



September 14, 2021

Lora W. Johnson
Clerk of the Council
City Hall – Room 1E09
1300 Perdido Street
New Orleans, LA 70112
lwjohnson@nola.gov

Re: *Appl. of ENO For Approval to Construct New Orleans Power Station and Req. For Cost Recovery and Timely Relief*, City Council of New Orleans Docket No. UD-16-02

Revised App. of ENO 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:

Attached please find for your further handling the **Alliance for Affordable Energy, the Deep South Center for Environmental Justice, and Sierra Club’s Motion for Investigation of the Failures of Entergy New Orleans, LLC, Motion for Independent Management Audit and Second Motion to Institute Prudence Review** to be filed in the above-referenced proceedings. As a result of the remote operations of the Council’s office related to COVID-19, the Movants submit this filing electronically and will submit the requisite original and number of hard copies once the Council resumes normal operations, or as you or the Council otherwise direct. The Movants request that you file this submission in accordance with Council regulations as modified for the present circumstances.

Thank you for your assistance in this matter.

Sincerely,

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*On Behalf of Alliance for Affordable Energy and
Sierra Club*

Enclosures

cc: Official Service List—Docket Nos. UD-16-02 & UD-18-07

BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS

APPLICATION OF ENTERGY NEW)
ORLEANS, LLC FOR APPROVAL)
TO CONSTRUCT NEW ORLEANS)
POWER STATION AND REQUEST) DOCKET NO. UD-16-02
FOR COST RECOVERY AND TIMELY)
RELIEF)

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

**MOTION FOR INVESTIGATION OF THE FAILURES OF ENTERGY NEW
ORLEANS, LLC, MOTION FOR INDEPENDENT MANAGEMENT AUDIT AND
SECOND MOTION TO INSTITUTE PRUDENCE REVIEW**

Entergy New Orleans, LLC (“ENO” or the “Company”) has greatly failed the people of New Orleans who, without electric service, suffered in the sweltering heat that took the lives of 12 residents¹, were displaced from their homes and lost wages and revenues due to closed businesses. The Alliance for Affordable Energy, Deep South Center for Environmental Justice, and Sierra Club (“Movants”) urge the Council of the City of New Orleans (“City Council”) to hold Entergy accountable.

Recent events in the aftermath of Hurricane Ida demonstrate that ENO misled the Council of the City of New Orleans (“City Council”) regarding the black start capabilities of the New Orleans Power Station (“NOPS”) in a reckless attempt to ensure that the gas plant it

¹ The Louisiana Department of Health (“LDH”) reported that the cause of death for New Orleans residents 12 was “excessive heat during power outage.” See LDH, *Hurricane Ida Storm-Related Death Toll Rises to 26*, (Sept. 8, 2021), <https://ldh.la.gov/index.cfm/newsroom/detail/6308>.

coveted was approved by this regulatory body. ENO's lack of veracity was publicly exposed due to another failure on the part of Entergy Louisiana, LLC ("ELL"), ENO, Entergy Services Inc. and Entergy Corporation (jointly "Entergy Companies"). The failure to harden transmission lines in an appropriate manner, despite starting this process after Hurricane Betsy² and millions of ratepayer dollars being expended on this fruitless endeavor,³ resulted in the failure of eight transmission lines leaving New Orleans "islanded". This catastrophic occurrence is the very event ENO used to justify the request for approval of NOPS. However, NOPS could not be used until the Slidell transmission line and some distribution lines were repaired.

As the City Council is well aware, ENO has proffered shifting rationales for why NOPS could not be black started.⁴ None of the Entergy Companies have offered any explanation for the catastrophic failure of eight transmission lines that were purportedly upgraded to withstand hurricane strength winds of 140 mph.⁵ It is unacceptable that electric services in and to New Orleans were disrupted after the Entergy Companies spent billions of dollars and for reasons that are not completely known more than a week after the outage. Without a thorough investigation by the City Council, the reasons for this catastrophic failure will never be known.

² See, Entergy, *Entergy's Resilience Plan*, at 5 (Dec. 2016) ("Entergy Resilience Plan"), https://cd-n.entergy.com/userfiles/content/environment/docs/Resilience_Plan.pdf. (claiming that "Entergy's hardening strategy actually began 40 years earlier when Hurricane Betsy pummeled the region").

³ Between 2005 and 2016, Entergy spent \$1.7 billion in hardening investments. *Id.*

⁴ David Hammer, *Entergy's shifting explanation on why new power plant didn't generate power*, WWL-TV News (Sept. 2, 2021), <https://www.wwltv.com/article/news/investigations/david-hammer/entergys-shifting-explanation-why-new-plant-didnt-generate-power/289-efa8b98f-80cc-4fbb-806d-74caa2163ec5>.

⁵ David Hammer, *Regulators question Entergy's transmission upgrades after 'catastrophic' failure*, WWL-TV News (Sept. 7, 2021), <https://www.wwltv.com/article/news/investigations/david-hammer/regulators-question-entergys-transmission-upgrades-after-catastrophic-failure/289-757c5b6d-fa64-4c65-9015-bdce5cbc1fd0>.

The city-wide power failure is the latest in a long line of Entergy Companies' management failures that New Orleans residents have been subjected to during the past several months. On March 15, 2021, Energy Future New Orleans submitted a letter to the City Council⁶ setting forth a litany of failures including unannounced power outages on Mardi Gras Day in excess of four times the required load shed in below-freezing temperatures that also shut off electric service to the city's essential water services; intentional safety violations at the Grand Gulf nuclear plant with exorbitant costs passed onto customers; and an apparent data breach that gave criminals access to customers' personal data. Now, in addition to the issues set forth in the letter, Entergy Companies can add to their parade of mismanagement lying to the City Council about the capabilities of NOPS and failing to harden transmission lines to withstand hurricanes they knew would come. These critical issues must be vigorously examined in an independent management audit to determine why ENO's actions were not sound and why their programs are not well implemented. This audit is a necessary step to ensure that the Entergy Companies are held accountable for their bad decisions and negligence that impair reliable and climate resilient utility service in New Orleans and put the health and safety of residents at risk. Through this motion, Movants formally reiterate the request for an independent management audit to identify corrective action to improve electric service that meets the needs of New Orleans residents and is responsive to the climate crisis.

Finally, the Movants reiterate the previous motion requesting that the City Council institute a prudence review.⁷ While the City Council issued a resolution requesting comment on

⁶ Energy Future New Orleans, *Letter from Energy Future New Orleans to City Council Requesting Management Audit of ENO* (Mar. 15, 2021) (attached as App. A).

⁷ Alliance for Affordable Energy and Sierra Club, *Mot. to Institute Prudence Review*, Docket No. UD-18-07 (Dec. 11, 2020) ("Motion to Institute Prudence Review").

the motion,⁸ the City Council never took any further action. In this initial request, Movants noted that New Orleans ratepayers pay handsomely for their electricity and for the new gas plant. ENO's recent Formula Rate Plan filing demonstrates the truth of this statement. New Orleans residents pay \$11 a month for NOPS,⁹ a gas plant that is not even giving the residents what was promised when the project was approved. To date, New Orleans residents have paid more than \$30 million on the gas plant that is an installment on the total cost of \$650 million to be paid over the next 29 years. In addition to the expenditures listed in the first motion, which are set forth again below, the City Council must review the prudence of NOPS in light of the misleading testimony provided by ENO.¹⁰ The City Council has an abiding responsibility to ensure that ratepayers are not burdened with inappropriate costs. The City Council should protect the ratepayers of New Orleans to the fullest extent possible by initiating an open and transparent prudence review of ENO's actions and claimed expenses, including contracting with an independent entity to audit ENO's expenditures, as well as any planning or investments the Entergy Companies actually performed to enable New Orleans to island using only the gas plant, and provide a full report to the City Council.

⁸ Resolution No. R-21-37, Resolution and Order to Initiate a Comment Period in Resp. to the All. for Affordable Energy and Sierra Club's Mot. to Institute Prudence Review to Examine the Costs Associated with the Design and Construction of the New Orleans Power Station (January 28, 2021) ("Resolution No. R-21-37").

⁹ David Hammer, *Entergy's shifting explanation on why new power plant didn't generate power*, WWL-TV News (Sept. 2, 2021), <https://www.wwltv.com/article/news/investigations/david-hammer/entergys-shifting-explanation-why-new-plant-didnt-generate-power/289-efa8b98f-80cc-4fbb-806d-74caa2163ec5>.

¹⁰ See, e.g., Suppl. and Amending Direct Test. of Charles L. Rice, Jr on Behalf of ENO, at 13 (July 6, 2017) ("Rice Direct"); Suppl. and Amending Direct Test. of Jonathan E. Long on Behalf of ENO, at 13:10–11 (July 6, 2017) ("J. Long Direct"); and Suppl. and Amending Direct Test. of Charles W. Long on Behalf of ENO, at 29:5–11 (July 6, 2017).

The Movants respectfully move that the City Council institute an investigation into whether ENO misled the City Council regarding the black start capabilities of NOPS and the failed transmission hardening practices of the Entergy Companies. In light of the repeated failures of ENO and the Entergy Companies, and to further the requested investigations, the Movants request an independent management audit to evaluate the management policies and practices of the Entergy Companies that impact services in and to New Orleans. Finally, Movants request a prudence review to investigate all aspects of the design and construction of NOPS.

In support of this Motion, the Movants state as follows:

I. BACKGROUND

1. Pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans, the City Council is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the city of New Orleans.
2. Pursuant to the City Council's powers of supervision, regulation and control over public utilities, the City Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities.
3. ENO is a public utility providing electric and natural gas service to all of New Orleans.

A. ENO's Application to Construct NOPS

4. ENO filed its original proposal to construct NOPS in June 2016.¹¹ The Initial Application outlined ENO's proposal to construct a 226 megawatt (“MW”) advanced combustion turbine (“CT”) generation facility on the Michaud site in New Orleans East. In addition to seeking approval to construct NOPS, ENO sought approval of a contemporaneous exact cost recovery rider on customer bills for all non-fuel costs to begin with the commercial operation of the plant. ENO also indicated it was contemplating a long-term service agreement (“LTSA”) with the original equipment manufacturer for major maintenance. According to ENO, if such an LTSA is executed, ENO seeks authorization to recover those costs through a fuel adjustment clause (“FAC”) mechanism. ENO estimated that the cost of the NOPS project would be \$216 million.
5. On July 6, 2017, ENO filed an amended application.¹² In this new filing, ENO still advocated construction of the 226 MW CT Alternative, but also submitted an alternative proposal to construct a smaller 128 MW “Alternative Peaker” at the Michoud site. The alternative proposal entailed construction of seven Wartsila 18V50SG Reciprocating Internal Combustion Engine (“RICE”) Generator sets (“RICE Alternative”) with black start capability. The anticipated cost of the RICE Alternative is \$210 million.

¹¹ Appl. of ENO for Approval to Construct NOPS and Req. for Cost Recovery and Timely Relief (June 20, 2016).

¹² Suppl. and Amending Appl. of ENO for Approval to Construct NOPS and Req. for Cost Recovery and Timely Relief (July 6, 2017).

6. During the years-long campaign for approval, ENO continually stressed in public testimony and other statements the importance of a local power plant in preventing the City from having the power shut off if its transmission lines went down.

Throughout ENO's written testimony, the Company highlighted the Alternative Peaker's black start capability. For example, Charles Rice testified that the Alternative Peaker:

will also include black-start capability, which will enable the Company to start the unit even when there is no power on the electric grid. This will give the Company the ability to restore electric service, should a complete loss of service occur. This could be a tremendous benefit if New Orleans is electrically "islanded" from the rest of the interconnected transmission grid, as it was after Hurricane Gustav.¹³

7. Other ENO witnesses similarly touted the black start capability of the Alternate Peaker. Mr. Jonathan E. Long stated that "the Alternative Peaker will have the ability to supply its own power to start-up and be able to supply power to the grid when needed."¹⁴ Similarly, Mr. Charles Long also testified that "the ability to black-start the Alternative Peaker enables the Company to restore power to loads from this resource... Thus, the Alternative Peaker's ability to black start will greatly enhance the Company's ability to restore electric service, should a complete loss of service on the electric system occur."¹⁵ The Advisors to the City Council of New Orleans ("Advisors") witnesses also highlighted the black start capability. Advisors witness Mr. Rogers stated that he believed that "the ability to black start the RICE Alternative

¹³ Suppl. and Amending Direct Test. of Charles L. Rice, Jr on Behalf of ENO, at 13 (July 6, 2017) ("Rice Direct").

¹⁴ Suppl. and Amending Direct Test. of Jonathan E. Long on Behalf of ENO, at 13:10–11 (July 6, 2017) ("J. Long Direct").

¹⁵ Suppl. and Amending Direct Test. of Charles W. Long on Behalf of ENO, at 29:5–11 (July 6, 2017).

in the event that New Orleans becomes disconnected from the regional transmission grid is an advantage that is *invaluable* and cannot be overlooked.”¹⁶

8. On brief, both ENO and the Advisors reiterated the availability and importance of the black start capability. ENO stated that the Alternative Peaker’s black start capability will “allow the plant to start up under its own power after a hurricane or major outage without a backfeed of power from the electric grid.”¹⁷ ENO further argued that “blackstart capability could be an important and vital benefit that would greatly enhance the Company’s ability to restore electric service should a complete loss of service on the electric system occur.”¹⁸ And as described by Company witness Mr. Jonathan E. Long, the RICE units will be equipped with blackstart capability.”¹⁹ ENO argued that the Alternative Peaker’s ability to black start was “invaluable”.²⁰ The Advisors stated that they agreed with ENO that a local resource with black start capability “would greatly enhance ENO’s ability to restore electric service, should a complete loss of service on the electric system occur, such as in the event of a major storm.” Advisors also asserted that “having local generation in the City that provides a dependable source of black-starting power and avoids the risks of transmission failure is especially important given that ENO’s system exists in an extreme weather event region.”²¹

¹⁶ Direct Test. of Joseph W. Rogers, P.E. on Behalf of Advisors at 51:15–17 (Nov. 20, 2017) (emphasis added) (“Rogers Direct”).

¹⁷ Post-Hr’g Br. of ENO at 5 (Jan. 19, 2018) (“ENO Brief”).

¹⁸ *Id.*

¹⁹ *Id.* at 59 (citing J. Long Direct at 13).

²⁰ ENO Brief at 90–91 (citing J. Long Direct at 13, Movish-1 at 4–5, and Rogers Direct at 51).

²¹ Post-Hr’g Br. of the Advisors to the Council of New Orleans, at 60 (Jan. 19, 2018) (citations omitted) (“Advisors’ Post-Hearing Brief”).

9. In approving the Alternate Peaker, the City Council expressly relied on the availability of the black start capability, finding that the value of local, on-site black start generation to support the City’s critical facilities and speed up storm restoration “cannot be understated.”²² The City Council found that construction of the Alternative Peaker was in the public interest, determining that “importantly, it has on-site black start capability, which will support ENO’s critical loads in the event of an outage and will aid in restoration efforts after a storm, a very valuable feature given the City’s susceptibility to extreme weather”.²³
10. Also as a part of its Supplemental Application, ENO requested approval of a contemporaneous exact cost recovery rider, to begin on the date that NOPS begins commercial operation to recover non-fuel and capacity costs. The Advisors and all Intervenors urged the Council to reject ENO's proposed exact cost recovery rider as inconsistent with principles of cost causation, constituting single-issue ratemaking,²⁴ and unnecessary.²⁵ Both ENO and the Advisors agreed that ENO should have a full and fair opportunity to recover prudently incurred costs that are approved by the Council; but reasonable opportunity to recover investment and a fair return is not a guarantee of dollar-for-dollar cost recovery.²⁶

²² Resolution No. R-18-65, Resolution and Order Regarding the Appl. of ENO for Approval to Construct New Orleans Power Station and Req. for Cost Recovery and Timely Relief, at 92 (Mar. 8, 2018) (“Resolution No. R-18-65”) (emphasis added).

²³ *Id.* at 109–110 (emphasis added).

²⁴ Advisors' Post-Hearing Brief at 129; Br. in Supp. of Conclusions and Recommendations on Behalf of Air Products and Chemicals, Inc., at 3–4, 16–18 (Jan. 19, 2018); Post-Hr’g Br. by the Alliance for Affordable Energy, Deep South Center for Env’t Justice, Inc., 350 – New Orleans, and Sierra Club, at 104 (Jan. 19, 2018) (“Joint Intervenors' Post-Hearing Brief”).

²⁵ Joint Intervenors' Post-Hearing Brief at 104; Advisors' Post-Hearing Brief at 129.

²⁶ 12/20/2017 Hr’g Tr. 60:6–15.

11. ENO also requested authorization to recover the LTSA expenses through the fuel adjustment clause.²⁷ The Advisors once again argued that ENO should be allowed “to recover any *prudently* incurred LTSA costs through the same cost recovery mechanism that the Council ultimately approves for all other NOPS fixed/non-fuel costs.”²⁸
12. On February 21, 2018, the Utility, Cable, Telecommunications and Technology Committee (“UCTTC”) held a public meeting to consider whether to approve ENO’s application to construct NOPS. In response to questioning from the Committee members, Ms. Emma Hand, one of the City Council’s Advisors, stated that the NOPS resolution should “find that Entergy should be entitled to recover all prudently incurred project fixed costs.”²⁹ Ms. Hand also suggested that the NOPS cost recovery issue would be addressed separately through the combined rate case.³⁰
13. With regard to the prudence issue, in Resolution No. R-18-65, the City Council expressly noted that it is obligated to set rates at a just and reasonable level, which includes the obligation to allow the utility an opportunity to recover its prudently incurred costs and a reasonable rate of return on its investment.³¹ The City Council determined that it would evaluate ENO’s cost recovery related to the NOPS project in

²⁷ Direct Test. of Orlando Todd on Behalf of ENO, at 10:8–17 (June 20, 2016).

²⁸ Direct Test. of Victor M. Prep, P.E., on Behalf of Advisors, at 24:9–25:5. (Nov. 20, 2017) (emphasis added); *see also* Resolution No. R-18-65 at 181–182.

²⁹ UCTTC Public Meeting Tr. at 309:23–25 (Feb. 21, 2018) (emphasis added).

³⁰ *Id.* at 310:5–9.

³¹ Resolution No. R-18-65 at 187 (citing *Bluefield Water Works & Improvement Co. v. W Va. Pub. Serv. Comm’n*, 262 U.S. 679 (1923)); *see also Fed. Power Comm’n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

the Combined Rate Case,³² finding that “ENO shall have a full and fair opportunity to recover all prudently incurred costs associated with the RICE Alternative.”³³

B. ENO’s 2018 Rate Case Proceeding

14. On September 21, 2018, ENO refiled its rate case.³⁴ ENO's Revised Application constituted a full base rate case, which, among other things, included ENO's request for a change in electric and gas rates and new rate schedules applicable to electric and gas service. An evidentiary hearing was conducted before the Honorable Jeffrey S. Gulin and several parties filed initial briefs and reply briefs.
15. Among other things, the City Council found that a return on equity (“ROE”) of 9.35% is reasonable and should be adopted.³⁵ Specifically with regard to NOPS, the Advisors correctly noted that ENO has the *opportunity* to earn its approved ROE rather than a guarantee that it will recover 100% of NOPS costs.³⁶ The Advisors argued that any NOPS adjustment approved by the Council should be conditioned upon the construction of NOPS and associated costs having been approved through a final judgment of the Council.³⁷ The City Council approved the NOPS adjustment with an instruction to ENO that no actual costs should be flowed through that adjustment to ratepayers until such time as the construction of NOPS *and the associated costs* have been approved through a final judgment of the Council.³⁸

³² Resolution No. R-18-65 at 186.

³³ *Id.* at 188, ¶ 2.

³⁴ Revised Appl. of ENO for a Change in Elec. and Gas Rates Pursuant to Council Resolutions R-15-194 and R-17-504 and For Related Relief (Sept. 21, 2018).

³⁵ Resolution No. R-19-457, Resolution and Order, at 24 (Nov. 7, 2019) (“Resolution No. R-19-457”).

³⁶ Initial Br. of the Advisors to the City Council of New Orleans, at 45 (July 26, 2019).

³⁷ Reply Br. of the Advisors to the City Council of New Orleans, at 52 (Aug. 9, 2019).

³⁸ Resolution No. R-19-457 at 113–114 (emphasis added).

16. ENO appealed the City Council’s rate decision to the District Court.³⁹ On September 28, 2020, ENO filed with the City Council an Agreement in Principle (“AIP”) through which several parties to the rate proceeding sought to revise certain aspects of the City Council’s rate decision. The AIP contained 12 negotiated terms and conditions, including one that permitted ENO to delay its next Formula Rate Plan report until June 2021, extending current rates until fall of next year. The AIP also requires ENO to dismiss its appeal of the City Council’s rate case decision. On October 15, 2020, the City Council approved the AIP.⁴⁰
17. On October 27, 2020, ENO made a filing pursuant to Resolution No. R-19-457. According to ENO, Ordering Paragraph 25(e) of Resolution No. R-19-457 permits the NOPS recovery to commence after Resolution No. R-18-65 becomes final. ENO states that it will commence the NOPS recovery with the first billing cycle of November 2020.⁴¹

II. ARGUMENT

A. The City Council Must Investigate ENO’s Misrepresentations Regarding the NOPS Black Start Capability and Must Impose Significant Consequences on ENO.

18. During the proceedings to consider whether ENO should receive approval to build the NOPS plant, several ENO witnesses justified the plant based on the plant’s black start

³⁹ Verified Pet. of ENO for Appeal and Judicial Review of, and Stay for or Injunctive Relief From, Res. R-19-457 of the Council of the City Of New Orleans in Civil District Court for the Parish of Orleans, Case No. 2019-12656 (Dec. 6, 2019).

⁴⁰ Resolution No. R-20-344, Resolution and Order Authorizing, Approving an Agreement in Principle to Forego the 2020 Formula Rate Filing and to Settle Litigation Related to the 2018 Rate Case (Oct. 15, 2020).

⁴¹ Compliance Filing Pursuant to Paragraphs 9 and 7 of the Agreement in Principle approved in Resolution R-20-344, at 1 (Oct. 27, 2020).

capability. Black start capability is the ability of the plant to start up under its own power without a backfeed of power from the electric grid. For example, Mr. Charles Rice stated:

the unit will also include black-start capability, which will enable the Company to start the unit even when there is no power on the electric grid. This will give the Company the ability to restore electric service, should a complete loss of service occur. This could be a tremendous benefit if New Orleans is electrically “islanded” from the rest of the interconnected transmission grid, as it was after Hurricane Gustav”⁴²

19. Despite repeatedly describing the black start capability as invaluable before the plant was built, ENO failed to use this capability after eight transmission lines surrounding New Orleans failed. A day and a half after the storm cleared, NOPS still wasn’t delivering any power.⁴³ Instead, ENO waited until the Slidell transmission line was repaired and energized. It should be noted that this took about a day longer than after Hurricane Gustav,⁴⁴ the hurricane ENO explicitly referenced as they argued in support of NOPS.
20. ENO’s explanation for why the black start capability remained unused has shifted like the wind. After the hurricane, ENO issued a statement:

New Orleans Power Station is operational and available to generate power. However, we are dealing with transmission constraints because of the damage to all eight major transmission lines that deliver power to the area. The reason we need the transmission lines to be fixed first is because we need a way to deliver the energy from the plant to customers.”⁴⁵

⁴² Rice Direct at 13.

⁴³ David Hammer, *Entergy NO CEO: New power plant could get electricity back to hospitals in 3 days, ‘God willing.’* (Aug. 31, 2021), <https://www.wwtv.com/article/ne-ws/investiga-ti-ons/david-hammer/entergy-new-power-plant-electricity-hospitals/289-97565961-85d6-4079-b07e-2a367e56726e>.

⁴⁴ Anthony Mcauley and Jeff Adelson, *Entergy gave shifting rationales for New Orleans East plant at center of Ida response* (Sept. 3, 2021), https://www.nola.com/news/hurricane/article_0f64b020-0b5e-11ec-ab08-67055e3460c4.html.

⁴⁵ Hammer, *supra* note 37.

This statement certainly is a concession that NOPS could not provide power to New Orleans when the City is islanded, as ENO promised. Similarly, ENO originally informed Council President Moreno and Council member Giarrusso that the plant required power from one of eight high-voltage transmission lines or from the regional power grid.⁴⁶ After receiving severe criticism, ENO altered its explanation to say that black-starting NOPS was not the best way to get electricity to customers.⁴⁷ When asked why the plant didn't come online earlier in the blackout, ELL CEO Phillip May said that it was imperative the transmission line be repaired first to ensure the system could handle fluctuations in the load.⁴⁸ This, of course, begs the question of if black starting NOPS when New Orleans is completely islanded is not the best option, how valuable is the option and when, if ever, should this option be utilized.

21. Questioning the value of the black start capability of NOPS that is found not to be the best option when New Orleans is islanded is not an academic exercise. ENO convinced the City Council that construction of NOPS was in the public interest, in part, due to the “invaluable” black start capability this project offered. The inability of the plant to be of immediate use in the days after Hurricane Ida, and its failure to prevent the blackout at the start of the year, cast doubt on Entergy's testimony that the plant would increase reliability and redundancy in extreme circumstances. Not only

⁴⁶ David Hammer, *Entergy's shifting explanation on why new plant didn't generate power*, WWL-TV News (Sept. 2, 2021), <https://www.wwtv.com/article/news/investigations/david-hammer/entergys-shifting-explanation-why-new-plant-didnt-generate-power/289-efa8b98f-80cc-4fbb-806d-74caa2163ec5>.

⁴⁷ *Id.*

⁴⁸ Mcauley & Adelson, *supra* note 38.

was ENO's testimony at best highly misleading, but New Orleans ratepayers essentially paid for a function they are not receiving and may never receive.

22. The City Council relied on ENO's testimony and assertions that having a power source within the City would protect New Orleans should there be transmission line failures like the ones during Hurricanes Ida and Gustav that severed the city's connection to the national grid. Misleading the City Council is an insidious form of imprudence.
23. The City Council should consider the February 12, 2019 decision by the South Carolina Public Service Commission ("SCPSC") regarding South Carolina Electric & Gas Company's ("SCE&G") abandonment of its nuclear development project on July 31, 2017. The SCPSC found that all investments after March 12, 2015 and until the project was abandoned were imprudent because of SCE&G's deliberate withholding of material information and its lack of transparency. The SCPSC expressly recognized the loss of trust and harm that resulted from SCE&G's actions subsequent to March 12, 2015. As the SCPSC stated "SCE&G's actions were imprudent under any definition of the term and this Commission will not tolerate deliberate withholding of material information, lack of transparency, or opacity from any entity under our jurisdiction." This conclusion resulted in SCE&G being prevented from recovering \$1.962 billion that SCE&G has spent on the plant's construction.⁴⁹
24. The City Council should reach the same conclusion as the SCPSC. Withholding material information, misleading the City Council and a lack of transparency cannot

⁴⁹ Order No. 2019-122, at 4–5, Docket Nos. 2017-207-E et al. (S.C. Pub. Serv. Comm'n Feb. 12, 2019).

be tolerated. The City Council should investigate the black-start capability of NOPS, including whether this capability will ever be useful even if it exists. If, after a thorough investigation, the City Council concludes that ENO misled the City Council, any ensuing punishment must be severe. ENO cannot be permitted to treat its regulator in this manner. A less than severe punishment will be viewed as just the cost of doing business, and not deter misleading and untruthful statements by Entergy. It would also open the door for misleading and untruthful statements by other companies regulated by the City Council.

25. Aside from the black start issue, another question raised by the use of NOPS is why only New Orleans residents are paying for a plant when residents outside of New Orleans receive service from NOPS during storm restoration. Power from NOPS went to Entergy Louisiana customers outside the city of New Orleans, including Arabi in St. Bernard Parish. Mr. May, the ELL CEO, responded “When we power a facility, electrons do not really respect regulatory or jurisdictional boundaries. They go to where the power can be served.”⁵⁰
26. Of course, the physics of providing electricity have not changed. Electricity is always going to go where the power can be served. New Orleans residents do not begrudge neighboring communities having their power restored. The City Council must determine the prudence of cost allocations by the Entergy Companies that exclusively charge New Orleans customers for a gas plant that is designed to aid residents beyond the city limits in the event of a catastrophic loss of power.

⁵⁰ Hammer, *supra* note 40.

B. The City Council Must Investigate the Entergy Companies' Transmission Line Hardening Program to Determine Whether Mismanagement Led to the Catastrophic Transmission Failures.

27. A key issue to be resolved by the City Council in the wake of Hurricane Ida is why so much of the transmission system failed. The fact that all eight transmission lines were lost at once raises concerns about how the Entergy Companies have managed, or mismanaged, the transmission system.
28. According to the Entergy Corporation, Entergy's hardening strategy began more than 40 years ago after Hurricane Betsy.⁵¹ Entergy asserts that "because Hurricane Betsy's wind speeds topped 140 mph, the Company hardened its transmission system well beyond National Electrical Safety Code (NESC) requirements."⁵² This begs the question of if, in fact, the Entergy Companies have spent 40 years hardening the transmission lines "well beyond" the National Electrical Safety Code requirements, then why did eight major transmission lines fail, including the total collapse of the Avondale tower, which was obviously in a rusted condition.
29. The failure to harden transmission lines in an appropriate manner, despite starting this process after Hurricane Betsy and billions of ratepayer dollar being expended on this fruitless endeavor,⁵³ resulted in eight transmission lines failures leaving New Orleans "islanded." This catastrophic occurrence is the very event ENO used to justify the

⁵¹ Entergy Resilience Plan at 5.

⁵² *Id.*

⁵³ Between 2005 and 2016, Entergy spent \$1.7 billion in hardening investments. *Id.* From 2017 to 2019, ELL spent about \$1.2 billion on numerous projects to improve its transmission system. Tim McLaughlin & Stephanie Kelly, *Why Hurricane Ida crippled the New Orleans power grid*, Reuters (Sept. 4, 2021), <https://www.reuters.com/business/environment/why-hurricane-ida-crippled-new-orleans-power-grid-2021-09-04/>.

- request for approval of NOPS. However, NOPS did not start on its own and could not be powered up until the Slidell transmission line was repaired.
30. One of the most shocking transmission failures was the total collapse of the transmission tower at Avondale. According to ELL CEO Phillip May, the higher fees residents pay for transmission hardening weren't used to improve or harden the transmission tower that fell in Avondale because it was already "robustly engineered" and had recently passed an inspection.⁵⁴ And yet, the transmission line failed, causing catastrophic suffering in New Orleans and the surrounding communities.
31. The City Council should find Mr. May's comments both disturbing and telling. Importantly, and not mentioned by Mr. May, no regulatory body inspects transmission lines to ensure that the transmission lines meet code requirements. Thus, when Mr. May states the Avondale line was inspected, that means that the line was inspected by an Entergy employee and not some independent inspector. Mr. May also fails to mention that while ELL had upgraded the line at Avondale, the tower had not been upgraded. This is the likely point of failure. The ignorance of the Entergy Companies to recognize that the transmission system is an integrated whole and is only as strong as its weakest link reflects a level of mismanagement that should not be tolerated.
32. One question the City Council needs to resolve, and one that the Entergy Companies have thus far refused to answer, is whether the "improved" transmission lines

⁵⁴ David Hammer, *An island without power: Why a massive Entergy transmission tower crumbled and all 8 sources of outside power were lost*, 4WWL (Aug. 30, 2021), <https://www.wwltv.com/article/news/investigations/david-hammer/an-island-without-power-why-a-massive-entergy-transmission-tower-crumbled-and-all-8-sources-of-outside-power-were-lost/289-bc36e2e4-b19e-4bf0-af3f-97c25f44460f>.

survived the hurricane. If the new infrastructure failed, then the highly expensive hardening project clearly is not working. However, at the end of the day and regardless of the conclusions of this investigation, it is clear that neither ENO nor the City Council can continue with business as usual. Building and rebuilding the transmission system again and again at a cost of hundreds of millions of dollars is not the solution.

33. The City needs a mix of solutions to its transmission infrastructure problem. These solutions should include microgrids, distributed generation with solar and selective transmission and distribution undergrounding for critical facilities and the most vulnerable neighborhoods to help New Orleans residents to rebound and recover as quickly as possible from storms and mitigate the impacts of the climate crisis. One example of a relatively small selective transmission undergrounding project is the transmission line which connects the Nine Mile generating station to New Orleans. This portion of transmission line is about ½ mile long. Undergrounding this line would result in the Nine Mile power plant becoming a part of the New Orleans “island” in the event that another hurricane damages other transmission to the city.

C. The City Council Must Require an Independent Management Audit to Determine Why ENO’s Utility Services Are Not Well Implemented.

34. ENO’s misleading statements with regard to the black start capability of NOPS, and the failure of the Entergy Companies’ transmission hardening programs are simply the latest in a long line of ENO management failures that New Orleans residents have had to endure. On March 15, 2021, Energy Future New Orleans submitted a letter to

the City Council⁵⁵ setting forth a litany of failures including unannounced power outages on Mardi Gras Day in excess of four times the required load shed in below-freezing temperatures that also shut off electric service to the city’s essential water services; intentional safety violations at the Grand Gulf nuclear plant with exorbitant costs passed onto customers; bill spikes with increases of 200–300 percent over last year; and ENO’s decision to reduce expenditures on operations and maintenance and an apparent data breach that gave criminals access to customers’ personal data. Movants note that City Council President Helena Moreno stated her support to “do a management audit and move forward with that based on their recommendations [in the letter].”⁵⁶ The audit should carefully examine why ENO’s actions have not been sound and why its programs, alone and in concert with the Entergy Companies, are not well implemented.

35. Now, in addition to the issues set forth in the letter, the City Council should require an independent management audit to examine ENO management’s repeated lies and misleading statements to the City Council about the capabilities of NOPS and failing to harden transmission lines to withstand hurricanes it knew would come.
36. An independent management audit is a necessary step to ensure that ENO is held accountable for its bad decisions and negligence. Through this motion, Movants formally reiterate the request for an independent management audit to identify

⁵⁵ See App. A.

⁵⁶ City of New Orleans, *New Orleans City Council Utility, Cable, Telecommunications and Technology Committee Meeting*, at 00:47:16–00:47:53 (Mar. 16, 2021) (remarks of Councilmember Moreno), http://cityofno.granicus.com/MediaPlayer.php?view_id=7&clip_id=3814.

corrective action to improve electric service that meets the needs of New Orleans residents and is responsive to the climate crisis.

37. Specifically, the recommendations sought an order from the City Council requiring Entergy to fund and undergo an independent management audit that addresses each of the following issues:

- A) Leadership and staffing roles, responsibilities and requirements;
- B) Organizational structure, decision-making processes, internal controls, and external relations of all kinds;
- C) Billing operations and verification method;
- D) Emergency planning and response;
- E) Salary and compensation levels; and
- F) Corporate culture and capacity to address the critical issues of climate change, a transition to a renewable energy system, advanced energy efficiency, and ensuring energy justice.

38. In the wake of Hurricane Ida, ENO has continued its mismanagement that has brought about devastating effects for New Orleans residents. For example, in the wake of Hurricane Ida, ENO posted an online map of New Orleans indicating areas where power was restored. This information was false. Some residents relied on this map to make their way back home after evacuation only to find their homes had no electricity in sweltering heat. Similarly, the poor condition of poles and wires that ENO has neglected for years made the work of restoring power by utility crews who came in from other states more difficult and time consuming. ENO's mismanagement worsened conditions for those New Orleans residents whose homes and businesses were not damaged by Hurricane Ida.

39. Hurricane Ida made landfall exactly 16 years after Hurricane Katrina on August 29, 2021. Both these major storms devastated communities in Louisiana and in other states. Both are recognized as climate disasters. It is worth noting that, after Hurricane Katrina, many New Orleans residents rebuilt their homes for the first time with rooftop solar panels. Residents learned nature-based solutions to mitigate against flooding. However, their wisdom to re-build sustainably is not shared by ENO's management who have yet to develop a climate action plan for New Orleans that can lessen our vulnerability to the climate crisis.
40. The City Council must recognize that the significant problems arising from ENO's mismanagement have not and will not improve on their own. An independent management audit of ENO was necessary before Hurricane Ida and has become more urgent in the aftermath of the storm. Movants urge the City Council to issue an order requiring Entergy to fund and submit to an independent management audit.

D. In Light of ENO's Misleading Statements Regarding the Black Start Capability of NOPS, Movants Reiterate the Request that the City Council Institute a Prudency Review to Examine All Costs and Expenses Associated with the Construction and Operation of NOPS.

41. Finally, the Movants reiterate the previous motion that the City Council institute a prudence review. While the City Council issued a resolution⁵⁷ requesting comment on the request, the City Council never took any further action. In this initial request, Movants noted that New Orleans ratepayers pay handsomely for their electricity and the new gas plant. ENO's recent Formula Rate Plan filing demonstrates the truth of

⁵⁷ Resolution R-21-37.

this statement. New Orleans residents will pay \$11 a month⁵⁸ for NOPS, a gas plant that is not even giving the residents what was promised when the project was approved. In addition to the expenditures listed in the first motion, which are set forth again below, the City Council must review the prudence of NOPS in light of the misleading testimony provided by ENO. The City Council has an abiding responsibility to ensure that ratepayers are not burdened with inappropriate costs. The City Council should protect the ratepayers of New Orleans to the fullest extent possible by initiating an open and transparent prudence review of ENO's actions and claimed expenses, including contracting with an independent entity to audit ENO's expenditures and provide a full report to the City Council.

42. "Prudent" management implies reasonable management and is related to "negligence." A finding of imprudence does not require any showing of fraud or actual dishonesty. As early as 1923, the Supreme Court recognized that the determination of what is just compensation for a public utility involves consideration of the utility's conduct in incurring its costs. Specifically, the Supreme Court stated that the return "should be adequate, *under efficient and economical management....*"⁵⁹ The Supreme Court subsequently held that regulation cannot be frustrated by requiring a rate to compensate for extravagant or unnecessary costs.⁶⁰ The utility's original investment must be reviewed before the consumers are charged

⁵⁸ David Hammer, *Entergy's shifting explanation on why new power plant didn't generate power*, WWL-TV News (Sept. 2, 2021), <https://www.wvltv.com/article/news/investigations/david-hammer/entergys-shifting-explanation-why-new-plant-didnt-generate-power/289-efa8b98f-80cc-4fbb-806d-74caa2163ec5>.

⁵⁹ *Bluefield Water Works & Improvement Co.*, 262 U.S. at 693 (emphasis added).

⁶⁰ *Acker v. U.S.*, 298 U.S. 426, 430 (1936).

for the investment. The rule is that ratepayers should not bear any costs that are found to be imprudent.

43. The basic authority for a regulatory body's requiring prudent investments rests on the just and reasonable standard itself. A utility which is subject to the just and reasonable standard is on notice that imprudent expenditures are inconsistent with that standard and may be disallowed. No further or other notice is required. Prudence reviews also reduce an important asymmetry of information that exists between a utility and its regulator. A regulatory body can obtain all the facts it needs to review the reasonableness of a utility's actions and choices. Prudence reviews are effective in catching errors made by the utilities.
44. The Federal Power Commission ("FPC") previously undertook a review of the case law concerning the criteria to be used in determining prudence. The FPC concluded that customers of a regulated company should not be required to pay more than the costs that would have been "incurred by alert, efficient, and responsible management."⁶¹
45. Similarly, the New York Public Service Commission ("NY PSC") decided the prudence issues relating to the Shoreham Nuclear Generating Facility on the basis of "how reasonable people would have performed the task that confronted the company."⁶² The NY PSC added, "that a company be held to account if it fails to respond adequately to changing circumstances or to new challenges that may arise as

⁶¹ *Midwestern Gas Transmission Co.*, 36 FPC 61 (1966), *reh'g denied*, 36 FPC 599 (1966), *aff'd*, *Midwestern Gas Transmission Co. v. FPC*, 388 F.2d 444 (7th Cir. 1968), *cert. denied*, 392 U.S. 928 (1968).

⁶² *Re Long Island Lighting Co.*, 71 P.U.R. 4th 262, *1 (Dec. 16, 1985).

a project progresses.”⁶³ “Ratepayers are entitled to protection from the consequences of unresponsive or inept management.”⁶⁴

46. In 1991, the Louisiana Supreme Court addressed the prudence standard in the context of a rate case filed by Gulf States Utilities Company.⁶⁵ The Court explained that the prudent standard is one of the principles used by ratemaking bodies to determine how much of a utility’s investment in a particular plant should be included in its rate base—ultimately to be borne by the utility’s ratepayers. To meet the prudent standard, the Court explained, “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 or should have been known at the time, responded in a reasonable manner.’”⁶⁶ Thus, the burden of proof in a prudency review is on the utility.

47. A regulatory body, therefore, will employ the “reasonable man” test found in many areas of the law including negligence law, as the general standard by which the prudence of utility management must be judged. Under the “reasonable man” test the fundamental question for decision-making is whether management acted reasonably in the public interest, not merely in the interest of the company or an integrated group of companies. The overriding issue is not the reasonableness of the cost in the abstract but “a reasonable and prudent business expense, which the consuming public may reasonably be required to bear.”⁶⁷

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Gulf States Utils. Co. v. La. Pub. Serv. Comm’n*, 578 So.2d 71 (La. 1991).

⁶⁶ *Id.* at *85 (citing *Re Cambridge Elec. Light Co.*, 86 P.U.R. 4th 574 (Mass. D.P.I. 1987)).

⁶⁷ *Midwestern Gas Transmission Co.*, 388 F.2d at 448.

48. A utility must make reasonable attempts to minimize costs through prudent decision-making since ratepayers may depend on only one monopolistic supplier.⁶⁸ Because customers of a monopolistic enterprise do not have the choice to take their business to a more efficient provider, market forces provide no incentive to utilities to act prudently. Therefore, a utility's only motivation to act prudently "arises from the prospect that imprudent costs" may be disallowed.⁶⁹
49. Therefore, the proper standard for determining whether a utility is imprudent is whether objectively that utility acts reasonably under the circumstances because only the utility, and not the ratepayer, is in a position to minimize imprudence and maximize efficiency.⁷⁰ The Louisiana courts have established that in a prudence review 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 or should have been known at the time, responded in a reasonable manner.'"⁷¹
50. The City Council has previously denied recovery of costs due to the utility's imprudence. The City Council found that approximately \$476 million of costs related to construction of a nuclear power plant had been imprudently incurred because the utility failed in its oversight and management of its participation in the project construction. The City Council specifically found that the utility had done virtually nothing to minimize its risks. However, the City Council decided not to permit \$135 million of the total costs to be passed onto ratepayers. On appeal, the Court found that

⁶⁸ *Entergy Gulf States, Inc. v. La. Pub. Serv. Comm'n*, 730 So.2d 890 (La. 1999).

⁶⁹ *Gulf States Util. Co. v. La. Pub. Serv. Comm'n*, 689 So.2d 1337, 1345 n.9 (La. 1997) (citing *In Re Long Island Lighting Co.*, 71 P.U.R. 4th 262 (N.Y.P.S.C.1985)).

⁷⁰ *Entergy Gulf States, Inc.*, 730 So.2d.

⁷¹ *Gulf States Util. Co.*, 578 So.2d at 85.

none of the imprudently incurred costs could be passed through to ratepayers, but had to be borne by utility shareholders.⁷²

51. Prudent management issues potentially cover the full range of cost and investment matters that may arise during the design, planning, and construction of a project. Among the issues the City Council should analyze are: a) the appropriateness of ENO's affiliate transactions with Entergy Services, Inc. and any other affiliated companies; b) the reasonableness of the engineering, procurement, and construction ("EPC") services contract that ENO entered into without review and approval by the City Council; c) whether ENO effectively administered the EPC contract and all other contracts related to the project; d) whether the construction methods selected by ENO were appropriate; e) if ENO responded to changing circumstances or new challenges; and f) whether the estimated revenue requirement associated with NOPS was calculated correctly. This listing is just a sample of the issues which the City Council should examine.
52. With regard to the affiliate issues, where an expenditure is the result of a charge by an affiliated company, it must be carefully scrutinized.⁷³ Excessive payments to an affiliate may be disallowed.⁷⁴ The part of the charges that represent unreasonable profits to the affiliated company may be disallowed for the purpose of determining rates to be charged by a utility.⁷⁵ The utility must show that a payment to an affiliate

⁷² *All. for Affordable Energy v. City Council*, 578 So.2d 949 (La. 1991). This decision was vacated by the Court at the request of the parties as part of the settlement agreement.

⁷³ *See, e.g., Central Tel. Co. v. State Corp. Comm'n of Va.*, 219 Va. 863 (1979).

⁷⁴ *See, e.g., U.S. West Commc'ns, Inc. v. Ariz. Corp. Comm'n*, 915 P.2d 1232 (Ct. App. 1996).

⁷⁵ *Central La. Elec. Co., Inc. v. La. Pub. Serv. Comm'n*, 373 So.2d 123 (La. 1979).

- for services or supplies is fair.⁷⁶ If there is an absence of data and information from which the reasonableness and propriety of the services rendered and the reasonable cost of rendering such services can be ascertained, the allowance is properly refused.⁷⁷
53. ENO's EPC contract also raises concerns. According to the City Council's Advisors testimony at the February 14, 2019 meeting, 80% of the costs Entergy claims it is entitled to recover stem from the EPC contract on the RICE units. ENO, not its ratepayers, selects the firms which work on a construction project and negotiates the applicable contracts. Therefore, ENO, not the ratepayers, must bear the consequences for the utility's failure to negotiate appropriate terms.
54. ENO's calculation of the estimated revenue requirements associated with NOPS also raises questions. In Resolution No. R-18-65, the City Council's Advisors provided an estimated monthly impact for residential customers of \$6.43.⁷⁸ The Advisors applied an ROE of 9.75% in calculating this estimate.⁷⁹ The Council found the Advisors' bill impact calculations to be based on more reasonable assumptions and therefore to be more convincing than ENO's rate impact calculations.⁸⁰
55. However, in the ENO rate proceeding, the City Council adopted an ROE of 9.35% for ENO. Based on this lower ROE, the bill impact for residential customers would reasonably be expected to be lower. Despite this lower ROE, ENO's typical monthly

⁷⁶ See, e.g., *Schuylkill Valley Lines v. Pa. Pub. Util. Comm'n*, 68 A.2d 448 (Pa. 1949).

⁷⁷ See, e.g., *State ex rel. Util. Comm'n v. General Tel. Co. of Southeast*, 189 S.E.2d 705 (N.C. 1972).

⁷⁸ Resolution No. R-18-65 at 184.

⁷⁹ *Id.* at 185.

⁸⁰ *Id.*

bill, as set forth in ENO's compliance filing, is \$6.84. The City Council should require ENO to explain why the expected bill impacts increased rather than decreased.

56. Finally, the City Council should find that ENO has ignored the City Council's determination regarding the recovery of NOPS costs. ENO asserts that it is permitted to recover the estimated first year non-fuel revenue requirement associated with NOPS after Resolution No. R-18-65 becomes final. However, in its rate proceeding decision, the City Council concluded that no actual costs should be flowed through the NOPS adjustment to ratepayers until such time as the construction of NOPS *and the associated costs* have been approved through a final judgment of the Council.⁸¹
57. New Orleans ratepayers are entitled to a probing prudence review. The City Council should protect the ratepayers of New Orleans to the fullest extent possible by initiating an open and transparent prudence review of ENO's claimed expenses. As a first step in this review, the City Council should contract with an independent auditor to fully examine all aspects of the design and construction of NOPS. The City Council can then use the independent auditors report to set the parameters of the prudence review proceeding.

E. In Order To Protect The Public Interest, The City Council Must Ensure That The Energy System Meets the Needs of New Orleans Residents and Provides Climate Change Mitigation and Adaptation.

It is unconscionable that New Orleans residents have come to expect failure from their public utility. They have also come to expect major outages during extreme weather

⁸¹ *Id.* at 113–114.

events, events that will increase due to climate change. In New Orleans, these two issues are intertwined. The City Council and the residents have a right to require better. What is clear from the events of the preceding several years is that either ENO has no intention of giving New Orleans the electric service it deserves, or the Company is simply incapable of doing so.

But we can build resilient power systems that can endure severe hurricanes. In order to do so, we need to look beyond simply replacing the same lines and wires or building more centralized power plants and expecting different results. Both regulators and utilities have repeatedly missed opportunities to act on this ability to build a better system. Instead, utilities keep repairing the same overhead lines and even furthering investments in gas plants like the one in New Orleans East—a plant that notably failed during Hurricane Ida and required grid power to resume operations. The City Council should take note of what worked in the days after Hurricane Ida: distributed renewable energy in the form of rooftop solar with battery storage on the homes of residents, who were also able to help out neighbors in need.⁸² The starting point of examining how to achieve a resilient power system is to correct the mistakes of the past, rather than continuing to repeat them. It is in the public interest of New Orleans to deliver an energy system that meets the needs of residents as well as mitigates and adapts to climate change.

⁸² See Halle Parker, *Rooftop Solar Systems Survived Hurricane Ida; in Black-out Some Powered Neighbors, Too*, The Times-Picayune, (Sept. 13, 2021), https://www.nola.com/news/environment/article_3cf5e99e-11af-11ec-a7b0-1f16a8fc2f09.html

III. CONCLUSION

The City Council is urged to take a hard look at the transmission failures of the Entergy Companies as well as a thorough examination of the mismanagement by ENO. Finally, no regulatory body can have the confidence of the public if it permits the utility it regulates to mislead both the regulatory body itself and the public who depend on that body for protection from the excesses of the monopoly utility. The investigations and examinations requested by the Movants are a vital first step to achieving the resilient power system New Orleans needs and deserves.

WHEREAS, for the reasons set forth above, the Movants respectfully request that the City Council 1) investigate ENO's misrepresentations regarding the NOPS black start capability; 2) investigate the Entergy Companies transmission line hardening programs; 3) require an independent management audit of ENO and Entergy Companies actions impacting services in and to New Orleans; 4) institute a prudence review to examine the costs associated with the design and construction of NOPS; and 5) contract with an independent auditor to conduct a full examination of the NOPS design and construction expenditures.

Dated: September 14, 2021.

Continued for signatures:

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of September 2021, a copy of the **Motion for Investigation of the Failures of Entergy New Orleans, LLC, Motion for Independent Management Audit and Second Motion to Institute Prudence Review** has been served on the persons listed below by electronic mail:

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*On Behalf of Alliance for Affordable Energy
and Sierra Club*

Appendix A

Energy Future New Orleans, *Letter from Energy Future New Orleans to City Council Requesting Management Audit of ENO*

March 15, 2021



March 15, 2021

Via Electronic Mail

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

Re: Management Audit Request

Dear Ms. Johnson:

Please find enclosed Energy Future New Orleans's (EFNO) letter to city council. Please file the attached communication and this letter into the record. As a result of the remote operations of the Council's office related to COVID-19, EFNO submits this letter electronically and will submit the requisite original and number of hard copies once the Council resumes normal operations, or as you direct. EFNO requests that you file this submission in accordance with Council regulations as modified for the present circumstances. If you have any questions, please do not hesitate to contact me.

Thank you for your time and attention,

Sincerely,

A handwritten signature in black ink, reading 'Logan Atkinson Burke', is written over a horizontal line.

Logan Atkinson Burke
Executive Director
Alliance for Affordable Energy
Energy Future New Orleans

March 15, 2021
(Via Electronic Mail Only)

Council President Helena Moreno
Councilmember-At-Large
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Helena.moreno@nola.gov

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Councilmember Kristin Gisleson Palmer
District "C"
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Kristin.Palmer@nola.gov

Dear City Councilmembers,

Sky-high bills. Unannounced power outages on Mardi Gras Day in excess of four times the required load shed in below-freezing temperatures that also shut off electric service to the city's essential water services. Intentional safety violations at the Grand Gulf nuclear plant with exorbitant costs passed onto customers, which have triggered a \$1B+ FERC case. And now an apparent data breach that gave criminals access to customers' personal data. All of these management failures at Entergy have occurred in less than three months with great harm to the people of New Orleans.

We cannot afford nor do we seek yet another special meeting that involves a presentation by Entergy in lieu of concrete regulatory action. As elected leaders responsible for the regulation of Entergy, we urge you to summon the courage to require Entergy to undergo an independent management audit. Entergy's cascade of failures necessitates a management audit to provide the Council with honest and trustworthy answers about weaknesses in Entergy's business and operational practices. A management audit is needed to investigate the causes for the increased bills and unannounced Mardi Gras power outage and provide facts that Entergy has evaded in its presentations to the Council. A management audit is also needed to identify corrective action to improve electric service that meets the needs of New Orleans residents and is responsive to the climate crisis.

We have no evidence that Entergy has the management team and skills to meet the challenges and solve the problems it faces. And it lacks the capacity to build the team necessary.

The Council must order Entergy New Orleans to fund an independently-conducted management audit that addresses each of the following issues:

- a) Leadership and staffing roles, responsibilities and requirements.
- b) Organizational structure, decision-making processes, internal controls, and external relations of all kinds.
- c) Billing operations and verification method.
- d) Emergency planning and response.
- e) Salary and compensation levels.
- f) Corporate culture and capacity to address the critical issues of climate change, a transition to a renewable energy system, advanced energy efficiency, and ensuring energy justice.

There is precedent for regulators directing an independent management audit of a utility that uncovered cost savings and opportunities to improve customer service. The management audit ordered by Hawaii's utility regulators identified more than \$20M in savings that the islands' utilities are now working to capture.

Please take the necessary steps to bring this embarrassing and dangerous pattern of failed and incompetent management to an end. The first step is an independent management audit of Entergy New Orleans, which only the Council can order.

Sincerely,

Clare Geisen, 350 New Orleans

Beth Butler, A Community Voice

Logan A. Burke, Alliance for Affordable Energy

Brent Newman, Audubon Louisiana

Elizabeth Soychak, Coalition Against Death Alley

Peter Digre, Climate Reality Project, New Orleans Chapter

Monique Harden, Deep South Center for Environmental Justice

Rev. Gregory T. Manning, Greater New Orleans Interfaith Climate Coalition

Sylvia McKenzie, Louisiana League of Conscious Voters

Grace Morris, Sierra Club

Andy Kowalczyk, Sustainable Energy Economy Solutions

VAYLA- New Orleans