

RESOLUTION

NO. R-24-49

CITY HALL: February 1, 2024

BY: COUNCILMEMBERS MORRELL, MORENO, GIARRUSSO, KING AND THOMAS

JOINT APPLICATION OF DELTA STATES UTILITIES NO, LLC AND ENTERGY NEW ORLEANS, LLC AUTHORIZING DELTA STATES UTILITIES NO, LLC TO OPERATE AS A JURISDICTIONAL NATURAL GAS LOCAL DISTRIBUTION COMPANY

RESOLUTION AND ORDER ESTABLISHING A PERIOD OF INTERVENTION AND OTHER PROCEDURAL REQUIREMENTS FOR THE CONSIDERATION OF THE JOINT APPLICATION

DOCKET NO. UD-24-01

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans ("Charter"), the Council of the City of New Orleans ("Council") is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the City of New Orleans; and

WHEREAS, pursuant to its powers of supervision, regulation and control over public utilities, the 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; and

WHEREAS, Entergy New Orleans, LLC ("ENO") provides retail electric service and gas within the City of New Orleans; and

WHEREAS, Delta States Utilities NO, LLC ("DSU") is a Delaware limited liability company and indirect subsidiary of BCP Infrastructure Fund, LP and its affiliated investment

vehicles, which is managed by Bernhard Capital Partners Management, LP and owned by infrastructure investors; and

WHEREAS, on December 11, 2023, ENO and DSU (“Applicants”) filed a joint application (“Application”) requesting the Council (i) authorize DSU to operate as a jurisdictional natural gas Local Distribution Company; (ii) approve the transfer and sale of ENO’s jurisdictional gas distribution business and acquisition by DSU; (iii) approve DSU’s assumption and adoption of ENO’s existing rates, rate schedules, and riders; (iv) approve DSU’s creation of a regulatory asset(s) to defer investments made by DSU to stand up the new gas distribution business, for future recovery, subject to Council approval; (v) determine that the costs of purchased assets not yet in service but currently categorized by ENO as construction work in progress do not constitute an acquisition premium, such that costs may be eligible for recovery in rates once placed in service; (vi) approve ENO’s transfer of certain customer data; and (vii) find that appropriate Council ratemaking resolutions, orders, and ordinances continue to be applicable to DSU; and

WHEREAS, pursuant to Chapter 158 of the Code of the City of New Orleans (“City Code”), when a utility files an application to change rates or services, the application must satisfy certain minimum filing requirements, which requirements provide the information necessary to permit a thorough analysis of the utility's application; and

WHEREAS, Chapter 158 of the Code of the City of New Orleans provides detailed filing requirements with respect to the materials and analyses required in any application for a change in rates, but does not provide such detail with respect to the transfer and sale of a utility; and

WHEREAS, Council Resolution R-06-88 was adopted, in part, to resolve ambiguity regarding the Council’s approval process and the approvals required before a corporate reorganization or transfer of assets takes place; and

WHEREAS, Council Resolution R-06-88 resolves that: no utility subject to the jurisdiction of the Council shall sell, assign, lease, transfer, mortgage, or otherwise dispose of or encumber the whole or any part of its franchise, works, property, or system, nor by any means direct or indirect, merge or consolidate its utility works, operations, systems, franchises, or any part thereof, nor transfer control or ownership of any of the assets, common stock or other indicia of control of the utility to any other person, corporation, partnership, limited liability company, utility, common carrier, subsidiary, affiliated entity or any other entity, where the values involved in such action exceed one percent (1 %) of the gross assets of such regulated utility or common carrier, or subsidiary thereof, nor in any way commit itself to take such action or affect any right, interest, asset, obligation, stock ownership, or control, involved in such action, without prior full disclosure of the prior intendment and plan of such utility or common carrier with regard to such action and without prior official action of approval or official action of non-opposition by the Council; and

WHEREAS, Council Resolution R-06-88 identifies the following 18 factors that the Council will consider in determining whether to approve any such transfer of ownership or control: (a) whether the transfer is in the public interest; (b) whether the purchaser is ready, willing and able to continue providing safe, reliable and adequate service to the utility's ratepayers; (c) whether the transfer will maintain or improve the financial condition of the resulting public utility or common carrier; (d) whether the proposed transfer will maintain or improve the quality of service to public utility or common carrier ratepayers; (e) whether the transfer will provide net benefits to ratepayers in both the short term and the long term and provide a ratemaking method that will ensure, to the fullest extent possible, that ratepayers will receive the forecasted short and long term benefit; (f) whether the transfer will adversely affect competition; (g) whether the

transfer will maintain or improve the quality of management of the resulting public utility or common carrier doing business in the City; (h) whether the transfer will be fair and reasonable to the affected public utility or common carrier employees; (i) whether the transfer would be fair and reasonable to the majority of all affected public utility or common carrier shareholders; (j) whether the transfer will be beneficial on an overall basis to City and local economies and to the communities in the area served by the public utility or common carrier; (k) whether the transfer will preserve the jurisdiction of the Council and the ability of the Council to effectively regulate and audit the public utility's or common carrier's operations in the City; (l) whether conditions are necessary to prevent adverse consequences which may result from the transfer; (m) the history of compliance or noncompliance that the proposed acquiring entity or principals or affiliates have had with regulatory authorities in this City or other jurisdictions; (n) whether the acquiring entity, persons, or corporations have the financial ability to operate the public utility or common carrier system and maintain or upgrade the quality of the physical system; (o) whether any repairs and/or improvements are required and the ability of the acquiring entity to make those repairs and/or improvements; (p) the ability of the acquiring entity to obtain all necessary health, safety and other permits; (q) the manner of financing the transfer and any impact that may have on encumbering the assets of the entity and the potential impact on rates; (r) whether there are any conditions which should be attached to the proposed acquisition; and

WHEREAS, it is the Council's desire to establish a procedural schedule that will allow the parties to this proceeding to rigorously investigate the Application, conduct discovery, file testimony and otherwise establish a record upon which the Council may use to render a determination as to whether to conditionally approve or deny the Applicants' request; and

WHEREAS, it is also the Council's desire to ensure that the Applicants and other parties to this proceeding provide fully responsive and timely discovery responses. In this regard, the Council notes that any party that fails to provide fully responsive and timely discovery responses may delay the Council's consideration of the Application; **NOW THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS,
THAT:

1. The Application shall be reviewed in a new docket designated as Docket No. UD-24-01.
2. The Honorable Jeffrey Gulin is appointed the Hearing Officer to preside over the proceedings in this docket, including the conduct of the evidentiary hearing, scheduling, handling discovery, motions, assembling and transmitting the record to the Council at the close of the hearing without a report or recommended findings. For good cause shown and as required by the circumstances of the proceedings, the Hearing Officer shall have the authority to change or amend the dates established in the schedule set forth below.
3. ENO, DSU, and the Council's Advisors are designated parties to these proceedings.
4. Stakeholders desiring to intervene in this proceeding shall file a motion to intervene pursuant to the City Code no later than March 4, 2024, with a copy submitted electronically to Byron Minor (Byron.Minor@nola.gov). Timely filed motions to intervene that are not opposed within the allotted time-period shall be deemed GRANTED.
5. A period of discovery is established herein, and it shall extend from the date of the adoption of this Resolution through eight (8) calendar days prior to the date of the

Evidentiary Hearing. Discovery requests must be made in time that responses may be received prior to the close of the discovery period. Responses to data requests shall be made on a rolling basis and shall be due in hand within 10 calendar days of receipt. Parties are encouraged to submit their data requests and responses electronically, where appropriate. Objections to data requests shall be filed within 5 calendar days of receipt.

6. The parties are encouraged to attempt to resolve their discovery disputes amicably prior to seeking the intervention of the Hearing Officer or appealing to the Council.
7. To the extent technical conferences or settlement negotiations are required, they are to be arranged by the parties with the assistance of the Hearing Officer, if necessary.
8. It is anticipated that during discovery, the parties may be required to produce documents or information that is deemed confidential and/or highly sensitive and, accordingly, the Council adopts for use in this docket its Official Protective Order adopted by Resolution R-07-432, a copy of which can be obtained from the Council Utilities Regulatory Office.
9. To the extent that the City Clerk's office closes before 5:00 pm on the date of any deadline contained herein, the deadline shall be extended to the next business day.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, THAT the following procedural schedule is hereby adopted:

1. Direct Testimony of Intervenors and Advisors shall be filed not later than May 31, 2024.
2. Rebuttal Testimony of the Applicants shall be filed not later than June 28, 2024.
3. Surrebuttal Testimony of Intervenors and the Advisors shall be filed not later than July 26, 2024.
4. Rejoinder Testimony of the Applicants shall be filed not later than August 23 2024.

5. The evidentiary hearing shall be conducted on September 9 - 11, 2024.
6. The Hearing Officer is to certify the record of these proceedings to the Council not later than September 30, 2024.
7. Initial briefs shall be filed not later than October 15, 2024.
8. Reply briefs shall be filed not later than November 1, 2024.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF, AND RESULTED AS FOLLOWS:

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.