



June 28, 2024

Via Electronic Mail

Clerk of Council
Room 1E09, City Hall
1300 Perdido Street
New Orleans, LA 70112

DELTA STATES UTILITIES LA, LLC, AND ENERGENCY LOUISIANA, LLC, EX PARTE
IN RE: APPLICATION FOR AUTHORITY TO OPERATE AS LOCAL DISTRIBUTION
COMPANY AND INCUR INDEBTEDNESS AND JOINT APPLICATION FOR APPROVAL
OF TRANSFER AND ACQUISITION OF LOCAL DISTRIBUTION COMPANY ASSETS
AND RELATED RELIEF (Docket No. UD-24-01)

Dear Clerk:

Please find enclosed the Rebuttal Testimony of Karl R. Rábago on behalf of the Alliance for Affordable Energy under this docket, as well as a signed affidavit in support. Please file the attached communication and this letter in the record of the proceeding. We will submit physical copies at your instruction. If you have any questions, please do not hesitate to contact me.

Thank you for your time and attention.

Sincerely,

Jesse S. George
New Orleans Policy Director
Alliance for Affordable Energy

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

**DELTA STATES UTILITIES LA, LLCC)
AND ENTERGY LOUISIANA, LLC,)
EX PARTE)
)
IN RE: APPLICATION FOR)
AUTHORITY TO OPERATE AS)
LOCAL DISTRIBUTION COMPANY)
AND INCUR INDEBTEDNESS AND)
JOINT APPLICATION FOR)
APPROVAL OF TRANSFER AND)
ACQUISITION OF LOCAL)
DISTRIBUTION COMPANY ASSETS)
AND RELATED RELIEF)**

DOCKET NO. UD-24-01

**REBUTTAL TESTIMONY
OF
KARL R. RÁBAGO
ON BEHALF OF
ALLIANCE FOR AFFORDABLE ENERGY**

JUNE 28, 2024

I. INTRODUCTION

Q. Please state your name, business name and address, and role in this matter.

A. My name is Karl R. Rábago. I am the principal of Rábago Energy LLC, a Colorado limited liability company, located at 1350 Gaylord Street, Denver, Colorado. I appear here in my capacity as an expert witness on behalf of the Alliance for Affordable Energy (“Alliance”).

Q. Are you the same Karl R. Rábago who previously submitted direct testimony on behalf of the Alliance in this proceeding?

A. Yes.

II. OVERVIEW OF TESTIMONY AND RECOMMENDATIONS

Q. Please provide an overview of your rebuttal testimony in this proceeding.

A. In this testimony I review the direct testimony filed by Advisor witnesses Victor M. Prep, Joseph W. Rogers, and Byron S. Watson. Collectively, the Advisor witnesses offer the recommendation that Council approval of the application in this proceeding hinge on the applicants meeting several conditions and making several commitments, despite also finding that the proposed transaction will result in duplication of utility functions and significant increases in gas customer rates—even if all goes well in the establishment of the brand-new Bernhard and DSU gas utility businesses. In my direct testimony, I characterized the proposal in this proceeding as “a pig in a poke.” The Advisors confirm and support my assessment. Even more significantly, the Advisors completely fail to address the critical issues relating to climate change raised by the application for the proposed transaction. I find this omission to be a fatal error—there can be no reasonable

assessment of the public interest impacts of the proposed transaction without full consideration of the Council's climate policies and other climate-related policy matters. As such, even if everything the Advisor witnesses hope will come true does come true, there is inadequate evidence in the record and inadequacy in the evidence considered by the applicants and the Advisor witnesses to support a finding that the proposed transaction is in the public interest. Based on my review of the Advisor witness testimonies, there is no evidence in that testimony to contradict my finding that the proposed transfer of ownership is not in the public interest. I therefore adhere to the conclusions and recommendations that I offered in my direct testimony.

Q. Please reprise your recommendations to the Council.

A. I recommend that the Council disapprove the proposed transfer of ownership of the gas distribution utility. To facilitate a managed decapitalization process, or to undertake any future consideration of the sale or transfer of management of the gas distribution utility, ENO should be directed to file a full general rate case for the gas distribution utility. No further action should be taken on sale or transfer of the gas distribution utility without such a comprehensive review of the gas distribution utility system. I offer three alternative paths for the Council's consideration, in order of preference.

Option 1: The Council should direct ENO to develop a retirement and managed decapitalization plan for the gas distribution utility that will result in ending all gas distribution service to residential and small commercial customers, and accompanying electrification of former gas energy loads, by no later than December 31, 2035.

Option 2: If the Council takes a decision not to require ENO to execute a managed decapitalization of the gas distribution utility, it should develop a plan for municipal takeover of the gas distribution utility and managed decapitalization of the gas utility by the end of 2035. The City should evaluate hiring a qualified firm to achieve this goal.

Option 3: If the Council takes a decision to allow the sale of the gas distribution utility to DSU NO and its parent Bernhard Capital, it should be calibrated to and conditioned on the outcome of a full rate review of the utility, and not to a simple carryover of existing rates, earnings levels, and spending plans. In addition, the Council should impose conditions on the sale including a requirement for developing and executing a managed decapitalization plan to accomplish electrification of all residential and small commercial demand for gas by the end of 2035, a cap on any transition costs subject to independent third-party evaluation of the transition costs, an across-the-board rate decrease and rate caps for three years, and significant commitments to gas efficiency program investments and performance for residential and small commercial customers.

III. NEW ORLEANS CITY COUNCIL AND LOUISIANA CLIMATE POLICIES

Q. Are issues relating climate change and reductions in the use of fossil fuels germane to this proceeding?

A. Yes. The broadly-sweeping public interest standard adopted by the Council for review of the merits of the proposed transaction¹ properly includes consideration of the fossil fuel-

¹ New Orleans City Council Resolutions R-06-88 (Mar. 16, 2006), R-24-49 (Feb. 1, 2024). *See* Alliance witness Karl R. Rábago direct testimony (“Rábago Direct”) at 8-14.

related emissions associated with the gas distribution system—and whether those emissions will increase or decrease under the proposed transaction, and whether extant climate- and fossil fuel-related policies will be frustrated by the proposed transaction.

Q. What policies indicate that climate change and climate change-related impacts are particularly relevant to this proceeding?

A. The Council has adopted Resolution No. R-22-11, directing the City of New Orleans and Sewerage and Water Board of New Orleans to procure 100% renewable power to meet each organization’s energy goals.² This resolution builds on Council Resolution R-21-182, establishing a renewable and clean portfolio standard for the City.³ New Orleans Mayor LaToya Cantrell has developed and is implementing a “Net Zero by 2050” plan for the City that calls for reducing greenhouse emissions relating to natural gas use, with the City taking a leadership role in electrification of thermal energy loads.⁴ Likewise, the Louisiana Climate Initiatives Task Force has developed a Louisiana Climate Action Plan that identifies the role that fossil methane gas development and use

² New Orleans City Council Resolution R-22-11 (Jan. 6, 2022), available at: <https://council.nola.gov/council/media/Assets/Committees/Climate/R-22-11-CNO-100-Renewable-Power-Goal.pdf>.

³ New Orleans City Council Resolution R-21-182 (May 20, 2022), available at: <https://council.nola.gov/council/media/Assets/Committees/Climate/R-21-182-Renewable-and-Clean-Energy-Portfolio-Standard.pdf>.

⁴ Office of Resilience & Sustainability, *Net Zero by 2050: A Priority List for Climate Action in New Orleans*, City of New Orleans (Dec. 2022), available at: <https://nola.gov/nola/media/Climate-Action/2022/Net-Zero-by-2050-A-Priority-List-for-Climate-Action-in-New-Orleans.pdf>.

plays in impacting the climate and also charts a course to net zero greenhouse gas emissions by 2050.⁵

Q. Why are these policies important in this proceeding?

A. As I explained in my direct testimony, Delta States Utilities New Orleans (“DSU NO”) founds its proposed acquisition of the gas distribution utility on a growth model for the business and completely fails to address climate change and greenhouse gas emissions.⁶ DSU NO’s plan is to make it harder for the City to meet its climate change policy goals.

Q. What climate change-related policies do the Advisor witnesses address in their direct testimony?

A. The Advisor witnesses do not address climate change-related policies or climate change in their direct testimony at all.

Q. Is the failure by the Advisor witnesses to address climate change and climate change-related policies significant?

A. Yes. In my opinion there can be no reasonable assertion that the proposed transaction is in the public interest without addressing climate change and climate-related policies. In this regard, the proposed transaction is fatally deficient. And further, the Advisor witnesses’ testimony cannot support a public interest finding supporting Council approval of the proposed transaction without addressing the critical issues relating to climate change.

⁵ Climate Initiatives Task Force, *Louisiana Climate Action Plan*, Office of the Governor (Feb. 1, 2022), available at: https://gov.louisiana.gov/assets/docs/CCI-Task-force/CAP/Climate_Action_Plan_FINAL_3.pdf.

⁶ Rábago Direct at 15-16.

Q. How else are climate change and climate change-related policies relevant to the regulation of the gas distribution utility serving the people of New Orleans?

A. Climate change policies uniformly express the need, as do those in New Orleans and Louisiana, for a transition to a net zero reliance on fossil fuels by a date certain. The necessary transition has significant economic, financial, operational, consumer, and equity issues for gas distribution utilities and the customers they serve. As pointed out in one recent study prepared for Advanced Energy United that addresses the issues:

The regulated gas distribution network is undergoing significant transformation due to a combination of market and policy forces. Increasingly, cost-competitive electric heating solutions are leading to decreased gas throughputs in many jurisdictions — a trend expected to accelerate as federal incentives for heating electrification and ambitious state and local climate goals take effect. Traditional regulatory frameworks in which utilities are incentivized to expand their systems and stranded asset risks are borne primarily by ratepayers are becoming increasingly misaligned with a contracting gas sector. A broader regulatory toolbox will be required to ensure that the gas transition materializes in a way that is equitable and affordable for customers.⁷

The study, which I commend to the Council’s attention as a valuable toolbox that draws on years of work addressing gas utility transition issues, recommends a phased transition⁸—what I termed a “managed decapitalization”—and which should begin now so as to avoid economic hardship to the gas utility’s most vulnerable customers. There is no time to lose on getting this important work underway. The proposed transaction

⁷ Strategen, *Regulatory Approaches for a Cost-Effective Gas Transition: Ratemaking, Incentives, and Other Tools*, Advanced Energy United (May 2024) at 3, available at: <https://advancedenergyunited.org/hubfs/2024%20Folders/2024%20-%20Reports/Regulatory%20Approaches%20for%20a%20Cost-Effective%20Gas%20Transition-%20Ratemaking%2c%20Incentives%2c%20and%20Other%20Tools.pdf>. Attached as Alliance-Rábago-Rebuttal Exhibit 1.

⁸ *Id.* at 13 et seq.

ignores this critical set of issues entirely, and the failure of the Council's Advisors witnesses to identify this omission and to propose conditions relating to an effective transition for the gas utility in the context of the proposed transaction is fundamental.

Q. Did you address these transition issues in your direct testimony?

A. Yes. I identified several elements of the Council's public interest test that directly raised climate change and the transition away from fossil fuel dependence, and my proposals regarding a managed decapitalization of the gas distribution utility were aimed at the critical transition away from fossil fuel dependence.⁹

V. ADVISOR WITNESSES REVIEW OF THE PROPOSED TRANSACTION

Q. What is your assessment of the review of the proposed transaction by the Advisor witnesses?

A. In my direct testimony, I pointed out that a major flaw in the application was a failure to support the application with an independent review, and that the Council still needs much more information to render a decision about whether the proposed transaction is in the public interest.¹⁰ The review by the Advisors addresses the first half of those concerns—an independent review of the proposed transaction. Indeed, because DSU NO is keeping critical information about the proposed transaction secret from the public, the review of the proposed transaction by the Advisor witnesses fills a critical gap in assessing some of the potential adverse impacts associated with the proposed transaction. Without disclosing confidential matters, the Advisor witnesses have estimated changes in revenue

⁹ Rábago Direct at 14-37.

¹⁰ Rábago Direct at 33-37

requirements and associated changes in retail rates that are material and relevant, including but not limited to an incremental revenue requirement increase of some \$16.5 million, or \$12.33 per residential customer month.¹¹ The Advisor witnesses estimate that DSU NO will seek higher profit rates due to a higher cost of capital, at a level estimated from undisclosed data.¹² The proposed transaction will also likely increase the revenue requirement and rates for Entergy New Orleans (“ENO”) customers by an undisclosed amount.¹³

Q. You said that you are also concerned that the Council doesn’t have all the information it needs to make a public interest determination regarding the application. Does the Advisor witnesses’ analysis address that fundamental lack of information?

A. No. The Advisor witnesses identify key uncertainties in the information needed to support a public interest analysis. In addition, in many instances DSU NO and ENO make representations about things that they might or could do which are unsupported by any solid and enforceable commitments. These uncertainties and commitment gaps include the following:

¹¹ See Advisor witness Watson direct testimony (“Watson Direct”) at 46; Advisor witness Rogers direct testimony (“Rogers Direct”) at 23. See also Rogers Direct at 9, 10.

¹² Rogers Direct at 35.

¹³ Rogers Direct at 25.

- Transaction costs associated with proposed transaction are dependent on Bernhard’s plan to achieve economies of scale in building new information technology systems for other gas distribution systems Bernhard seeks to acquire.¹⁴
- DSU NO commitments are not formally memorialized and therefore are unlikely to be enforceable should DSU NO choose not to make good on those commitments.¹⁵
- DSU NO maintaining or improving quality of service is contingent on successful execution of DSU NO’s transition plan, and DSU NO has no record of customer care performance that informs the likelihood of DSU NO’s success.¹⁶
- DSU NO provides no information quantifying long-term customer rate and bill impacts.¹⁷
- Assertions of possible non-quantifiable benefits or hard-to-quantify benefits will not mitigate “a significant incremental rate increase to gas customers solely due to the [proposed transaction.]”¹⁸
- Potential benefits to electric customers due to ENO receiving sales proceeds are unquantified, unsupported by commitments from ENO, and are offset by short-term rate increases to electric customers.¹⁹

¹⁴ Rogers Direct at 7.

¹⁵ Rogers Direct at 8.

¹⁶ Rogers Direct at 18.

¹⁷ Rogers Direct at 24.

¹⁸ Rogers Direct at 24: 11-13.

¹⁹ Rogers Direct at 25.

- The prudence of DSU NO spending and the fairness of DSU NO rates are unknown and contingent on the outcome of a rate case to be conducted at an unknown date in the future and will require active oversight by the Council.²⁰
- It is not known whether DSU NO will have the management structure and personnel in place to properly execute on operational management of the gas distribution utility.²¹
- Benefits to New Orleans and surrounding communities are only “potential.”²²
- DSU NO lacks a track record from which to assess whether DSU NO and its affiliates will be in compliance with requirements of the Council and other jurisdictions,²³ or whether DSU NO will be able to obtain necessary permits.²⁴
- DSU NO resources to make repairs and improvements are contingent on Bernhard Capital following through on asserted but unmemorialized commitments.²⁵

²⁰ Rogers Direct at 27.

²¹ Rogers Direct at 28.

²² Rogers Direct at 30.

²³ Rogers Direct 31-32.

²⁴ Rogers Direct at 33-34.

²⁵ Rogers Direct at 33.

- The Council lacks detailed analysis to support a conclusion that the acquisition price Bernhard is paying to ENO is reasonable, especially in light of the transition to net zero energy resources in New Orleans and Louisiana.²⁶
- ENO and affiliate ELL propose to defer transaction costs associated with the sale of their respective gas distribution businesses for recovery from electricity customers at some future, unspecified date.²⁷
- DSU NO refused to provide information about transaction costs because it asserts that it will not seek to recover those costs from customers, but the lack of data limits the Council's ability to determine if DSU NO has classified or will properly classify transaction and transition costs.²⁸
- DSU NO proposes to set rates and schedules according to a Gas Formula Rate Plan that has itself not been settled.²⁹
- Adequate financing for DSU NO is dependent on whether Bernhard will follow through on unmemorialized commitments regarding capital support.³⁰

²⁶ Watson Direct at 9-10 (describing secret information about ENO's process for evaluating Bernhard's purchase price offer). There is no reference to climate change or the transition away from dependence on fossil fuels in the Watson Direct or that of any Advisor witness' testimony.

²⁷ Watson Direct at 14-15.

²⁸ Watson Direct at 15-16.

²⁹ Watson Direct at 17.

³⁰ Watson Direct at 20. Advisor witness Watson superficially asserts that ENO has also been dependent on capital support from Entergy Corporation, but does not discuss the vast differences between the parent companies, the ways they are regulated, or the businesses that they engage in.

- DSU NO has not committed to abiding by FERC accounting procedures, so the Council will face added burdens in reviewing and understanding DSU NO accounting records.³¹ DSU NO’s internal auditing controls are all to-be-determined.³²
- DSU NO’s transition cost estimates are all secret and excluded from public review and will ultimately impact tax and other accounting effects.³³ Even the amortization period for regulatory assets proposed by DSU NO are secret, so citizens have no way of knowing how long DSU NO’s transition costs will increase rates and household energy burdens.³⁴ DSU NO refused to provide an estimate of its rate base taking into account all tax effects of the proposed transaction, denying the public and the Council necessary information to assess the public interest impacts of the proposed transaction.³⁵ Advisor witness Watson was able to estimate one category of tax impacts of the transaction, relating to Accumulated Deferred Income Tax (“ADIT”), will increase the gas utility rate base by more than \$55 million—driving rate increases and impacts that Advisor witness Watson describes as “substantial.”³⁶

³¹ Watson Direct at 21-22, 26.

³² Watson Direct at 24.

³³ Watson Direct at 28.

³⁴ Watson Direct at 30.

³⁵ Watson Direct at 32-33.

³⁶ Watson Direct at 33-34.

- DSU NO has not budgeted operations and maintenance (“O&M”) spending beyond the first year of operations, but this is largely based on extending ENO O&M costs plus secret adjustments.³⁷
- DSU NO faces a substantially higher, but secret cost of debt as compared to ENO.³⁸
- Several of the metrics that the Council traditionally relies upon for setting the allowed cost of capital are unavailable for DSU NO, and the proposed transaction is based upon an unreasonable assumption of a 55% equity ratio (from the formula rate plan) being appropriate for DSU NO.³⁹ DSU NO has a higher cost of debt than ENO.⁴⁰
- Entergy will realize profits on the sale of the gas distribution utility that exceed its level of investments, adjusted for depreciation and amortization expenses,⁴¹ but makes no commitments regarding the disposition of those profits.
- ENO’s current rates are outdated and do not form a reasonable basis for setting DSU NO rates because they haven’t been comprehensively reviewed since 2018.⁴² Simply stated, current ENO rates are not cost based.⁴³

³⁷ Watson Direct at 35.

³⁸ Watson Direct at 38.

³⁹ Watson Direct at 38-40.

⁴⁰ Watson Direct at 41.

⁴¹ Watson Direct at 47.

⁴² Advisor witness Prep direct testimony (“Prep Direct”) at 5.

⁴³ Prep Direct at 6.

- Current non-jurisdictional (“NJ”) customers that take gas service under privately negotiated contracts will not contribute to recovery of additional costs relating to the proposed transaction.⁴⁴ Advisor witness Prep suggests that NJ customers currently under-recover their cost of service.⁴⁵
- Any proposed “cost recovery adjustment” by DSU NO is yet to be determined.⁴⁶
- DSU NO has made no commitment to how it proposes to recover the costs of shared services agreements as it builds its gas distribution utility enterprise,⁴⁷ so the burden on New Orleans citizens is unknown.
- DSU NO provides no detail on how it will account for transition costs as compared to transaction costs—meaning the Council has no way of knowing how big a rate increase DSU NO will request when it finally decides to.⁴⁸ The absence of any commitment to contain such costs creates a strong incentive for DSU NO to increase those costs during the period between closing and rate case filing.
- DSU NO has provided only preliminary estimates of transition costs and these estimated costs are unsupported by any benefit-cost analysis.⁴⁹ DSU NO’s

⁴⁴ Prep Direct at 5-6.

⁴⁵ Prep Direct at 7.

⁴⁶ Prep Direct at 8.

⁴⁷ Prep Direct at 10-11.

⁴⁸ Prep Direct at 17-18.

⁴⁹ Prep Direct at 20-21.

preliminary estimate is subject to change.⁵⁰ Moreover, DSU NO's transition costs will not necessarily end at the date of the closing for the proposed transaction.⁵¹

Q. What do you conclude from your review of the Advisor witnesses' testimony?

A. There remains a material and significant amount of uncertainty about whether the proposed transaction is in the public interest. The Council has not been provided with the facts and commitments necessary to ensure that the transaction is in the public interest. Because the applicants and the Advisor witnesses did not address climate change and climate change policies, the application and testimony are materially deficient. Therefore, my original conclusions and recommendations regarding the proposed transaction remain valid. The proposed transaction should not be approved.

Q. Does this conclude your rebuttal testimony?

A. Yes.

⁵⁰ Prep Direct at 21.

⁵¹ Prep Direct at 22.

