

**RESOLUTION
R-18-225**

CITY HALL: June 21, 2018

**BY:  COUNCILMEMBERS MORENO, WILLIAMS, GIARRUSSO, BANKS,
AND BROSSETT**

**RESOLUTION AND ORDER ESTABLISHING A DOCKET AND OPENING A
RULEMAKING PROCEEDING TO CONSIDER REVISING THE COUNCIL'S RULES
TO ALLOW RELEASE OF WHOLE-BUILDING DATA TO BUILDING OWNERS**

DOCKET NO. UD-18-___

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, LLC¹ ("ENO" or "Company"), effective September 1, 2015, is a public utility providing electric and natural gas service to all of New Orleans; and

Background

WHEREAS, in Council Resolution No. R-17-428, the Council expressed its support for the City's goal to reduce overall greenhouse gas emissions dramatically by 2030 and committed to work with the Administration in the further development of the concepts set forth in the

¹ Pursuant to a Council-approved restructuring that was effective December 1, 2017, Entergy New Orleans, Inc. is now operating as Entergy New Orleans, LLC.

Administration’s Climate Action Strategy and directed the Utility Advisors and the Council Utility and Regulatory Office to work with the Administration; and

WHEREAS, in that Resolution the Council also committed that as each proposal for a specific action affected by the Climate Action Strategy that requires Council approval comes forward, the Utility, Cable, Telecommunications, and Technology Committee shall open an appropriate docket to provide a full and transparent process, open to all stakeholders, to examine the proposed action and develop a supportable regulatory strategy and administrative record upon which to base Council action; and

WHEREAS, the Council is aware of the Administration’s City Energy Project an energy efficiency project designed to encourage commercial building owners to benchmark their energy usage data in order to calculate the value of making energy efficiency improvements to their buildings; and

WHEREAS, in discussions with the Mayor’s Office of Resilience and Sustainability (“ORS”), ORS indicated to the Advisors that the Council’s restrictions preventing ENO from releasing whole-building data to building owners for buildings with multiple meters without first obtaining the consent of each tenant creates a time-consuming obstacle for building owners seeking such data for energy benchmarking purposes; and

WHEREAS, City Code Section 158-1045(e) states that a customer has “[t]he right to have customer information, including payment history and consumption patterns, kept confidential;”² and

² New Orleans, La., Code of Ordinances ch. 158, art. VIII, § 1045(e) (2018).

WHEREAS, the Council’s Service Regulations³ implementing Section 158-1045(e), were most recently updated through Council Resolution No. R-16-105. The Service Regulations provide at *Section 53. Customer Confidentiality* that “[u]nless specific written permission is obtained from the Customer to release the information regarding the Customer, the Company shall insure that Customer information, including payment history and consumption patterns will be kept confidential. Customer information may be provided under a protective order issued and/or confidentiality agreement executed in a legal proceeding, but in such proceedings the Company should make every effort to maintain the Customer’s privacy;” and

WHEREAS, the Advisors are of the opinion that the Customer Service Regulations, as presently written, would prohibit ENO from releasing whole-building data to a landlord in a building with multiple meters without first obtaining written authorization from each tenant in the building; and

WHEREAS, the Advisors have reviewed information provided by ORS, including the January 2016 U.S. Department of Energy (“DOE”) Energy Data Accelerator report *Best Practices for Providing Whole-Building Energy Data: A Guide for Utilities* (“*Best Practices Report*”),⁴ and the October 2014 U.S. DOE Pacific Northwest National Laboratories report *Commercial Building Tenant Energy Usage Data Aggregation and Privacy* (“*Data Aggregation and Privacy Report*”);⁵ and

³ A copy of the Service Regulations applicable to ENO may be found here: http://www.energynorleans.com/content/price/tariffs/enoi_service_regs.pdf.

⁴ See *Best Practices Report*, <https://betterbuildingssolutioncenter.energy.gov/sites/default/files/attachments/Best%20Practices%20for%20Providing%20Whole-Building%20Energy%20Data%20-%20Guide%20for%20Utilities.pdf>.

⁵ See *Data Aggregation and Privacy Report*, https://www.pnnl.gov/main/publications/external/technical_reports/PNNL-23786.pdf.

WHEREAS, the *Best Practices Report* indicates that there are 18 utilities currently participating in such a program to release whole-building data to the building owner;⁶ and

WHEREAS, the *Data Aggregation and Privacy Report* undertook a comprehensive study as to whether allowing the release of aggregated data raised a significant risk of violating the customer's privacy. In particular, they ran studies on two factors using a sampling of six utilities: (1) how many meters had to be aggregated together to sufficiently protect customer privacy and (2) how much did the pool of eligible buildings diminish as you increase the number of required meters. The report sought to establish a quantitative approach for providing practitioners, such as utilities, public utility commissioners, and other policy-makers with a defensible aggregation threshold selection method, which would protect tenant privacy and ensure data on the greatest number of buildings can be reported;⁷ and

WHEREAS, the *Data Aggregation and Privacy Report* found that four-meter buildings are the first meter aggregation level not subject to simple deduction techniques for estimating individual customer electric utility use.⁸ This means that in buildings with at least four meters, a building owner could not deduce an individual tenant's energy usage easily from the aggregated data; and

WHEREAS, the *Data Aggregation and Privacy Report* also found that the number of buildings eligible for the program at each level diminishes rapidly above four meters and that establishing a higher threshold for the number of meters required would significantly diminish the set of buildings eligible for aggregated reporting;⁹ and

⁶ *Best Practices Report* at 9.

⁷ *Data Aggregation and Privacy Report* at 1-2

⁸ *Id.* at 2, 23.

⁹ *Id.* at 2, 24.

WHEREAS, the Advisors believe the conclusions in the *Data Aggregation and Privacy Report* suggest that a four-meter threshold appears to provide sufficient protection against a building owner being able to deduce what any individual tenant's actual energy usage is, and increasing the threshold to a greater number of meters diminishes the number of buildings eligible to participate at a more rapid rate than the rate at which the protection of customer privacy increases (*i.e.*, more is lost than gained by moving from a four-meter requirement to a five-meter requirement).¹⁰ The Advisors also believe that this data suggests that whole-building data aggregation where the building has at least four meters would sufficiently protect the customer's right under the City Code to keep their energy consumption data confidential; and

WHEREAS, the Advisors recommend to the Council that the Council open a rulemaking proceeding to seek comment from ENO and the public regarding a proposal to revise the Customer Service Regulations to allow ENO to release aggregated, whole-building energy consumption data to the building owner where the building has at least four meters would be in the public interest; and

WHEREAS, the Advisors do not suggest releasing such information to the public, only to the owner of the building for which the data is being aggregated. The *Data Aggregation and Privacy Report* also suggests that because the owner of the building generally has access to tenant meters and other information that is not available to the general public, therefore there may be less concern about increasing customer vulnerability with respect to releasing information to building owners than there is with releasing such information to the general public;¹¹ and

WHEREAS, the Advisors have also advised the Council that there are certain other issues regarding the release of whole-building energy use data, particularly related to collecting,

¹⁰ *Id.* at 2, 24.

¹¹ *Id.* at 6.

aggregating, and releasing such data for significant numbers of buildings, and suggest that more information is needed before a course of action can be suggested to the Council regarding such issues; and

WHEREAS, the first issue, which the Advisors suggest the Council seek further information from ENO and the public, is the issue of mapping energy meters to buildings. The *Best Practices Report* states that many customer information systems -- the systems utilities use to bill customers -- are not designed to track energy consumption at the building level and may not be able to “map” individual meters to specific structures.¹² Additionally, it states, the addresses used by utilities to associate meters with buildings (known as service addresses) often differ from the physical street address for a building.¹³ The *Best Practices Report* finds that this issue has presented a significant barrier for many utilities considering whole-building data access,¹⁴ and

WHEREAS, the *Best Practices Report* also indicates that there are different methods of addressing this issue including running queries in the utility’s system, working with building owners and tenants to match meters to buildings, matching customer account information with external data sets, and using geographic information system data;¹⁵ and

WHEREAS, the Council also notes that ENO is about to undertake a roll out of Advanced Metering Infrastructure (“AMI”) and the Council is interested in whether this process will offer any potential opportunities to efficiently identify the specific location of meters on ENO’s system, or facilitate the provision of aggregated whole-building data in any way; and

WHEREAS, the Advisors recommend that the Council seek additional information in order to determine whether the mapping issue is a concern on the ENO system, and what the most

¹² *Best Practices Report* at 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 3.

efficient and least costly manner of addressing this issue might be. It would be particularly useful to the Council to have input from ENO on this issue; and

WHEREAS, another issue related to the provision of aggregated whole-building data to building owners is how to efficiently communicate the data from the utility to the building owner in a manner that allows the building owner to use it easily and effectively for purposes such as energy benchmarking and energy management. For example, many building owners attempting to conduct energy benchmarking will utilize a tool such as the U.S. Environmental Protection Agency's ("EPA") ENERGY STAR® Portfolio Manager web service ("Portfolio Manager").¹⁶ For many utilities, the energy information must be manually extracted from the billing system, then transmitted to the building owner, who must manually enter it into the Portfolio Manager.¹⁷ This can be a barrier to benchmarking for many building owners, and is also known to cause errors in data entry that affect benchmarking results.¹⁸ The *Best Practices Report* suggests that fully automating the process offers a more elegant approach.¹⁹ It states that the Portfolio Manager web services enables utilities to transfer energy data directly from their systems into the Portfolio Manager on an ongoing basis, eliminating the need for manual input by customers, and that the EPA provides technical support to utilities who want to use web services as part of their data access solution;²⁰ and

WHEREAS, the Advisors also recommend that the Council seek more information regarding the issue of automating the process, including the extent to which this is an issue

¹⁶ *Id.* at 5. See also <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

impacting ENO customers, building owners, potential energy savings and the cost of implementing solutions to better automate the process; and

WHEREAS, the Council agrees with the Advisors that adjustments to its rules allowing ENO to more easily provide whole-building energy usage data to building owners has the potential to benefit building owners by making it easier for them to energy benchmark their buildings and identifying energy efficiency measures likely to be effective in saving the building owners and their tenants money on their utility bills while furthering the Council's goal of increasing deployment of energy efficiency measures in the City; and

WHEREAS, the Council agrees with the Advisors that a rulemaking on this issue is appropriate and timely; now therefore:

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

1. The Council establishes Docket No. UD-18-___ to consider *A Rulemaking to Amend the Council's Customer Service Regulations*.
2. The Honorable Jeffrey Gulin is hereby appointed as Hearing Office in this docket to preside over the proceedings and rule on procedural disputes, including motions and discovery, and shall, for good cause shown and as required by the circumstances of the proceeding, have the authority to change or amend the procedural dates set forth herein.
3. To the extent that the City Clerk's office closes before 5:00 pm on the date of any deadline contained herein or otherwise set by the Hearing Officer, the deadline shall be extended to the next business day.
4. The Council adopts the following procedural schedule:
 - a. Interested parties shall intervene in the case by July 20, 2018. Persons desiring to intervene shall do so by filing a motion to intervene with the Clerk of Council and paying the applicable filing fee, unless such fee is waived pursuant to Council Resolution No. R-16-365, with a copy submitted to Chief of Staff, Council Utility Regulatory Office, Room 6E07 City Hall, 1300 Perdido Street, New Orleans, LA 70112. The Council's requirements for motions to intervene may be found in the City Code (which is available on the Council's website) at Sections 158-236, 158-240, 158-286, 158-287, 158-322, and 158-324. Objections to intervention requests shall be filed within five days of such requests. Timely-filed intervention requests not objected to within that time period shall be deemed GRANTED.

- b. Comments from all parties regarding the proposal to amend the Council's Customer Service Regulations to allow ENO to disclose aggregated, whole-building energy usage data for buildings with four or more meters to building owners without the need to first obtain authorization from the tenants of such building shall be filed no later than August 24, 2018. Parties may also file comments regarding other aspects of whole-building energy reporting, such as mapping meters to buildings, and automating data aggregation and transmission. ENO is specifically requested to provide comment to the Council on the logistics and costs associated with mapping meters to buildings and automating aggregation and transmission.
- c. Reply comments shall be filed no later than September 14, 2018.
- d. An Advisors' Report responding to the comments and reply comments and providing the Advisors' revised recommendations to the Council in response to the comments and reply comments shall be filed no later than October 19, 2018.

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.