

RESOLUTION

NO. R-20-67

CITY HALL: February 20, 2020

BY: COUNCIL MEMBERS MORENO, WILLIAMS, GIARRUSSO, BANKS,
GISLESON BALMER, BROSETT AND NGUYEN

REVISED APPLICATION OF ENTERGY NEW ORLEANS, LLC FOR A
CHANGE IN ELECTRIC AND GAS RATES PURSUANT TO COUNCIL
RESOLUTIONS R-15-194 AND R-17-504

RESOLUTION AND ORDER AUTHORIZING A SETTLEMENT BETWEEN
THE ADVISORS AND ENTERGY NEW ORLEANS LLC AS TO SPECIFIC TAX
ISSUES PRESENTED IN THE COMBINED RATE CASE UD-18-07 AND AMENDING
RESOLUTION R-19-457

DOCKET NO. UD-18-07

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" or "Company"), is a public utility providing electric and natural gas service to all of New Orleans; and

WHEREAS, on July 31, 2018, ENO filed its initial *Application of Entergy New Orleans, LLC for a Change in Electric and Rates Pursuant to Council Resolutions R-15-194 and R-17-504 and For Related Relief* (“Initial Rate Filing”); and

WHEREAS, in a letter dated August 15, 2018, Roderick K. West, Entergy Group President of Utility Operations, explained that ENO had decided to withdraw its Initial Rate Filing, explaining that the decision to withdraw the Initial Rate Filing was in “response to the thoughtful feedback that Entergy New Orleans has received from members of the Council of the City of New Orleans and Council’s legal and technical Advisors, particularly with regard to the need to develop a better path toward a single rate structure for all customers of Entergy New Orleans, both those residing on the East Bank of New Orleans and those residing in Algiers” and noted that ENO would refile the rate case in September; and

WHEREAS, on September 21, 2018, ENO refiled its rate case, *Revised Application of Entergy New Orleans, LLC for a Change in Electric and Gas Rates Pursuant to Council Resolutions R-15-194 and R-17-504 and For Related Relief* (“Revised Application”); and

WHEREAS, on October 4, 2018, the Council adopted Resolution R-18-434 establishing a procedural schedule to allow the parties to this proceeding to rigorously investigate the Revised Application, conduct discovery, file testimony, and otherwise establish a record upon which the Council could rely to make a determination as to the proper rates to be charged by ENO; and

WHEREAS, several parties timely intervened in the docket some of which included the Alliance for Affordable Energy, Air Products and Chemicals, Inc., Building Science Innovators, LLC, City of New Orleans, Sewerage and Water Board of New Orleans, Crescent City Power Users Group, Justice and Beyond, Sierra Club, and 350 New Orleans; and

WHEREAS, numerous parties evaluated various aspects of the case by issuing hundreds of discovery requests, reviewing thousands of pages of responses, and conducting oral depositions of multiple experts; and

WHEREAS, a total of thirty-three (33) expert witnesses provided sworn pre-filed testimony in the case in support of their respective positions; and

WHEREAS, beginning June 17, 2019, a five-day evidentiary hearing was conducted wherein parties were allowed to cross examine other parties' witnesses and introduce additional evidence into the record; and

WHEREAS, the Council reviewed the Revised Application, the positions of the parties, and the evidence presented in the voluminous record certified in this proceeding; and

WHEREAS, on November 7, 2019, the Council adopted Resolution R-19-457 ("Rate Case Resolution") and resolved the issues presented; and

WHEREAS, on December 6, 2019, pursuant to Section 3-130 of the Home Rule Charter, ENO filed a Verified Petition of Entergy New Orleans, LLC for Appeal and Judicial Review of, and Stay for or Injunctive Relief from, Resolution R-19-457 of the Council of the City of New Orleans ("Appeal") in Civil District Court for the Parish of Orleans; and

WHEREAS, on December 9, 2019, ENO filed its Compliance Filing Subject to Injunctive Relief and Pending Judicial Review of Resolution R-19-457 ("Compliance Filing"); and

WHEREAS, ENO's request for injunctive relief was set for hearing on February 12, 2020; and

WHEREAS, in a report dated January 3, 2020, the Advisors found that the Compliance Filing reasonably complied with the Rate Case Resolution; however, there were outstanding issues related to (1) the energy efficiency cost recovery rider (“EECR”) and (2) the electric and gas interim rate adjustment riders (“IRAR”); and

WHEREAS, on January 22, 2020, the Alliance for Affordable Energy and the Sierra Club (“Intervenors”) filed a joint Petition of Intervention in the Appeal; and

WHEREAS, on February 5, 2020, ENO filed a Notice of Intention to Narrow Scope of Application for Preliminary Injunction (“Notice”). The Notice narrowed the scope of the requested injunctive relief to the ratemaking treatment of (1) the net operating loss (“NOL”) accumulated deferred income taxes (“ADIT”) and (2) ADIT associated with accelerated tax depreciation deductions related to electric and gas meter investment to be retired as a result of ENO’s advanced metering infrastructure (“AMI”) installations (“Stranded Meter ADIT”); and

WHEREAS, on February 12, 2020, ENO and the Council through its Advisors filed an Unopposed Joint Motion and Order to Continue Preliminary Injunction Hearing and For Limited Remand to Council (“Joint Motion”); and

WHEREAS, the Joint Motion was granted, the hearing was continued to March 2, 2020, and the matter was remanded in part “to allow the Council to consider potential modifications to Ordering Paragraphs 5 and 7 of Council Resolution R-19-457”; and

WHEREAS, the Advisors, at the direction of the Council, sought a resolution of the limited remaining issues after ENO’s Notice and the Court’s limited remand that would benefit ratepayers and allow for the timely implementation of rates; and

WHEREAS, an Agreement in Principle (“AIP”) on the “potential modifications” among ENO, the Advisors and CURO Counsel was reached and executed on February __. 2020; and

WHEREAS, the AIP reflects that issues raised in the Appeal relating to Ordering Paragraphs 5 and 7 of Council Resolution R-19-457 implicate differences otherwise subject to ENO’s Application for Preliminary Injunction; and

WHEREAS, the Council finds that it is in the public interest to assure the timely implementation of rates through the modifications described in the AIP; and

Compliance Filing Issues

WHEREAS, the terms of the AIP, attached hereto as “Exhibit 1”, addresses the concerns raised by the Advisors in response to the Compliance Filing as follows; and

WHEREAS, pursuant to the AIP, ENO will reduce the cost to customers for the Energy Smart Program by \$2.2 million to resolve all issues related to prior Lost Contribution to Fixed Costs (“LCFC”) collections; and

WHEREAS, pursuant to the AIP, ENO will calculate the electric IRAR rates to return \$15.9 million to electric customers over the period April 2020 through June 2020; and

WHEREAS, pursuant to the AIP, ENO will calculate the gas IRAR rates to return \$2.5 million to gas customers over the period April 2020 through June 2020; and

Tax Issues

WHEREAS, the AIP further addresses concerns raised by ENO related to the tax treatments at issue in the Appeal as follows; and

WHEREAS, pursuant to the AIP, the Council will permit ENO to include NOL ADIT in the gas rate base, increasing the gas revenue requirement by \$0.84 million; and

WHEREAS, the Council will permit ENO to exclude Stranded Meter ADIT from electric and gas rate bases and to include a return on the Stranded Meter ADIT using the return implicit in the AMI AIP's recovery of the stranded meter investments, resulting in increases to the electric and gas revenue requirements of \$0.24 million and \$0.01 million respectively; and

WHEREAS, as a result of the AIP, ENO will withdraw its request for preliminary injunction as to the implementation of rate reductions associated with NOL ADIT and Stranded Meter ADIT; **NOW THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the Agreement in Principle is approved in its entirety.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That Resolution R-19-457 be amended to delete ordering paragraphs 5 and 7 on page 185 and replace them as follows:

5. ENO's proposal to include NOL ADIT in its gas rate base is approved, consistent with the terms and conditions in the AIP attached to Resolution R-20-67.

7. Stranded Meter ADIT shall be excluded from ENO's electric and gas rate base, consistent with the terms and conditions in the AIP attached to Resolution R-20-67.

ENO shall adjust its electric and gas revenue requirements to include a return on the

Stranded Meter ADIT using the returns implicit in the AMI Agreement in Principle's recovery of the stranded meter investment.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That except for paragraphs 5 and 7 modified herein, all provisions of Resolution R-19-457 shall remain unchanged.

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

YEAS: Banks, Brossett, Giarrusso, Moreno, Nguyen, Williams - 6

NAYS: 0

ABSENT: Gisleson Palmer - 1

AND THE RESOLUTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

Lera W. Johnson
CLERK OF COUNCIL

**AGREEMENT IN PRINCIPLE
TO RESOLVE ENTERGY NEW ORLEANS, LLC'S REQUEST FOR
PRELIMINARY INJUNCTION ENJOINING COUNCIL RESOLUTION R-19-457
AND FACILITATE THE IMPLEMENTATION OF BASE RATES**

Recognizing that the Council for the City of New Orleans ("Council") issued Council Resolution R-19-457 ("Rate Case Resolution"), dated November 7, 2019, as its final order in Council Docket No. UD-18-07, referred to herein as the 2018 Rate Case;

Recognizing that on December 6, 2019, Entergy New Orleans, LLC ("ENO" or the "Company") filed in the Civil District Court of the Parish of Orleans ("CDC") ENO's Verified Petition for Appeal and Judicial Review of, and for Stay of or Injunctive Relief from Resolution R-19-457 ("Judicial Review Petition") of the Council of the City of New Orleans, CDC No. 2019-12656;

Recognizing that the Judicial Review Petition sought to enjoin the Rate Case Resolution in its entirety so that the existing base rates and rate structure in place as of the date of the Rate Case Resolution remained in place subject to refund and requested that the district court set aside, reverse, and vacate the Rate Case Resolution;

Recognizing that on December 9, 2019, ENO filed in the Council its Compliance Filing Subject to Injunctive Relief and Pending Judicial Review of Resolution R-19-457 ("Compliance Filing");

Recognizing that on January 3, 2020, pursuant to the Rate Case Resolution, the Council Advisors reported to the Council that ENO's Compliance Filing reasonably complied with the Rate Case Resolution except with respect to the rate for the Energy Efficiency Cost Recovery ("EECR") Rider, which would recover the remaining costs of Program Year 9 (i.e., through December 31, 2019);

Recognizing that the Council Advisors contended that the EECR Rider rate should be reduced so as to reflect a credit for the ongoing collection of Lost Contribution to Fixed Costs ("LCFC"), which the Council Advisors argue that the Council prohibited in Resolution R-17-176 for Program Years 7, 8, and 9;

Recognizing that ENO disputed the Council Advisors' interpretation of Resolution R-17-176 and credit calculations and argued that any Council action to refund amounts collected pursuant to authorize rates constituted prohibited retroactive ratemaking and prohibited single-issue ratemaking;

Recognizing that the Advisors and ENO were in ongoing discussions regarding the details of the implementation of the electric and gas Interim Rate Adjustment Riders ("IRARs") required by the Rate Case Resolution;

Recognizing that, based on the confirmation that ENO's Compliance Filing comports with the provisions of the Rate Case Resolution, on February 5, 2020, ENO filed its Notice of Intention to Narrow Scope of Application for Preliminary Injunction leaving only ENO's request to enjoin the Rate Case Resolution's rulings excluding from gas rate base net operating loss ("NOL") accumulated deferred income taxes ("ADIT") (Ordering Paragraph 5) and including in electric

and gas rate base regulatory liabilities equivalent to ADIT associated with accelerated tax depreciation deductions related to electric and gas meter investment to be retired as a result of ENO's Advanced Metering Infrastructure ("AMI") Project ("Stranded Meter ADIT") (Ordering Paragraph 7), the implementation of which rulings ENO believes would violate the Internal Revenue Service ("IRS") normalization rules;

Recognizing that, in order for ENO to implement the base rates authorized by the Rate Case Resolution by the first billing cycle of April 2020, ENO requires certainty as to the authorized base rates, including the Energy Efficiency Cost Recovery Rider by February 24, 2020;

Recognizing that February 12, 2020 was the date of the hearing on ENO's requested preliminary injunction and that there was no guarantee that the district court would rule on ENO's request and all appeals would be completed by February 24, 2020;

Recognizing that the Council and ENO wish to resolve their disputes related to the NOL ADIT and Stranded Meter ADIT through this Agreement in Principle so that the new base rates and rate structures may be implemented by the first billing cycle of April 2020;

Recognizing that the Council Advisor attorneys and the Council Utilities Regulatory Office Counsel ("CURO") represent the Council in the judicial review of the Rate Case Resolution, CDC No. 2019-12656;

Recognizing that the Council will take the necessary action to consider this Agreement in Principle as soon as practicable;

The signatories to this Agreement in Principle hereby agree to the following provisions, terms, and conditions:

1. ENO agrees to withdraw its request for preliminary injunction regarding the implementation of rate reductions associated with NOL ADIT and Stranded Meter ADIT, while maintaining the remainder of the relief requested in its Judicial Review Petition.
2. The Council agrees that the Rate Case Resolution Ordering Paragraph 7 shall be modified with respect to Stranded Meter ADIT. The Council agrees that Stranded Meter ADIT shall be excluded from electric and gas rate base. Instead, ENO will adjust its electric and revenue requirements to include a return on the Stranded Meter ADIT using the return implicit in the AMI Agreement in Principle's recovery of the stranded meter investment. This provides for consistent treatment of the Stranded Meter ADIT and stranded meter investment in rates, which ratemaking treatment ENO asserts complies with the IRS normalization rules. This modification increases the electric revenue requirement by \$0.24 million and increases the gas revenue requirement by \$0.01 million. This ratemaking treatment is precedential only with respect to the AMI Stranded Meter ADIT issue and shall apply until the recovery of ENO's stranded meter investment concludes under the terms of the AMI Agreement in Principle.
3. The Council agrees to modify its ruling with respect to NOL ADIT in Ordering Paragraph 5 of the Rate Case Resolution. The Council agrees that, for purposes of setting gas base rates effective the first billing cycle of April 2020, NOL ADIT shall be included

in gas rate base. This modification increases the gas revenue requirement by \$0.84 million. The Council, its Advisors, and ENO agree that nothing in this paragraph should be considered precedent for ratemaking, legal, or policy purposes and reserve their respective rights to take any position with respect to the ratemaking treatment of NOL ADIT in future proceedings, including formula rate plan evaluations.

4. ENO will calculate the Electric IRAR rates to return \$15.9 million to electric customers over the months of April 2020 through June 2020, as shown in Exhibit 1. This amount is based on an overall electric revenue decrease of \$41.8 million and an electric base revenue requirement of \$418.2 million. In the calculation of the Electric IRAR rates, the Company shall not use the reallocation discussed in Paragraph XIV of the summary pleading accompanying the Compliance Filing. Instead, the Company shall reallocate the annual electric revenue increment for the Small Electric rate class shown below to all other rate classes excluding the Algiers portion of the Residential rate class based on kilowatt-hours. The credit for the LIS rate class will be returned in three equal parts over the months of April 2020 through June 2020.

The Council and the Advisors recognize that the Electric IRAR rates include annual estimated savings that customers were expected to receive through the Purchased Power and Capacity Acquisition Cost Recovery Rider, which is to be replaced with Purchased Power Cost Recovery ("PPCR") Rider and the MISO Cost Recovery Rider in 2019. In lieu of adjustments to the true-ups of the PPCR and MISO Rider to true-up 2019 expenses, ENO shall be allowed in the Electric Formula Rate Plan to collect, outside of the bandwidth formula, \$4.0 million for Evaluation Period calendar year for 2019 and \$2.2 million for Evaluation Period calendar year 2020 so that such savings are not returned to electric customers twice, once through the Electric IRAR and a second time through the PPCR and the MISO Riders. No other true-up adjustments shall be permitted related to the Electric IRAR.

5. ENO will calculate the Gas IRAR rates to return \$2.5 million to gas customers over the months of April 2020 through June 2020, as shown in Exhibit 2. This amount is based on an overall gas revenue decrease of \$2.5 million and a gas revenue requirement of \$39.8 million. No other true-up adjustments shall be permitted related to the Gas IRAR.
6. ENO shall credit (*i.e.*, reduce) the amount owed by customers for Energy Smart Program Year 9 Energy Smart expense by \$2.2 million. Such credit shall fully resolve all issues related to prior LCFC collections and all issues, known or unknown, as to amounts to be recovered by ENO from customers or amounts to be refunded to customers by ENO related to Energy Smart Program Year 9 and Program Years before Program Year 9.
7. This Agreement in Principle reflects a compromise, settlement and accommodation among the signatories and the terms and conditions herein are interdependent. All actions by the signatories contemplated or required by this Agreement in Principle are conditioned upon the Council expressing its authorization of and consent to all of the terms of this Agreement in Principle.

8. Except as otherwise expressly provided for herein, no party shall be deemed to have approved, accepted, agreed to, or consented to any ratemaking or other legal principle or policy, and nothing in this Agreement in Principle should be considered precedent for ratemaking, legal or policy purposes.

AGREED TO BY THE FOLLOWING SIGNATORIES:

THE COUNCIL OF THE CITY OF NEW ORLEANS

BY: _____ DATE: _____
Erin C. Spears,
Counsel for Council Utility Regulatory Office

BY: _____ DATE: _____
Clinton A. Vince
Utility Advisors to the Council of New Orleans

ENTERGY NEW ORLEANS, INC.

BY: _____ DATE: _____
David Ellis
President & CEO