



October 1, 2021

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Re: *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, City of New Orleans Docket No. UD-18-07*

Dear Ms. Johnson:

Attached please find for your further handling the **Request for Suspension of Procedural Schedule and Comments of Alliance for Affordable Energy** to be filed in the above-referenced proceeding. As a result of the remote operations of the Council's office related to COVID-19, the Alliance for Affordable Energy submits 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 directs. The Alliance for Affordable Energy requests 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*

Enclosures

Cc: Official Service List—Docket No. UD-18-07

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	)	DOCKET NO. UD-18-07
COUNCIL RESOLUTIONS R-15-194	)	
AND R-17-504 AND FOR RELATED	)	
RELIEF	)	

**REQUEST FOR SUSPENSION OF PROCEDURAL SCHEDULE AND COMMENTS OF  
THE ALLIANCE FOR AFFORDABLE ENERGY**

The Alliance for Affordable Energy (“Alliance”) respectfully submits this request for suspension of the procedural schedule pursuant to Resolution No. R-21-295.<sup>1</sup> In light of the City Council of the City of New Orleans’ (“City Council”) decision to institute both an independent management audit and after-incident review of Entergy New Orleans, LLC (“ENO”) relative to its preparation and response to Hurricane Ida (“Hurricane Ida investigation”) as well as the still pending motion for a prudence review, the City Council should suspend the procedural schedule in the above-captioned proceeding until the management audit, Hurricane Ida investigation, and prudence review are completed.

In support of this Request, the Alliance states 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

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<sup>1</sup> Resolution No. R-21-295, Resolution and Order Granting Entergy New Orleans, LLC’s Mot. to Extend the Deadline for the 2021 Formula Rate Filing (Aug. 5, 2021) (“Resolution No. R-21-295”).

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 2018 Rate Case Proceeding**

4. On September 21, 2018, ENO refiled its rate case.<sup>2</sup> 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.
5. On November 7, 2019, the City Council adopted Resolution No. R-19-457, setting new rates and establishing the deadlines for ENO’s electric and gas formula rate plans (“FRP”) evaluation filings.<sup>3</sup>
6. On June 30, 2021, ENO filed a Motion to Delay its 2021 FRP Filing until July 19, 2021 and the City Council granted the unopposed motion in Resolution No. R-21-295.

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<sup>2</sup> 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).

<sup>3</sup> Resolution No. R-19-457, Resolution and Order, at 24 (Nov. 7, 2019).

7. On July 16, 2021, ENO filed its 2021 FRP requesting an increase in electric and gas rates totaling \$64.3 million resulting in an estimated increase of \$25 per month on typical residential electric and gas bills.

## II. ARGUMENT

### **A. The City Council Should Delay Consideration of ENO’s Formula Rate Plan Filing Until After Completion of the Independent Management Audit and the Hurricane Ida Investigation.**

8. On March 15, 2021, Energy Future New Orleans (“EFNO”) submitted a letter to the City Council 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.<sup>4</sup>
9. Specifically, EFNO sought an order from the City Council requiring ENO 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;

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<sup>4</sup> EFNO, *Letter from Energy Future New Orleans to City Council Requesting Management Audit of ENO* (Mar. 15, 2021).

- 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.
10. On September 14, 2021, the Alliance, Deep South Center for Environmental Justice and Sierra Club (“Movants”) filed a Motion for Investigation of the Failures of ENO, Motion for Independent Management Audit and Second Motion to Institute Prudence Review. The Movants reiterated the recommendations set forth in the ENFO letter. The Movants also noted that in addition to the ENO failures listed in the letter, ENO can add to their parade of mismanagement lying to the City Council about the capabilities of the New Orleans Power Station (“NOPS”) and failing to harden transmission lines to withstand hurricanes ENO knew would come.
  11. The Movants asserted that 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. According to the Movants, this audit is a necessary step to ensure that ENO is 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. Movants formally reiterated 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.
  12. On September 22, 2021, the City Council’s Utility, Cable, Telecommunications and Technology Committee (“Utility Committee”) adopted a motion directing the Council Utilities Regulatory Office (“CURO”) to develop the scope for a request for

qualifications and proposals for a consultant to conduct a management audit. On September 23, 2021, the full City Council adopted the Motion.<sup>5</sup>

13. In addition to requesting an independent management audit, the Movants requested an investigation into ENO's misleading of the City Council regarding the black start capabilities of NOPS, the failure to harden transmission lines in an appropriate manner, despite starting this process after Hurricane Betsy,<sup>6</sup> and millions of ratepayer dollars being expended on this fruitless endeavor.<sup>7</sup>
14. 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. 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 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.

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<sup>5</sup> Mot. No. M-21-342 (Sept. 23, 2021).

<sup>6</sup> See Entergy, *Entergy's Resilience Plan*, at 5 (Dec. 2016) (claiming that "Entergy's hardening strategy actually began 40 years earlier when Hurricane Betsy pummeled the region...."), [https://cdn.entergy.com/userfiles/content/environment/docs/Resilience\\_Plan.pdf](https://cdn.entergy.com/userfiles/content/environment/docs/Resilience_Plan.pdf).

<sup>7</sup> Between 2005 and 2016, Entergy spent \$1.7 billion in hardening investments. *Id.*

15. On September 22, 2021, the Utility Committee adopted a resolution and order directing the City Council's Utility Advisors to conduct an after-incident review of ENO relative to its preparation and response to Hurricane Ida. The full City Council adopted this resolution on September 23, 2021.<sup>8</sup>
16. The City Council cannot find the rate changes proposed by ENO in its FRP filing are just and reasonable until the management audit and Hurricane Ida investigation are both completed. Any mismanagement and imprudence discovered through the audit or investigation would be grounds to deny ENO full recovery of its alleged expenses. Previously, 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 City Council; but the reasonable opportunity to recover investment and a fair return is not a guarantee of dollar-for-dollar cost recovery.<sup>9</sup> Increases in rates which are based on mismanagement and imprudence by the utility are not just and reasonable. The City Council cannot approve the FRP filing in the absence of the information which will be provided by the management audit and the Hurricane Ida investigation.

**B. The Request to Institute a Prudence Review is Still Pending Before the City Council.**

17. On December 11, 2020, the Alliance and Sierra Club filed a Motion to Institute Prudence Review requesting that the City Council 1) institute a prudence review to investigate all aspects of the design and constructions of NOPS and 2) contract with an independent auditor to conduct a full examination of the NOPS design and

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<sup>8</sup> Resolution No. R-21-343, Resolution and Order Directing the Council's Utility Advisors to Conduct an After-Incident Review of Entergy Relative to Its Preparation and Response to Hurricane Ida (Sept. 23, 2021).

<sup>9</sup> Hr'g Tr. at 60:6-15, Docket No. UD-16-02 (Dec. 20, 2017) (emphasis added).

construction expenditures. While the City Council issued a resolution<sup>10</sup> requesting comment on the request and directed CURO and the City Council's Advisors to provide the City Council with a recommendation as to whether the City Council should initiate the requested prudence review,<sup>11</sup> the City Council never took any further action.

18. On September 14, 2021, Movants filed a motion which included a Second Motion to Institute Prudence Review. In addition to the expenditures listed in the first motion, which were reiterated in the second motion, Movants argued that the City Council must review the prudence of NOPS in light of the misleading testimony provided by ENO.
19. "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.<sup>12</sup> The Supreme Court subsequently held that regulation cannot be frustrated by requiring a rate to compensate for extravagant or unnecessary costs.<sup>13</sup> The rule is that ratepayers should not bear any costs that are found to be imprudent.

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<sup>10</sup> Resolution R-21-37, Resolution and Order to Initiate a Comment Period in Response to the Alliance and Sierra Club's Mot. to Institute Prudence Review to Examine the Costs Associated with the Design and Construction of NOPS (Jan. 28, 2021).

<sup>11</sup> *Id.* at 3. There is no public record of either CURO or the City Council Advisors providing this recommendation to the City Council.

<sup>12</sup> *Bluefield Water Works & Improvement Co. v. W Va. Pub. Serv. Comm'n*, 262 U.S. 679, 693 (1923) (emphasis added).

<sup>13</sup> *Acker v. U.S.*, 298 U.S. 426, 430 (1936).



20. Moreover, 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. Under the applicable “reasonable man” test the fundamental question 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.”<sup>14</sup>
21. 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.

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<sup>14</sup> *Midwestern Gas Transmission Co. v. FPC*, 388 F.2d 444, 448 (7<sup>th</sup> Cir. 1968), *cert. denied*, 392 U.S. 928 (1968).

22. For example, ENO's calculation of the estimated revenue requirements associated with NOPS raises questions. In Resolution No. R-18-65, the City Council's Advisors provided an estimated monthly impact for residential customers of \$6.43.<sup>15</sup> The Advisors applied a return on equity ("ROE") of 9.75% in calculating this estimate.<sup>16</sup> The City 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.<sup>17</sup>
23. However, in the ENO rate proceeding, the City Council adopted an ROE of 9.35% for ENO.<sup>18</sup> 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 bill impact, 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.
24. 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. Similar to the need for a complete management audit and Hurricane Ida investigation, the City Council cannot determine that the rates proposed by ENO are just and reasonable in the absence of a prudency review. This is particularly true in this

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<sup>15</sup> Resolution No. R-18-65, Resolution and Order Regarding the Appl. of ENO for Approval to Construct NOPS and Req. for Cost Recovery and Timely Relief, at 184 (Mar. 8, 2018).

<sup>16</sup> *Id.* at 185.

<sup>17</sup> *Id.*

<sup>18</sup> *Supra* note 3.

instance given ENO's deliberate withholding of material information and its lack of transparency. Misleading the City Council is an insidious form of imprudence.

### III. CONCLUSION

**WHEREAS**, for the reasons set forth above, the Alliance respectfully requests that the City Council suspend the procedural schedule in the above-captioned proceeding until the completion of 1) the independent management audit; 2) the Hurricane Ida investigation and 3) the requested prudence review.

Dated: October 1, 2021.

Respectfully submitted,



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*On Behalf of Alliance for Affordable Energy*

## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of October 2021, a copy of the **Request for Suspension of Procedural Schedule and Comments of the Alliance for Affordable Energy** has been served on the persons listed below by electronic mail:

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*On Behalf of Alliance for Affordable Energy*