

October 15, 2024

Via Electronic Mail

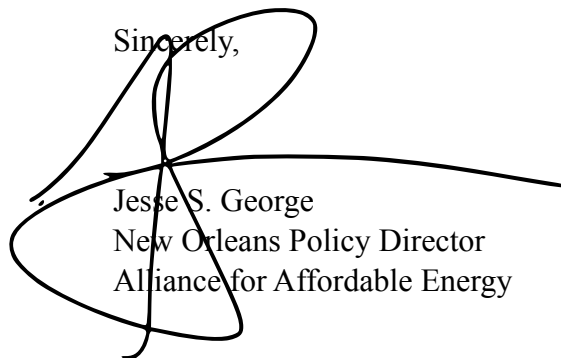
Clerk of Council
Room 1E09, City Hall
1300 Perdido Street
New Orleans, LA 70112

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 (UD-24-01)

Dear Clerk,

Please find the enclosed Initial Brief of the Alliance for Affordable Energy for filing under the docket referenced above. We will submit physical copies at your instruction. If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

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

**Before
The Council of the City of New Orleans**

**DELTA STATES UTILITIES LA, LLC
AND ENTERGY LOUISIANA, LLC,
EX PARTE**

DOCKET NO. UD-24-01

**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**

OCTOBER 15, 2024

INITIAL BRIEF OF THE ALLIANCE FOR AFFORDABLE ENERGY

I. INTRODUCTION

On December 11, 2023, Entergy New Orleans, LLC (“ENO”) and Delta States Utilities New Orleans, LLC (“DSU NO”) filed a joint application (“Application”) before the New Orleans City Council (“Council”) to, *inter alia*, authorize the sale and transfer of ENO’s gas distribution business to DSU and to allow DSU to operate as a jurisdictional natural gas Local Distribution Company. On February 1, 2024, the Council adopted Resolution R-24-49, establishing a docket, period of intervention, and procedural schedule for the consideration of the joint application. After multiple rounds of testimony, the Hearing Officer certified the record on September 17, 2024. The Alliance for Affordable Energy (“Alliance”) now submits the following initial brief in opposition to the Application.

II. THE APPLICANTS HAVE NOT MET THE STANDARDS ESTABLISHED UNDER COUNCIL RESOLUTION R-06-88

The Council adopted its General Order on Corporate Restructuring Requirements (“General Order”) via Resolution R-06-88 on March 16, 2006, which prohibits the sale or transfer of the franchise and any assets of a utility under the jurisdiction of the Council without the Council’s approval or official action of non-opposition when the value of those assets exceeds 1% of the utility’s gross assets and delineates 18 factors that the Council **shall** consider in determining whether or not to approve such a transfer. These include:

- 1) Whether the transfer is in the public interest.
- 2) Whether the purchaser is ready, willing and able to continue providing safe, reliable and adequate service to the utility’s ratepayers.
- 3) Whether the transfer will maintain or improve the financial condition of the resulting public utility or common carrier.
- 4) Whether the proposed transfer will maintain or improve the quality of service to public utility or common carrier ratepayers.
- 5) 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.
- 6) Whether the transfer will adversely affect competition.
- 7) Whether the transfer will maintain or improve the quality of management of the resulting public utility or common carrier doing business in the City.
- 8) Whether the transfer will be fair and reasonable to the affected public utility or common carrier employees.
- 9) Whether the transfer would be fair and reasonable to the majority of all affected public utility or common carrier shareholders.
- 10) 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.
- 11) 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.
- 12) Whether conditions are necessary to prevent adverse consequences which may result from the transfer.
- 13) 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.

- 14) 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.
- 15) Whether any repairs and/or improvements are required and the ability of the acquiring entity to make those repairs and/or improvements.
- 16) The ability of the acquiring entity to obtain all necessary health, safety and other permits.
- 17) 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.
- 18) Whether there are any conditions which should be attached to the proposed acquisition.

Resolution R-06-88 also establishes an affirmative burden of proof on the acquiring company, in this case DSU NO, that the requirements of the General Order have been satisfied. In its application and supporting testimony, DSU NO has failed to satisfy virtually all of the factors included in the General Order.

A. DSU NO has not proven that the transfer is in the public interest

While the Alliance agrees generally with both ENO's and DSU NO's characterizations of "public interest" as that which is most beneficial to society as a whole, the applicants have failed to address significant concerns raised by the Alliance's testimony under this docket regarding public interest, including the effects of the general trend toward electrification and the electrification of the Sewerage & Water Board of New Orleans ("SWBNO") on remaining fossil gas ratepayers and the effects of continued investment in and expansion of fossil gas distribution on the Council's climate and clean energy goals. In his rebuttal testimony on behalf of DSU NO, Jeffrey Yuknis testified that, "While climate change and the elimination of GHG emissions are important public policy topics, they are also independent and have no direct relevance on whether this Transaction is in the public interest."¹ To assert that climate-related issues are outside of the scope of this proceeding is worse than narrow-minded, it is irresponsible. The gas utility is a major source and driver of greenhouse gas emissions and how the utility will deal with this and

¹ DSU NO – 4 at 48-49

increasing limits on such emissions is very much germane. The gas utility will face load defection due to electrification, starting with SWBNO, and addressing how customers will be protected from stranded cost burdens is also very much germane. The application is fatally defective in failing to address these consequential issues.

B. DSU NO has not proven that it is able to continue providing safe, reliable and adequate service to the utility's ratepayers

DSU NO proposes to be a utility, but it has never served a single customer. Significant questions remain as to DSU NO's ability to assume operation of ENO's fossil gas distribution system and provide industry standard service to gas ratepayers. Here, the Alliance agrees with the testimony of Council Advisor Joseph W. Rogers that DSU NO has not met its burden of proof.²

C. DSU NO has not proven that the transfer will maintain or improve the quality of service to ratepayers nor that it will provide net benefits to ratepayers

The General Order includes the requirement that DSU NO prove that the Application will provide net benefits to ratepayers in both the short and long terms, and charges the company with providing a ratemaking method that will ensure ratepayers receive these benefits. Here, again, DSU NO has failed to meet its burden. Indeed, DSU NO has attempted to substitute a "no harm" standard for the clear language of the General Order. The Alliance agrees with the testimony of Mr. Rogers that, of the supposed benefits to ratepayers that the applicants have identified "many of these benefits are non-quantifiable and difficult to weigh against costs that are quantifiable, while others appear to be maintaining the status quo under a different owner."³

Despite proposing a 15-month rate freeze after the sale, DSU NO has plans to expand fossil gas infrastructure in the city. This will result in inevitable rate increases that will fall upon a shrinking pool of vulnerable ratepayers to bear. As the Alliance's witness Karl R. Rábago

² ADV – 6 at 13 (15-16)

³ *Id.* at 9 (6-8)

stated in his subrebuttal testimony, the Application would result in “saddling an entire generation with the costs of this expensive transaction and almost certainly guaranteeing additional stranded costs on the day when New Orleans achieves a transition to a net zero energy economy. It is important to remember that both ENO and DSU NO are proposing a ‘deal’ that makes gas service more expensive, to a significant but undefined degree. The only offsets for these certain and significant costs are unenforceable chances that benefits might occur when all those costs are incurred. Kicking the can down the road on the transition costs in the proposed transaction is not in the public interest and obscures the true costs of the proposed transaction.”⁴

D. DSU NO has not proven that the transfer will maintain or improve the quality of management of the resulting utility

Again, DSU NO has never served a single ratepayer, and significant questions remain as to the company’s readiness and ability to assume management of the gas utility.

E. DSU NO has not proven that the transfer will be beneficial on an overall basis to City and local economies and to the communities in the area served

DSU NO witness David Dismukes has attempted an estimate of the purported economic benefits of the proposed sale, including “indirect” and “induced” benefits. This analysis fails to account for the existential threat to the City of New Orleans posed by climate change resulting from the burning of fossil fuels. Echoing Mr. Yuknis’ testimony almost verbatim but adding no substance to the assertion, in his rebuttal testimony Mr. Dismukes states that, “Climate change and the elimination of GHG emissions are important public policy topics but are independent and have no direct relevance on whether this Proposed Transaction is in the public interest.”⁵ While DSU NO offers estimates of supposed “indirect” and “induced” economic benefits, it

⁴ AAE – 3 at 8 (9-17)

⁵ DSU NO – 15 at 56 (16-18)

emphatically denies any responsibility for including the known and foreseeable risks associated with not only maintaining but expanding fossil gas infrastructure in the city. As the party bearing responsibility for proving affirmatively that the Application will have overall benefits to communities in the area served and to the local economy, it has once again failed to meet its burden.

III. THE RATEPAYER PROTECTION MEASURES RECOMMENDED BY THE COUNCIL'S ADVISORS ARE INSUFFICIENT

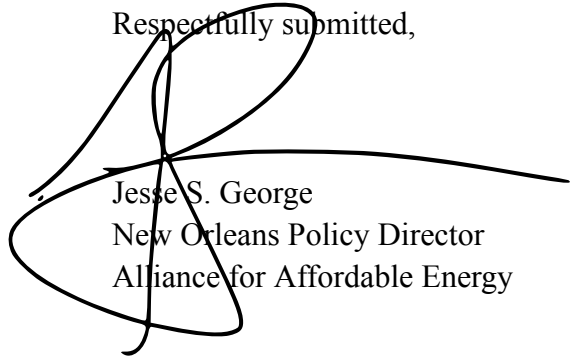
Though the Advisors have recommended measures to mitigate the ratepayer impact of the proposed transaction, they, like the applicants, have failed to address adequately the issues raised by in Alliance's testimony, including the detrimental climate effects as well as the effect of electrification – especially the electrification of the SWBNO – on remaining ratepayers. The evaporation of such a significant portion of current retail gas load, along with the incremental impacts of electrification in general, will have harmful effects on the shrinking population of remaining customers that neither the applicants nor the Council's Advisors have given appropriate consideration.

IV. THE COUNCIL SHOULD DENY THE APPLICATION AND INITIATE PROCEEDINGS FOR A MUNICIPALLY MANAGED PHASE-OUT OF ENO'S GAS DISTRIBUTION SYSTEM

The applicants have failed to meet the burden of proof established under Resolution R-06-88, including a failure to prove that the Application is in the public interest or will result in net short- or long-term benefits for ratepayers, communities, and the local economy. At the same time, the applicants have irresponsibly dismissed concerns that the Alliance has raised over the

climate impact of not only continuing but expanding reliance on fossil fuels in a city regularly ravaged by climate disaster, and on the looming loss of retail load due to electrification that will have negative effects on vulnerable ratepayers who are left behind. For these reasons, the Council cannot responsibly approve the transaction and must deny the application. As recommended in the Alliance's direct testimony, the Council should initiate proceedings to develop a plan for municipal takeover of the gas distribution utility and managed decapitalization of the gas utility by the end of 2035. The Council should evaluate hiring a qualified firm to achieve this goal.⁶

Respectfully submitted,



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

⁶ AAE – 1 at 38

**Before
The Council of the City of New Orleans**

**DELTA STATES UTILITIES LA, LLC
AND ENTERGY LOUISIANA, LLC,
EX PARTE**

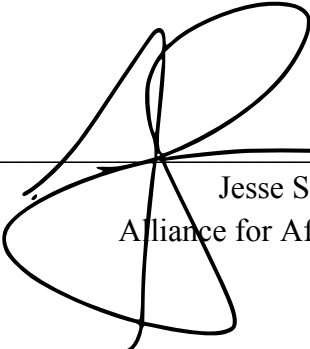
DOCKET NO. UD-24-01

**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**

OCTOBER 15, 2024

CERTIFICATE OF SERVICE

I do hereby certify that I have, this 15th day of October 2024, served the foregoing correspondence upon all other known parties of this proceeding by electronic mail.



Jesse S. George
Alliance for Affordable Energy

Service List

clerkofcouncil@nola.gov

Clerk of Council

City Hall - Room 1E09

1300 Perdido Street

New Orleans, LA 70112

Tel: (504) 658-1085

Fax: (504) 658-1140

Service of Discovery not required

Erin Spears, espears@nola.gov

Chief of Staff, Council Utilities Regulatory Office

Bobbie Mason, bfmason1@nola.gov

Christopher Roberts, cwroberts@nola.gov

Byron Minor, Byron.minor@nola.gov

Candace Carmouche, Candace.Carmouche@nola.gov

Jared Reese, jared.reese@nola.gov

City Hall - Room 6E07

1300 Perdido Street

New Orleans, LA 70112

Tel: (504) 658-1110

Fax: (504) 658-1117

Krystal D. Hendon, CM Morrell Chief-of-Staff, Krystal.hendon@nola.gov

1300 Perdido St. Rm. 2W50

New Orleans, LA. 70112

Andrew Tuozzolo, CM Moreno Chief-of-Staff, avtuozzolo@nola.gov

1300 Perdido St. Rm. 2W40

New Orleans, LA. 70112

Justyn Hawkins, 504-658-1108 jahawkins@nola.gov

Chief of Staff

City Hall - Room 1E06

1300 Perdido Street

New Orleans, LA 70112

Donesia D. Turner, Donesia.Turner@nola.gov

Law Department

City Hall - 5th Floor

New Orleans, LA 70112

Tel: (504) 658-9800

Fax: (504) 658-9869

Service of Discovery not required

Tanya L. Irvin, tirvin@nola.gov

Chief Deputy City Attorney

Law Department

City Hall - 5th Floor

New Orleans, LA 70112

Tel: (504) 658-9800

Fax: (504) 658-9869

Norman White, Norman.White@nola.gov

Department of Finance

City Hall - Room 3E06

1300 Perdido Street

New Orleans, LA 70112

Tel: (504) 658-1502

Fax: (504) 658-1705

Greg Nichols, grnichols@nola.gov

Deputy Chief Resilience Officer

Office of Resilience & Sustainability

1300 Perdido Street, Suite 8E08

New Orleans, LA 70112

Tel: 504-658-4958

Cell: 504-253-1626

Sophia Winston, sophia.winston@nola.gov

Energy Policy & Program Manager

Office of Resilience & Sustainability

1300 Perdido Street, Suite 8E08

New Orleans, LA 70112

Tel: 504-658-4914

Cell: 504-677-9756

ADMINISTRATIVE HEARING OFFICER

Hon. Jeffrey S. Gulin, judgegulin@gmail.com

3203 Bridle Ridge Lane

Lutherville, MD 2109

Tel: (410) 627-5357

CITY COUNCIL CONSULTANTS and SUPPORT STAFF

Clinton A. Vince, clinton.vince@dentons.com

Presley Reed, presley.reedjr@dentons.com

Emma F. Hand, emma.hand@dentons.com

Dee McGill, dee.mcgill@dentons.com

Denton Law Firm,

1900 K Street NW

Washington, DC 20006

Tel: (202) 408-6400

Fax: (202) 408-6399

Basile J. Uddo (504) 583-8604 cell, buddo@earthlink.net

J. A. "Jay Beatmann, Jr. (504) 256-6142 cell, (504) 524-5446 office direct,

jay.beatmann@dentons.com

c/o DENTONS US LLP

650 Poydras Street

Suite 2850

New Orleans, LA 70130

Joseph W. Rogers, jrogers@legendcgl.com

Victor M. Prep, vprep@legendcgl.com

Byron S. Watson, bwatson@legendcgl.com

Legend Consulting Group

6041 South Syracuse Way, Suite 105

Greenwood Village, CO 80111

Tel: (303) 843-0351

Fax: (303) 843-0529

ENTERGY NEW ORLEANS, LLC

Leroy Nix, lnix@entergy.com

Entergy New Orleans, LLC

Vice-President, Regulatory and Public Affairs

Deanna Rodriguez, drodri2@entergy.com

Entergy New Orleans, LLC

President and Chief Executive Officer

Entergy New Orleans, LLC

Mail Unit L-MAG-505B

1600 Perdido Street

New Orleans, LA 70112

Polly Rosemond, prosemo@entergy.com

Kevin T. Boleware, (504) 670-3673, kbolewa@entergy.com

D'Angela Savoie, dsavoil@entergy.com

Keith Wood, (504) 670-3633, kwood@entergy.com

Derek Mills, (504) 670-3527, dmills3@entergy.com

Ross Thevenot, (504) 670-3556, rtheven@entergy.com

1600 Perdido Street, L-MAG 505B

New Orleans, LA 70112

Vincent Avocato, (281) 297-3508, vavocat@entergy.com

Entergy New Orleans, LLC

2107 Research Forest Drive, T-LFN-4

The Woodlands, TX 77380

Courtney Nicholson, cnicho2@entergy.com

Heather Silbernagel, (504) 576-2806, hsilber@entergy.com

Leslie M. LaCoste (504) 576-4102, llacost@entergy.com

Lacresha D. Wilkerson, (504) 576-6571, lwilke1@entergy.com

Ed Wicker, (504) 576-3101, ewicker@entergy.com

Linda Prisuta, (504) 576-4137, lprisut@entergy.com

Entergy Services, LLC

Mail Unit L-ENT-26E

639 Loyola Avenue

New Orleans, LA 70113

Fax: 504-576-5579

Joe Romano, III (504) 576-4764, jroman1@entergy.com
Tim Rapier, (504) 576-4740, trapier@entergy.com
Erin Farrell, (504) 576-2758, efarrel@entergy.com
Entergy Services, LLC
Mail Unit L-ENT-3K
639 Loyola Avenue
New Orleans, LA 70113
Fax: (504) 576-6029

Anthony Arnould, Jr.
5755 Choctaw Drive
Baton Rouge, LA

DELTA STATES UTILITIES NO

Ryan King, ryan.king@deltastatesutilities.com
President
Delta States Utilities NO, LLC
400 Convention Street, 10th Fl
Baton Rouge, Louisiana 70802
Telephone: (225) 228-2500

Carrie R. Tournillon, Carrie.tournillon@keanmiller.com
KEAN MILLER LLP
909 Poydras Street, Suite 3600
New Orleans, Louisiana 70112
Telephone: (504) 585-3056

Gordon Polozola, gordon.polozola@keanmiller.com
KEAN MILLER LLP
Post Office Box 3513
Baton Rouge, Louisiana 70821
Telephone: (225) 387-0999

Edward H. Bergin, nbergin@joneswalker.com
Jones Walker LLP
201 St. Charles Ave
New Orleans, LA 70170-5100
Telephone: (504)582.8222

Lucie R. Kantrow, lucie@bernhardcapital.com
General Counsel
Bernhard Capital Partners
400 Convention Street, 10th Fl
Baton Rouge, Louisiana 70802
Telephone: (225) 228-2500

INTERVENORS

Alliance For Affordable Energy

Logan A. Burke, logan@all4energy.org
Jesse S. George, jesse@all4energy.org
Sophie Zaken, regulatory@all4energy.org
4505 S. Claiborne Ave.
Tel: (504) 208-9761

Greater New Orleans Interfaith Climate Coalition

Pastor Gregory Manning, gmanning1973@yahoo.com
Bette Kussmann, bettekussmann48@gmail.com
Peter Digre, peterdigre@gmail.com
2021 S. Dupre Street
New Orleans, LA 70125

Sewerage and Water Board of New Orleans

Luke F. Piontek, lpiontek@roedelparsons.com
Daniel T. Price, dprice@roedelparsons.com
Paige S. Stein, pstein@roedelparsons.com
Judith Sulzer, Jsulzer@roedelparsons.com
8440 Jefferson Highway, Suite 301
Baton Rouge, LA 70809

Yolanda Y. Grinstead, ygrinstead@swbno.org
625 St. Joseph Street, Suite 201
New Orleans, LA 70165

Healthy Gulf

Sage Michael Pellet, sagemichael@healthygulf.org
Martha Collins, mcollins@healthygulf.org
Matt Rota, matt@healthygulf.org
935 Gravier Street, Suite 700
New Orleans, La 70112
(504) 525-1528