



December 18, 2019

Via Hand-Delivery

Ms. Lora W. Johnson, CMC  
Clerk of Council  
City Hall – Room 1E09  
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**  
*City Council of New Orleans Docket No. UD-18-07*

Dear Ms. Johnson,

Please find enclosed an original and four copies of the **Alliance for Affordable Energy and Sierra Club's Opposition to the Compliance Filing of Entergy New Orleans, LLC**. Please file this letter and the attached opposition in the record of this proceeding and return one time stamped copy to Ms. Sophie Zaken, in accordance with normal procedures.

Thank you for your assistance with this matter.

Sincerely,

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Enclosures  
cc: Official Service List

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

**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 )**

**DOCKET NO. UD-18-07**

**ALLIANCE FOR AFFORDABLE ENERGY AND SIERRA CLUB'S  
OPPOSITION TO THE COMPLIANCE FILING  
OF ENTERGY NEW ORLEANS, LLC**

**DECEMBER 18, 2019**

The Alliance for Affordable Energy and Sierra Club (collectively, “Public Interest Intervenors”) submit this opposition in response to Entergy New Orleans, LLC’s (“ENO” or “Company”) December 9, 2019 Compliance Filing. Once again, ENO displays a remarkable ability to ignore the fact that it is the *regulated* entity and that, as such, ENO cannot dictate the terms of its service to the Council of the City of New Orleans (“Council”). In its Compliance Filing, ENO openly defies Council Resolution No. R-19-457. The Council must reject the tariff provisions in ENO’s Compliance Filing pertaining to the construction and operation of the New Orleans Power Station (“NOPS”) and order the Company to file a new compliance filing that actually complies the directives set forth in Council Resolution No. R-19-457.<sup>1</sup>

## **I. BACKGROUND**

On September 28, 2017, the Council adopted Resolution No. R-17-504, which directed ENO to make a rate case filing before the Council on or before July 31, 2018. On July 31, 2018, ENO filed with the Council its 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. The Council expressed concern over certain aspects of ENO’s filing. These concerns led the Council to indicate its intent to direct ENO to make a supplemental filing.<sup>2</sup> In a letter dated August 15, 2018, Roderick K. West, Entergy Group President of Utility Operations, explained that ENO had decided to withdraw its July 31, 2018 Application, stating that this decision to withdraw was in response to the feedback that ENO received from members of the Council.

On September 21, 2018, ENO filed with the Council its Revised Application of Entergy

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<sup>1</sup> The Public Interest Intervenors’ lack of comment on other aspects of ENO’s Compliance Filing should not be construed as an endorsement of those provisions or calculations.

<sup>2</sup> See, e.g., fox8live.com, *Entergy New Orleans Withdraws Plan to Hike Electric Bills* (Aug. 15, 2018), <https://www.fox8live.com/story/38891313/entergy-new-orleans-withdraws-plan-to-hike-electric-bills/>.

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 (“Application”). On October 4, 2018, as part of Council Resolution No. R-18-434, the Council docketed ENO’s Application as Docket No. UD-18-07.

Among the many riders requested by ENO was a rider to recover the costs associated with the construction of NOPS, a gas plant in New Orleans East. If approved, this rider would have enabled ENO to begin recovering the estimated first year revenue requirement associated with NOPS beginning in the month after NOPS enters commercial operation. Specifically, the ENO proposed language stated:

ENO shall include through an interim rate adjustment effective as of the first billing cycle of the month following the Commercial Operation Date (“COD”) the final estimated first-year revenue requirement associated with the completion of the construction of the New Orleans Power Station (“NOPS”), the construction of which was approved by the Council of the City of New Orleans in Resolution R-18-65.<sup>3</sup>

On November 7, 2019, the Council rejected ENO’s proposed rider in Council Resolution No. 19-457, and expressly required that:

No NOPS cost shall be included in the FRP<sup>4</sup> mechanism until such time as the construction of NOPS and associated costs have been approved through a final judgment of the Council.<sup>5</sup>

The Council ordered ENO to submit a compliance filing within 30 calendar days of the adoption of the resolution.<sup>6</sup>

ENO did not seek rehearing of Council Resolution No. R-19-457.

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<sup>3</sup> Application, Rider Schedule EFRP-5 (Electric Formula Rate Plan Rider Schedule), Section III.C. (pdf page 1077 of the Application).

<sup>4</sup> “FRP” is the acronym for formula rate plan.

<sup>5</sup> Council Resolution No. R-19-457 at 187, ¶ 25(e) (Nov. 7, 2019).

<sup>6</sup> *Id.* at 189, ¶ 40.

## II. ARGUMENT

The fundamental requirement for a compliance filing is that it must comply.<sup>7</sup> That is, the filing must implement the Council's resolution. This basic requirement applies regardless of whether ENO disagrees with, or is seeking judicial review of, that resolution. Compliance filings are not vehicles for ENO to challenge, or seek to change, the order. A compliance filing that fails to comply must be rejected.<sup>8</sup> This requirement is straightforward. ENO must follow the Council's directives. The Company may not ignore those instructions or offer arguments against complying as a substitute for actual compliance.

ENO's Compliance Filing inexplicably defies the Council's clear directive. In this filing, ENO falsely asserts that the resolution permits ENO to recover costs after the gas plant is placed in operation. Specifically, ENO falsely states the resolution authorizes ENO "to defer the NOPS non-fuel costs, including the cost of capital, after NOPS enters operation and until ENO commences non-fuel cost recovery from ENO's customers."<sup>9</sup> Furthermore, ENO's Compliance Filing includes an Electric Formula Plan Rider Schedule (Rider Schedule EFRP-5) that contains the following inappropriate provision:

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<sup>7</sup> See, e.g., *Sierra Pac. Power Co.*, 80 FERC ¶ 61,376, 62,271 (Sept. 26, 1997) ("The sole purpose of a compliance filing is to make the revisions directed by the Commission."); *Midcontinent Independent System Operator, Inc.*, 125 FERC ¶ 61,156 at P 57, n.51 (Nov. 7, 2008) ("The Commission has previously held that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether or not they comply with the Commission's previously-stated directives.") (citations omitted).

<sup>8</sup> See, e.g., *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, 63,160 (June 24, 1993) ("The sole relevant issue in reviewing [a] compliance filing is whether the filing complies with the directions in the . . . [o]rder."); *Midcontinent Independent System Operator, Inc.*, 167 FERC ¶ 61,128 at P 12 (May 16, 2019) (explaining that the proposal is not necessary to comply with the Commission Order, and is thus outside the scope of this compliance proceeding); *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186 at P 28 (Aug. 30, 2010) (finding that "portions of [MISO's] filing exceed the scope of compliance).

<sup>9</sup> Compliance Filing at 7, § XI (Dec. 9, 2019) (emphasis added).

ENOL shall include through an FRP interim rate adjustment effective as of the first billing cycle of the month following the Commercial Operation Date (“COD”) the final estimated first-year revenue requirement associated with the completion of the construction of the New Orleans Power Station (“NOPS”), *the construction of which was approved by the Council of the City of New Orleans in Resolution R-18-65. . . .* In the event that the two pending appeals of Resolution R-18-65 have not concluded by the NOPS COD, then ENO shall be permitted to defer the NOPS non-fuel costs, including the cost of capital, after NOPS enters operation and until ENO commences non-fuel cost recovery from ENO’s customers so as to keep ENO in the same position as if ENO had implemented the FRP interim rate adjustment the month following COD. Such deferral shall be included in the interim FRP rate adjustment.<sup>10</sup>

There is no excuse for ENO’s blatant defiance of the Council’s directive. The first sentence of this proposed tariff revision was included in ENO’s Application and was specifically rejected by the Council. ENO cannot include this rejected language in the tariff simply because the Company disagrees with the Council’s decision. The tariff language addressing the deferral of costs was never even considered by the Council. ENO cannot insert unapproved language in a compliance tariff in an effort to achieve through a compliance filing approval for tariff terms that the Company failed to even request in the rate application.

ENO’s rationale for this tariff provision is spurious. ENO states that “ENO reads Ordering Paragraph 25(e) regarding a possible delay in the recovery of NOPS non-fuel costs *in pari materia* with Resolution R-18-65 and Resolution R-19-78 to authorize ENO to defer the NOPS non-fuel costs, including the cost of capital, after NOPS enters operation and until ENO commences non-fuel cost recovery from ENO’s customers, and has included language to this effect in the Electric FRP Rider.”<sup>11</sup> To the contrary, the Council’s language regarding the recovery of NOPS costs is clear, precise, and requires no interpretation. The Council

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<sup>10</sup> *Id.* at Rider Schedule EFRP-5 (Electric Formula Rate Plan Rider Schedule), Section III.C. (pdf page 102–3 of 550) (emphasis added).

<sup>11</sup> *Id.* at 7, § XI.

unequivocally state that *no* NOPS cost shall be included in the FRP mechanism until the construction of NOPS and associated costs have been approved through a final judgment of the Council. No means no. ENO's language that "Such deferral shall be included in the interim FRP rate adjustment" is the direct opposite of "No costs shall be included in the FRP mechanism." The fact that ENO disagrees with the Council's decision is not a justification for including this language in the tariff.

Moreover, ENO continually fails to acknowledge that the Company no longer has Council approval to construct NOPS. As the Council is aware, on June 14, 2019, the District Court issued a bench ruling voiding Resolution No. R-18-65. Judge Griffin memorialized this oral ruling in a written judgment issued on July 2, 2019. Thus, contrary to the rationale set forth in the proposed tariff language, the construction of NOPS does not have the approval of the Council. ENO is not entitled to collect the costs of NOPS construction from the ratepayers in the absence of a new finding by the Council that construction of the project is in the public interest.<sup>12</sup>

Finally, the Council must recognize that Council approval of ENO's Compliance Filing would constitute reversible error. It is well-established that a regulatory body cannot effect a substantive change of "a prior order without affording prior notice and an opportunity to be heard to interested parties."<sup>13</sup> The *Scott* court found that the "Commission's reasoning behind the change is immaterial, as it was unlawful for the Commission to effect this substantive change

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<sup>12</sup> ENO's reliance on Resolution No. R-19-78 is misplaced and disingenuous. This resolution sanctioned ENO for the Company's unethical conduct with regard to the use of paid actors to distort the public process. Nothing in Resolution No. R-19-78 supports the continued construction of NOPS.

<sup>13</sup> *Scott Paper Co. v. Pa. Pub. Util. Comm'n*, 126 Pa.Cmwlt. 111, 122, 558 A.2d 914, 919 (1989) (finding Commission's approval of utility's compliance filing after rate case, which included provision affecting rates contrary to the terms of the rate case order, constituted amendment of prior order without notice or opportunity to be heard).

absent notice to the parties as well as a full opportunity to be heard.”<sup>14</sup> Moreover, ENO’s arguments in support of its tariff provision, contained in its documents submitted in support of its Compliance Filing, do not constitute substantial evidence of record upon which the Council could base its decision.<sup>15</sup>

### III. CONCLUSION

Simply put, ENO’s Compliance Filing fails to comply. ENO’s attempt to evade the Council’s directive cannot be tolerated. ENO dishonestly attempts to charge New Orleans residents and businesses for a gas plant that has no approval and which the Council specifically excluded from the formula rate plan. New Orleans City Code § 158-91(a) mandates that the Council issue a notice of deficiency to ENO for the Compliance Filing submitted on December 9, 2019.<sup>16</sup> The Council should issue this notice of deficiency and direct ENO to remove all statements and provisions in its tariff which pertain to the proposed new gas plant that is referred to as the New Orleans Power Station or NOPS.

Dated: December 18, 2019

Respectfully submitted,



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<sup>14</sup> *Id.* at 123.

<sup>15</sup> *Id.*

<sup>16</sup> The Public Interest Intervenors respectfully request that the Council serve any correspondence pertaining to ENO’s Compliance Filing on all the parties, including any notice issued pursuant to New Orleans City Code § 158-91(a).



**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of December 2019, a copy of the **Alliance for Affordable Energy and Sierra Club’s Opposition to the Compliance Filing of Entergy New Orleans, LLC** has been served on the persons listed below by electronic mail and/or U.S. First-Class mail, postage prepaid:

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Additionally, pursuant to the New Orleans, Louisiana Code of Ordinances, Ch. 158, Art. III, Div. 1, § 158-236, the following persons have been served with copies of the aforementioned document, in triplicate, via U.S. first-class mail, postage prepaid:

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Washington, D.C., this 18<sup>th</sup> day of December, 2019.



Nicolas Thorpe  
Litigation Assistant, Earthjustice