

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

**APPLICATION OF ENTERGY )  
LOUISIANA, LLC FOR AUTHORITY )  
TO CHANGE RATES, APPROVAL OF )  
FORMULA RATE PLAN AND FOR )  
RELATED RELIEF FOR OPERATIONS )  
IN ALGIERS )**

**DOCKET NO. UD-13-01**

**ORDER**

On February 26, 2014, the Council Advisors filed a motion to strike certain portions of the rebuttal testimony and related exhibits previously filed by ELL. On March 5, 2014, AARP filed an identical motion and adopted the memorandum in support filed by Council Advisors. Also on March 5, 2014, ELL filed its reply opposition to the motion.

A telephone hearing was held on March 7, 2014 and all parties participated. At the conclusion of the telephone hearing, the Hearing Officer directed the parties to begin negotiations to resolve the matter with particular efforts directed toward the possibility that the Hearing Officer might deny the motion *if* ELL agreed to sufficiently *extend* its waiver of its right to have the Council render its determination by "May, 2014" as provided in Resolution R-13-159. *See* Resolution at 7.

Within the time frames prescribed by the Hearing Officer, ELL and Council Advisors informed the Hearing Officer via electronic mail correspondence that, while ELL was willing to extend the deadline for Council determination until June 30, 2014, the parties were unable to

reach an agreement as to resolution of the motions and requested the Hearing Officer to render a ruling.

### Arguments

Council Advisors and AARP ("Movants") argue that certain portions of the Rebuttal testimony filed by ELL on February 18, 2014, specifically certain updated cost of service adjustments, substitution of a new "MISO Cost Recovery Mechanism" for the "Incremental Transmission Revenue Recovery rider," and updates to the "ROE," constitute improper rebuttal testimony and should be stricken from the record. Moreover, they argue that ELL "cannot change the Council-ordered test year ... without Council authorization." Advisors' Memorandum at 6.

In reply, ELL argues that (1) Movants mischaracterize Council Resolution R-13-159 in a manner which would unlawfully "limit plant pro forma adjustments to a six-month post-test period." ELL Memorandum at 8; (2) the rebuttal testimony constitutes proper rebuttal of prior criticisms contained in written testimony of Movants; and (3) in any event, all of the testimony is highly probative and relevant.

### Discussion

The Hearing Officer fully concurs with ELL's third argument – all of the rebuttal testimony at issue is highly probative and relevant. Indeed, the Hearing Officer would much prefer that the Council have the benefit of reviewing said testimony and supporting data before rendering a determination. But whether testimony is probative and relevant is inapposite to whether it constitutes proper rebuttal. ELL was accorded ample opportunity to adduce such testimony at

the proper time, and its failure to do so cannot be cured, absent good cause, by improperly disguising such testimony as "rebuttal," when it is not rebuttal. *See e.g., State ex rel Guste v. Nicholls College Foundation*, 592 So.2d 419 (La. App. 1 Cir. 1991). Indeed, because the testimony and data are highly relevant, the Hearing Officer expressed at the hearing a desire to explore every possibility of allowing the testimony, so long as any prejudice to Movants could be mitigated by a sufficient extension of time for Movants to analyze the new testimony and data, conduct discovery, and prepare their surrebuttal testimony. Unfortunately, the Hearing Officer has concluded that the approximate four-week extension of the procedural schedule offered by ELL does not allow sufficient time. Accordingly, the Hearing Officer must reluctantly grant the motions.

Given that the Hearing Officer has found that the testimony and exhibits at issue must be stricken as improper rebuttal, there is no need to address the parties' interpretations of Council Resolution R-13-159.

IT IS HEREBY ORDERED that the motions of Council Advisors and AARP to strike portions of the rebuttal testimony and related exhibits filed by ELL are granted in full.

Signed this 14th day of March, 2014.

  
\_\_\_\_\_  
JEFFREY S. GULIN, HEARING OFFICER