. R-18-100, and settled Louisiana law addresses others. ENO summarizes the resolution of these issues below.

- i. Address regulation issues related to “charge-for-charge” providers including disclosure and consumer protection matters.

As noted above, on April 5, 2018, the Council passed Resolution R-18-100 to encourage the use of electric vehicles and the construction, location, and operation of electric vehicle charging stations on both private and public property.<sup>40</sup> Addressing directly the regulation issues related to “charge-for-charge” providers of electric-vehicle charging, the Council determined that such providers would not be subject to the Council’s utility regulatory authority on the following terms:

[A] person or entity that purchases electricity from Entergy New Orleans or another utility regulated by the New Orleans City Council and furnishes such electricity exclusively to charge vehicles, to or for the public, for compensation, never was, and is not now, a utility or public utility as those terms are used in the New Orleans Home Rule Charter and the New Orleans City Code, and is not subject to the Council’s utility regulatory authority.<sup>41</sup>

The Council made clear, however, that its determination that “charge-for-charge” activity under the stated terms is not subject to the Council’s utility regulatory authority *does not* exempt that activity from other regulatory authority of the Council or the City, including authority over public rights-of-way, zoning and other land use regulations, master plan requirements, safety and permit requirements, public works requirements, and finance and revenue requirements.<sup>42</sup> Furthermore, a consequence of the Council’s self-imposed limitation of its utility regulatory authority in Resolution R-18-100 may be that “charge-for-charge” providers do not qualify for the exemption from the Louisiana Unfair Trade Practices and Consumer Protection Law, also known as the “LUPTA,” La. R.S. 51:1401-28, for “*transactions* subject to the jurisdiction of the Louisiana Public Service Commission or other *public utility regulatory body . . .*” La. R.S. 51:1406

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<sup>40</sup> See, Resolution R-18-100 at 3.

<sup>41</sup> *Id.* at 3-4. See, e.g., Sections 146-275 and 146-276 of the City of New Orleans’ Code of Ordinances, which require entities who would install physical assets, like EV charging stations, over or under the streets of New Orleans to obtain a “special franchise” from the City.

<sup>42</sup> *Id.* at 4.

(emphasis added). This means that providers of “charge for charge” services may be subject to the provisions of the LUPTA, which can form the basis for causes of action asserted by private parties, or oversight actions initiated by the Louisiana Attorney General’s Office. It will be important for the Council to keep the interplay of these various statutes and exemptions in mind as it continues to navigate the regulatory landscape related to EVs and entities that are not franchised utilities that offer EV charging services to consumers in New Orleans.

- ii. Address the use of generation sources other than electricity provided by ENO to power electric vehicle charging stations.

The Council’s jurisdictional determination in Resolution R-18-100 hinged on the requirement that “charge-for-charge” providers “purchase[] electricity from Entergy New Orleans or another utility regulated by the New Orleans City Council . . . .”<sup>43</sup> Aside from this requirement that “charge-for-charge” providers in the City receive electric service from a Council-regulated public utility, municipal franchise law also addresses the permissible sources of electricity to power electric vehicle charging stations. Under Louisiana law, a utility without a franchise has no right (1) to enter into and transmit and sell electricity to the inhabitants of a municipality or (2) to use, occupy, or obstruct the streets, alleys, or other public places within the corporate limits with its poles, transmission lines, meters, and other equipment.<sup>44</sup> It follows that a third-party acting as a non-franchised utility can be enjoined from providing electric service to new customers in a municipality by a utility that has a valid franchise, even if that franchise is non-exclusive.<sup>45</sup>

A non-franchised entity seeking to self-generate electricity and then sell that electricity to power electric vehicle charging stations in the City cannot avoid these bedrock principles of municipal franchise law by asserting that it is not a regulated public utility per Resolution R-18-

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<sup>43</sup> See, Resolution R-18-100 at 3.

<sup>44</sup> See, *Town of Coushatta v. Valley Electric Membership Corp.*, 139 So. 2d 822, 828 (La. App. 2d Cir. 1961).

<sup>45</sup> *Id.* at 827 (“The holder of a nonexclusive franchise . . . has the legal right to be free from the competition of one not having a valid franchise.”); *New Orleans Public Service Inc. v. Citizens Utilities Co.*, 726 So. 2d 1012, 1016 (La. App. 4th Cir. 1999) (same); *Gulf States Utilities Co. v. Dixie Electric Membership Corp.*, 185 So. 2d 313, 316 (La. App. 1st Cir. 1966) (finding that the holder of a nonexclusive franchise is “entitled to judicial protection against non-franchised competition”).



100. In *Citizens*, the court considered whether a non-utility, Louisiana Gas Service Intrastate Company (“LGSI”), violated ENO’s gas franchise with the City when it contracted to provide natural gas to the New Orleans Sewerage and Water Board (“SWB”) and to construct approximately 3,500 feet of pipeline and a natural gas pressure regulating station in Orleans Parish.<sup>46</sup> LGSI argued that, because it was not a “public utility,” it was not subject to the franchise or regulatory control of the Council.<sup>47</sup> But the court disagreed, finding that the central issue was not LGSI’s status as a utility, but rather whether it had entered into a contract that would duplicate the services ENO was to provide under the franchise agreement.<sup>48</sup> The Court found that “a non-holder of a franchise is prohibited from providing services to a municipality which issues a franchise to another entity, regardless of the alleged offender’s status as a ‘non-utility’ company”.<sup>49</sup> The court determined that a contract to provide natural gas to the SWB did violate ENO’s franchise.<sup>50</sup> Accordingly, the court affirmed the trial court’s issuance of a permanent injunction against the SWB-LGSI arrangement.<sup>51</sup>

ENO operates under an electric franchise or indeterminate permit that was originally issued on September 2, 1922, pursuant to which ENO has the right and authority to:

... construct or otherwise acquire, own, maintain and operate plants, works, and systems in the City of New Orleans for the generation and distribution of electrical energy for heat, light, power and other purposes, and to erect, construct, maintain and operate in, over and through all streets, alleys, highways, squares, parks, bridges and other public places in the City of New Orleans, all poles, wires, conductors or cables, conduits and other accessories, including the

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<sup>46</sup> See, 726 So. 2d at 1013–14. ENO’s gas franchise provides that ENO has the right and authority: “. . . to acquire, manufacture, distribute, deliver and vend artificial and or natural gas in the City of New Orleans and to construct, lay and maintain pipes, mains, conduits, man-holes, reducers and all other appurtenances and accessories in, across and through the streets, alleys, highways, squares, parks, bridges and other public places in the City of New Orleans . . . .” Ordinance No. 7069.

<sup>47</sup> *Id.* at 1014.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 1015–16

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 1018.

right to cross the Mississippi River and other water courses within the limits of the City of New Orleans, at convenient points. . . .<sup>52</sup>

The law does not permit an entity without these same rights and authority to supplant ENO and self-generate its own electricity and in turn sell that electricity to power electric vehicle charging stations in the City.<sup>53</sup>

With that understanding, it is important to reiterate that Resolution R-18-100 was necessary to provide clarity to market participants, and that ENO fully supported the Resolution allowing third-party providers to offer EV charging services to the public for compensation. But that support was predicated on the continued honoring, and enforcement of, ENO's rights under its franchise agreement with the City of New Orleans to generate, transmit, and furnish electricity to those third-party providers in a manner consistent with ENO's legal rights and obligations.

**III. Theme III: What equitable, public safety, consumer protection, and logical issues should be taken into consideration?**

The Council, Advisors, other parties are right to consider issues related to equity and consumer protections. The small set of issues identified in this section of the Consensus Issues List will no doubt grow as this proceeding, and the adoption of EVs, progresses. ENO is committed to protecting the interests and safety of its customers and community and will continue to monitor such issues and prepare the distribution grid for increased adoption of EVs. The Council's continued oversight of activity related to EVs will also be necessary to ensure that safety and consumer protection issues are being properly addressed.<sup>54</sup> As such, the Council should carefully consider this factor, as it did when adopting Resolution R-18-100, to the extent it considers self-imposing additional limitations on its regulatory authority.

ENO also agrees that the Council should monitor issues that may arise with regard to EVs in the context of storm evacuation.<sup>55</sup> One way to do so would be for the Council to participate in

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<sup>52</sup> See, Ordinance No. 7068.

<sup>53</sup> See, *Citizens*, 726 So. 2d at 1016.

<sup>54</sup> See, Issue III.4.

<sup>55</sup> See, Issue III.1.

the State's DC Fast Charging Master Plan,<sup>56</sup> which is exploring the use of funds made available from various sources (*e.g.*, the Volkswagen emissions settlement) for the creation of a fast charging corridor along Louisiana highways. The current plan is visible through the program's website.<sup>57</sup>

ENO noted in its April 2018 Grid Modernization Report that one of the objectives of ENO's grid modernization efforts is preparing the distribution grid for the incorporation of new and emerging technologies, such as electric vehicles. ENO represented that its grid modernization study has, and will, identify "changes in the design and configurations of ENO's infrastructure that will assist in accommodating integration of these technologies."<sup>58</sup> Construction on the projects identified in that April 2018 Report is underway and additional projects are being planned. As such, ENO is presently hard at work in preparing the distribution grid for the increased penetration of EVs.<sup>59</sup> To the extent that the Council wishes to prioritize these efforts and ensure that continuous funding and contractor resources are available to execute this work in the most timely and efficient manner possible, it should approve the Distribution Grid Modernization Rider that ENO proposed in the 2018 Rate Case. Doing so will provide many benefits, including accelerating the pace at which increased EV adoption can be accommodated.

As noted above, ENO's proposed Pilot to invest \$500,000 in EV charging stations on City-owned property would allow for the Council, the City administration, the Advisors, and stakeholders to provide input on the optimal locations of the charging stations ENO has offered to install throughout the City. ENO has structured its Pilot in this way to help ensure that all stakeholders can contribute to achieving an equitable distribution of charging infrastructure.<sup>60</sup> Additionally, as also documented above, other regulators have found that utility involvement in building and owning charging infrastructure is necessary for that infrastructure to be equitably

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<sup>56</sup> See, <https://louisianacleanfuels.mysocialpinpoint.com/>

<sup>57</sup> [https://louisianacleanfuels.mysocialpinpoint.com/cleanfuels/map#/?utm\\_source=email&utm\\_medium=social-media&utm\\_campaign=addtoany](https://louisianacleanfuels.mysocialpinpoint.com/cleanfuels/map#/?utm_source=email&utm_medium=social-media&utm_campaign=addtoany)

<sup>58</sup> See, ENO's Grid Modernization and Smart Cities Report, filed in this Docket on April 10, 2018, at pg. 19.

<sup>59</sup> See, Issue III.2.

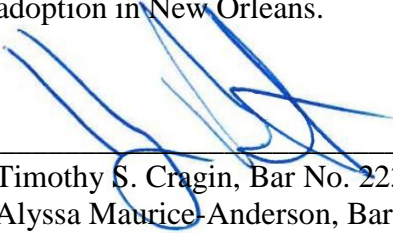
<sup>60</sup> See, Issue III.3.

distributed. ENO hopes that the Council will follow the lead of other progressive regulators in jurisdictions with higher levels of EV adoption, as well as the recommendation of its Advisors, and approve the Pilot in Docket UD-18-07 to enable the Parties to this proceeding to best utilize ENO's proposed investment in publicly-accessible, equitably-distributed charging infrastructure.

#### **IV. Conclusion**

ENO agrees with and is encouraged by the Council's findings that (i) "encouraging the use of electric vehicles is in the public interest," and (ii) "the construction, location and operation of electric vehicle charging stations on both private and public property should be encouraged," and ENO will continue its efforts to fulfill the Council's directives in this regard. ENO looks forward to the next steps in this Information Gathering Process and the phase of the proceedings that will follow the Advisors' February 2020 Report. ENO hopes that, in the interim, the Council, the Advisors, and other stakeholders will take advantage of the opportunities afforded by ENO's various proposals to advance the pace of EV adoption in New Orleans.

By: \_\_\_\_\_



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**CERTIFICATE OF SERVICE**

**Docket No. UD-18-01**

I hereby certify that I have served the required number of copies of the foregoing report upon all other known parties of this proceeding, by the following: electronic mail, facsimile, overnight mail, hand delivery, and/or United States Postal Service, postage prepaid.

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New Orleans, Louisiana, this 11<sup>th</sup> day of October, 2019.



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