

RESOLUTION

NO. R-19-____

CITY HALL:_____

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

IN RE: DIRECTING ENTERGY NEW ORLEANS, INC. TO INVESTIGATE AND REMEDIATE ELECTRIC SERVICE DISRUPTIONS AND COMPLAINTS AND TO ESTABLISH MINIMUM ELECTRIC RELIABILITY PERFORMANCE STANDARDS AND FINANCIAL PENALTY MECHANISMS

DOCKET NO. UD-17-04

RESOLUTION AND ORDER REGARDING PRUDENCE INVESTIGATION REGARDING ENTERGY NEW ORLEANS, LLC ELECTRIC SERVICE DISRUPTIONS AND COMPLAINTS

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”) as the governmental body with power of supervision, regulation, and control over public utilities providing service within the City of New Orleans; and

WHEREAS, Entergy New Orleans, LLC (“ENO” or “Company”) provides electric service within the City of New Orleans; and

WHEREAS, on June 8, 2017, Councilmember Jared Brossett sent a letter to ENO noting the Councilmember’s concerns regarding ongoing and increasing customer complaints related to electric outages and reliability issues “during what appears to be normal electric system operations and during what I would describe as lesser storm events.”¹ The letter directed ENO to provide

¹ See Council Resolution No. R-18-475 at 1.

detailed information explaining the specific problems and causes of the outages for the previous 12 month period, in addition to other specific information; and

WHEREAS, at the June 28, 2017 Council Utility, Cable, Telecommunications, and Technology Committee (“UCTTC”) meeting, ENO made a presentation, that provided information regarding ENO’s reliability performance, outage causes, and ENO’s current reliability programs. At that meeting, the UCTTC strongly voiced its concerns regarding ENO’s reliability issues, and posed numerous questions to ENO concerning such issues; and

WHEREAS, on July 10, 2017, ENO responded to Councilmember Brossett’s letter, providing detailed information on its outages occurring for the 12 month period of June 1, 2016 through May 31, 2017. ENO also provided statistical information regarding its 2017 System Average Interruption Frequency Index (“SAIFI”) and System Average Interruption Duration Index (“SAIDI”) and the prevailing weather conditions for ENO’s entire distribution system for the same time period;² and

WHEREAS, on August 10, 2017, the Council unanimously adopted Resolution R-17-427 establishing Docket No. UD-17-04, for the Council’s investigation into electric outages, and reliability issues in Orleans Parish in general, ENO’s level of distribution Operations and Management (“O&M”) staffing and scheduling, and to consider the establishment of minimum reliability performance standards for all of the utilities under the Council’s jurisdiction including the establishment of financial penalty mechanisms for failure to meet such minimum reliability standards as established by the Council in this docket; and

² *Id.* at 2.

WHEREAS, among other things, Resolution No. R-17-427 directed ENO to “provide the Council with its formal plans, budgets, and schedules for improving the reliability performance of its distribution system and recommended minimum SAIFI and SAIDI standards to measure the reliability performance of its distribution system for monitoring and evaluation by the Council and its Technical Advisors;”³ and

WHEREAS, on November 10, 2017, ENO filed its initial reliability plan (“Initial Plan”) with the Council, which consisted of six major reliability-focused programs described as: the FOCUS Program, the Backbone Program, the Internal Program, the Pole Program, the Equipment Inspection Program, and the URD/Cable Renewal Program. Each of these programs was generally described; and

WHEREAS, the Technical Advisors performed a review of ENO’s Initial Plan, and concluded that it lacked adequate detail concerning ENO’s proposed projects, schedules, a comparison of capital and O&M costs by years, and the location of each proposed project included in its Initial Plan’s FOCUS, Backbone, Internal, Equipment Inspection, and URD/Cable Renewal Programs, despite the Council’s clear direction that the plan should have included more detailed information; and

WHEREAS, the Technical Advisors found that the lack of significant details thwarted the Council’s ability to perform a “thorough and comprehensive review of ENO’s Reliability Plan and to constantly measure ENO’s performance in accomplishing its Reliability Plan as proposed;”⁴ and

³ *Id.* at 3.

⁴ *Id.*

WHEREAS, the Technical Advisors concluded that the Initial Plan “contained no information upon which the Council can measure any improvement in ENO’s reliability performance;”⁵ and

WHEREAS, after the Council’s adoption of Resolution R-17-427, numerous distribution outages throughout ENO’s system continued to occur with great frequency, and Councilmembers continued to receive numerous customer complaints regarding the occurrence of such outages, especially related to equipment failures during normal clear weather conditions; and

WHEREAS, the Council became increasingly concerned about the continuation of ENO’s pattern of frequent large-scale distribution outages and customer service interruptions, often for extended periods of time; and

WHEREAS, on April 5, 2018, the Council unanimously adopted Resolution No. R-18-98, which directed ENO “to show cause...why ENO’s inaction and omissions in mitigating and remediating electric service disruptions and complaints and unacceptable reliability performance should not be presumed imprudent.”⁶ In addition, the resolution directed ENO to file a revised reliability plan that would be required to include certain specified and detailed information;⁷ and

WHEREAS, the resolution also directed the Advisors to file a report with the Council regarding: “(i) their review and recommendations regarding ENO’s revised reliability plan; (ii) recommending proposed minimum reliability standards upon which ENO’s future reliability performance can be evaluated; and (iii) proposing financial penalty mechanisms for ENO’s non-

⁵ *Id.* at 6.

⁶ Council Resolution No. R-18-98 at 8.

⁷ *Id.* at 9.

compliance with such minimum reliability performance standards for the Council’s consideration and future action;”⁸ and

WHEREAS, on October 31, 2018, the Council unanimously adopted Resolution R-18-475 expressing the Council’s view that “for nearly two years, the Council has been expressing its discontent with the unacceptable level of outages on ENO’s distribution system and the Company’s overall poor, reliability performance;”⁹ and

WHEREAS, the Council established a prudence investigation “to determine whether ENO’s inaction and omissions in mitigating and remediating electric service disruptions and complaints and addressing the performance of the distribution system as discussed herein were imprudent and whether financial and/or other penalties should be imposed by the Council;”¹⁰ and

WHEREAS, the resolution established a procedural schedule that directed ENO to file “such testimony, evaluations, analyses, workpapers, and other information, as the Company believes will be of assistance to the Council in this prudence investigation;”¹¹ and

WHEREAS, the resolution provided for comments responsive to ENO’s filing to be filed by any participating intervenors and the Council’s Advisors, as well as providing for rebuttal testimony by ENO; and

WHEREAS, although there were intervenors in the Docket, none submitted comments in response to ENO’s filing; and

⁸ *Id.*

⁹ Council Resolution No. R-18-475 at 9.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 14.

WHEREAS, the procedural schedule has been completed and the record has been certified by the Hearing Officer; and

BACKGROUND

WHEREAS, this Council proceeding is in response to the significant customer complaints regarding declining day-to-day distribution reliability on the ENO system; and

WHEREAS, the Initial Plan filed by ENO was found by the Technical Advisors to be functionally useless and structured in a manner that would thwart the Council’s efforts to effectively “perform a thorough and comprehensive review of ENO’s Reliability Plan and to constantly measure ENO’s performance in accomplishing” the plan;¹² and

WHEREAS, ENO’s repeated failure to reflect the sense of urgency expressed by Councilmember Brossett, the UCTTC and the Council, up to and including the filing of a functionally useless reliability plan, resulted in the Council unanimously adopting Resolution No. R-18-98, which directed ENO to submit a revised remediation plan following specific details, and to show cause why it should not be found to have acted imprudently for its “inaction and omission in [not] mitigating and remediating electric service disruptions and complaints and unacceptable reliability performance;”¹³ and

WHEREAS, the rising concerns and frustrations of the UCTTC regarding reliability issues were strongly stated at subsequent meetings when members posed numerous questions to ENO concerning those issues; and

¹² See Council Resolution No. R-18-475 at 3.

¹³ See Council Resolution No. R-18-98 at 8.

WHEREAS, at the June 28, 2018 UCTTC meeting, Councilmembers learned that ENO had cut distribution system funding just prior to the decline in reliability. Ms. Melonie Stewart, ENO Vice President of Customer Service, appeared at the meeting. Ms. Stewart admitted that “[a]s we [ENO] backed off on that funding slightly, we did see the reliability go in the wrong direction.”¹⁴ The Council also learned at that meeting that the “slight” reduction in funding was \$1,000,000 in 2014 according to Ms. Stewart.¹⁵

MS. STEWART:

So, Councilmember Brossett, Madam Chair, members of the Utility Committee, we do have a plan, and we do recognize that our performance has not been up to par over the past **several years**. In 2013, we had outstanding distribution reliability, and we did **back off slightly on our funding** because we didn’t want to spend money on a system that was performing extremely well. We wanted to ensure that we were spending our money in the right places, that we were balancing costs and reliability, and the reliability on the distribution system was outstanding in 2013. As we backed off on that funding slightly, we did see the reliability go in the wrong direction....¹⁶

COUNCILMEMBER WILLIAMS:

What was the date that you said that you all - - I think I am using your word correctly - - slacked off on the investment? What was the date of that? what year was that?

¹⁴ Transcript, UCTTC Meeting June 28, 2018 (“June 28, 2018 Transcript”) at 75.

¹⁵ *Id.* at 76-77.

¹⁶ *Id.* at 74-75. (Emphasis added.)

MS. STEWART:

In 2014. **In 2014 we reduced our investment in the distribution system by about a million dollars;**¹⁷ and

WHEREAS, Councilmember Jason Williams reflected the reaction of the Committee:

... I struggle with the fact that today you say you realize that you are not investing enough and you are falling short. You said that, but the reaction to that again seems delayed, and I am certain that shareholders of Entergy did not suffer during those times.... Businesses, people, citizens, ratepayers suffered during those times. Why wasn't there a quicker reaction to reinvesting in that grid?¹⁸

In response Ms. Stewart replied:

... When we look at the performance of our distribution and transmission system, our entire system, it's like a link in a chain. If there's one weak link in that chain, then power is lost, whether the weak link is on the distribution system, within the substation, within the transmission system. We are always monitoring performance of our entire system to ensure that we are spending the dollars in the right places. We are always trying to balance cost and reliability.

When we saw that our reliability on the distribution system was performing very well, we looked at the other links in the chain and said, 'Are there other areas that are vulnerable and should we shift some of that funding from the distribution system upstream to ensure that other potential challenges don't cause outages?' So that's what it was. It was really a shift in funding. We looked at all the links in the chain to make sure that they were all strong.¹⁹

COUNCILMEMBER WILLIAMS:

I think it's also a matter of perspective. I would say that the system was performing better. I don't know that I would say the system was performing well. I mean, you don't have to ride very far in the City of New Orleans to realize that, you know, we don't have the most modern grid in the world and it is not at the top of its game; right? So right now I am just talking about equipment failures,²⁰ and

WHEREAS, the Council also learned from Ms. Stewart that the key reliability benchmarks

followed by ENO at the time were clearly declining:

¹⁷ *Id.* at 76-77. (Emphasis added.)

¹⁸ *Id.* at 77.

¹⁹ *Id.* at 77-78.

²⁰ *Id.* at 78-79.

MS. STEWART:

So most of your reliability - - in this industry, reliability benchmark data is available on SAIFI, the frequency of outages, and SAIDI, the duration of outages. We will monitor our progress based on SAIFI and SAIDI and compare ourselves to peers in our industry and share that information with you to ensure that we are making improvements that are appropriate.

COUNCILMEMBER MORENO:

... Let me have the advisors come in. Can you let us know what the SAIFI and SAIDI numbers have been doing over the past couple of years?

MR. MOVISH:

Yeah. ENO's reported information to the EIA shows that the SAIFI's are - - the frequency of outages is getting longer, and it shows that the duration of outages is getting longer.

COUNCILMEMBER MORENO:

So, Phil, what you are saying is that it's actually getting worse?

MR. MOVISH:

Yes;²¹ and

WHEREAS, ENO provided information on its outages occurring for the 12 month period of June 9, 2016 through May 31, 2017. ENO also provided statistical information regarding its 2017 System Average Interruption Frequency (SAIFI) and System Average Interruption Duration Index (SAIDI) and the prevailing weather conditions for ENO's entire distribution system for the same time period;²² and

WHEREAS, according to ENO's data the Advisors were able to determine that ENO's SAIDI results had declined significantly between 2013 and 2017 as did their SAIFI results. In addition, the information determined that 56% of the outages during the time period occurred during fair weather conditions. Further, the Advisors' preliminary analysis revealed that of the

²¹ *Id.* at 84-85.

²² The Technical Advisors' analysis of ENO's data was reported in the filing of the "Technical Advisors' Review of Entergy New Orleans, Inc.'s Outages and Reliability Performance Council Docket No. UD-17-04, Initial Report to the Council of the City of New Orleans."

total 2,599 outages from all causes that occurred in ENO's distribution system during the June 1, 2016 through May 31, 2017 period, more than one-third were the result of equipment failures;²³ and

WHEREAS, the Technical Advisors' analysis indicated that a total of 2,599 outages from all causes occurred in ENO's distribution system during the June 1, 2016 through May 31, 2017 period taking into account all weather conditions, of which a total of 1,462 outages from all causes occurred during fair weather conditions, and the Technical Advisors noted that many of the outages reported by ENO were of significantly longer duration; and

WHEREAS, the Technical Advisors' analysis indicated that of the 2,599 total outages that occurred during June 1, 2016 through May 31, 2017, approximately 56% occurred during normal business hours between 8:00 a.m. and 5:00 p.m., and approximately 44% occurred outside of normal business hours starting at 5:00 p.m. and ending 8:00 a.m.; and

WHEREAS, approximately 48% of all outages that occurred between 8:00 a.m. and 5:00 p.m. were greater than 2 hours in duration, and approximately 31% of outages during this time period were greater than three hours in duration; and

WHEREAS, 54% of all outages that occurred during 5:00 p.m. and 8:00 a.m. were greater than 2 hours in duration and 38% of outages during this time period were greater than 3 hours in duration; and

WHEREAS, the ENO data and the Technical Advisors' analysis were sufficient to confirm the Council's concern and to support additional investigation; and

²³ Technical Advisors' Review Initial Report to the Council of the City of New Orleans, dated October 31, 2017 ("Technical Advisors' Review of Initial Report"), Table 1 at 3.

WHEREAS, after the Technical Advisors rejected ENO's Initial Plan, and the Council directed ENO to file a Revised Reliability Plan, which further delayed progress on analyzing, approving and implementing such a plan; and

WHEREAS, the Council continued to express serious concerns about ongoing reliability problems and ENO's lethargic response. As Councilmember Brossett expressed it:

You know, I don't - - I am still dismayed at the level of urgency and action today. I mean, the level of lack of preparation for the Council, the Council's Utility Committee, is plainly awful. You all have to present us with an action plan, as Mr. Vince stated, and **treat it like a crisis** because our ratepayers deserve better;²⁴ and

WHEREAS, at the July 19, 2018 UCTTC meeting, the Council expressed serious concerns about ENO's inability to answer basic questions regarding the status of its distribution equipment and the overall condition of its assets, which raised the concern that ENO was not giving the necessary attention to the reliability problems; and

WHEREAS, ENO's presentation at that meeting raised doubts as to whether ENO even properly understood its own system. Chair Helena Moreno pointed out:

...this is a serious matter, that we need to understand just the overall condition of your assets, and I am not quite understanding your asset management process or if you really have one that's fully vetted out or that -- you know, you can't even come to the table and explain to us just the very basics of what your assets look like;²⁵ and

WHEREAS, Councilmember Giarrusso, addressing ENO executives said:

... So I added up based on your top ten outage causes equipment failures ... and I got 5,065 from 2013-2018.... If you divide that by six years, you get 845 per year, which means 2.3 times a day we are having an equipment failure right now;²⁶ and

²⁴ Transcript, July 19, 2018 UCTTC Meeting ("July 19, 2018 Transcript") at 54. (Emphasis added.)

²⁵ *Id.* at 17.

²⁶ *Id.* at 39.

WHEREAS, Chair Moreno summarized: “Well, at the end of the day, you still have the majority of the outages for Entergy being caused by equipment failures...;”²⁷ and

WHEREAS, as a result of the information provided by ENO and the concerns expressed by the Council, the Council unanimously adopted Resolution R-18-475 initiating a prudence investigation regarding ENO’s decisions and actions relating to service disruptions and complaints. The resolution directed ENO specifically to “file...such testimony, evaluations, analyses, workpapers, and other information, as the Company believes will be of assistance to the Council in this prudence investigation.”²⁸

ENO’S RESPONSE

WHEREAS, on January 10, 2019, ENO filed its “Response to Prudence Investigation pursuant to Resolution No. R-18-475” (“Initial Response”), which included the Supplemental Direct Testimony of Tad S. Patella and Direct Testimony of William L. Sones; and

WHEREAS, ENO argued in its Initial Response that Resolution No. R-17-427 presupposed that there would be a consideration of establishing minimal reliability standards and financial penalty mechanisms as prerequisites to the imposition of any reliability related deficiencies by ENO; and

WHEREAS, ENO stated that “if the purpose of this docket was to establish minimum reliability standards and associated financial penalties for failure to meet such standards, no such standards were in place at the inception of this docket. Moreover, to date, no such minimum reliability performance standards or financial penalty mechanisms have been proposed by the

²⁷ *Id.* at 31

²⁸ Council Resolution No. R-18-475 at 14.

Advisors or any other party to this docket and, accordingly, the Council has neither established nor considered the establishment of any minimum reliability standards or associated financial penalties. Because the Council has not established minimum reliability standards or any penalties associated with failure to meet any such standards if adopted, no financial penalty should be imposed on ENO retroactively for failing to meet some standard established after the fact;”²⁹ and

WHEREAS, ENO asserted that without minimum reliability standards the cost associated with attaining and maintaining those standards cannot be determined:

However, in order to gauge the level of investments ENO must make and the level of costs it must expend to meet or exceed a Council-imposed minimum reliability standard, it must know what that standard is. If the Council expects 1st quartile performance, there will be a certain cost associated with achieving and maintaining that level of reliability. If the Council expects 2nd quartile performance, presumably there will be a somewhat lower level of cost associated with attaining and maintaining that level of reliability.... But if the Council is going to seek to penalize ENO for not attaining a certain level of reliability, it should first enact the standards it plans to impose, so ENO can assess the level of financial commitment needed;³⁰ and

WHEREAS, ENO also argued that the Council improperly “presumed” that ENO acted imprudently with respect to its distribution reliability and that the burden should be on the Council to establish imprudent conduct; and

WHEREAS, ENO asserted that it “has shown that it has reacted reasonably and prudently in the face of increased distribution-related outages in 2016 by significantly increasing its reliability-related investments and expenditures and by setting forth a detailed and reasonable plan for combating those increases;”³¹ and

²⁹ ENO Response to Prudence Investigation dated January 10, 2019 at 7-8.

³⁰ *Id.* at 8.

³¹ *Id.* at 9.

WHEREAS, ENO argued that in 2016 ENO “ramped up its reliability spending by \$10 million over its baseline reliability budget and committed to spending an additional \$30 million on storm hardening projects;”³² and

WHEREAS, ENO claimed that these efforts “appear to be having a positive effect, with preliminary distribution line customer interruptions in 2018 declining by approximately 20% when compared to 2017 distribution line customer interruptions. Although these distribution line advances were offset in 2018 by a challenging year for transmission-related customer interruptions, it is clear that the hard work that is being done by our motivated reliability team is showing progress;”³³ and

WHEREAS, ENO relied upon the Supplemental Direct Testimony of Tad S. Patella, P.E. who addressed actions taken by ENO in 2018 to address distribution reliability including (1) the establishment in 2018 of the dedicated “Fix-It-Now (“FIN”) reliability crew and the success that the crew has had in identifying potential outages before they occur and fixing the issue(s) that might have resulted in an outage; (2) our engagement of Quanta Technology, LLC to perform an independent review of our reliability programs and to provide recommendations for improving our reliability programs and procedures; and (3) the reliability work that was accomplished in 2018 and the distribution line reliability improvements that we are seeing;”³⁴ and

WHEREAS, the balance of Mr. Patella’s testimony was an elaboration on actions taken with respect to the FIN program in 2018, the Quanta Report in 2018 and other general descriptions

³² *Id.* at 10.

³³ *Id.*

³⁴ Supplemental Direct Testimony of Tad S. Patella, P.E. at 2.

of routine reliability projects, and the approximately \$16.5 million in storm hardening work “that is also expected to provide long-term reliability benefits;”³⁵ and

WHEREAS, ENO also relied upon the Direct Testimony of William L. Sones who described his testimony as helping to demonstrate that “ENO’s capital and O&M investments in transmission reliability programs have been reasonable and prudent, and that the measures ENO has taken to address recent reliability challenges are also reasonable and prudent, and strike a reasonable balance between (i) the need to make certain capital and O&M transmission line and substation investments and (ii) the cost to customers of making those investments;”³⁶ and

WHEREAS, after describing a number of transmission and substation related projects, Mr. Sones concluded that “[w]hile these projects do not specifically address the causes of outages recently experienced by ENO, they address reliability issues from a broader system perspective by increasing transmission capacity and ENO’s ability to reliably serve customers. Without the construction of these projects, the system could have experienced additional reliability issues. Furthermore, while it is difficult to quantify, having newer assets can result in higher reliability, as these newer assets would be less prone to failure in comparison with older assets;”³⁷ and

WHEREAS, ENO also referred to the Direct Testimony of Tad S. Patella, P.E. in its response to Resolution No. R-18-98 in which Mr. Patella referenced the testimony of Melonie Stewart and the “description of the various reliability programs that are regularly used to maintain

³⁵ *Id.* at 9.

³⁶ Direct Testimony of William L. Sones at 3-4.

³⁷ *Id.* at 14-15

and improve reliability in the Metro Region and that are part of the Reliability Plan that ENO filed with the Council in November 2017;”³⁸ and

WHEREAS, Mr. Patella attempted to explain why outages on the distribution system can occur on fair weather days by noting that:

For example, on a fair weather day, it is still possible for animals to come into contact with electrical equipment and cause outages or for a vehicle to strike an ENO pole resulting in power outages to an entire neighborhood. Or on a day that is fair, but windy, a cross arm that has been weakened by age or long-term exposure to weather may finally give way, resulting in outages. Or a child’s metallic balloon can come in contact with an overhead distribution wire causing a short and resulting in an outage. Even on days when it is neither windy nor raining, the extreme heat and humidity that often descends on New Orleans can place an increased level of stress on equipment, leading to more equipment failures than would otherwise be the case in more moderate climates. In that example, even though the sun may be shining without a cloud in the sky, the temperature may be a significant factor in an outage.... It could be due to age, or to a defective part, or to an outside force such as wind, a tree, a car, an animal, or any number of other intrusions;³⁹ and

WHEREAS, Mr. Patella concluded that “ENO has stacked-up reasonably well against other U.S. utilities with respect to its SAIDI and SAIFI scores from 2013 through 2015.”⁴⁰ However, in his explanation of SAIDI and SAIFI benchmarks, Mr. Patella acknowledged that those benchmarks declined between 2013 and 2017 placing “ENO in the fourth quartile among U.S. utilities for those years;”⁴¹ and

WHEREAS, Mr. Patella speculated on the potential causes of the declining reliability performance of the distribution system: “However, as noted, ENO’s SAIFI and SAIDI results increased sharply in the past two years. Again, it is difficult to pinpoint the primary cause of such

³⁸ Direct Testimony of Tad S. Patella at 9. The Reliability Plan referenced by Mr. Patella is the plan that was rejected by the Technical Consultants and the Council, which led to a Revised Reliability Plan not referenced in Mr. Patella’s testimony.

³⁹ *Id.* at 10-11.

⁴⁰ *Id.* at 20.

⁴¹ *Id.* at 14.

fluctuations with certainty, but a look at the comparative weather data for those years seems to provide at least a partial explanation.”⁴² Mr. Patella goes on to testify that in 2016 the number of days in which the temperature reached 90 degrees or above was “approximately 46% higher than the average for 2013 through 2015. Similarly, the average rainfall for 2015 through 2017 was approximately 20% higher than the average of the five previous years.”⁴³ Mr. Patella also notes an increase in lightning strikes in 2016 and 2017 without concluding that they are related to outages, but that “[g]enerally speaking, the more extreme the weather, the more stress is placed on the distribution system and the more likely SAIFI and SAIDI results will be adversely affected;”⁴⁴ and

WHEREAS, ENO’s Initial Response also referred to the Direct Testimony of Melonie P. Stewart provided in connection with ENO’s Response to Resolution No. R-18-98. Ms. Stewart’s testimony is offered to “help demonstrate that ENO’s efforts to operate and maintain the distribution system in New Orleans have been reasonable;”⁴⁵ and

WHEREAS, Ms. Stewart’s testimony was a broad and general description of ENO’s annual reliability plans, which consists of eight major reliability programs. In addition to the primary reliability programs, Ms. Stewart also testified with respect to ENO’s filed Storm Hardening Plan; however, none of Ms. Stewart’s testimony directly addressed the issues raised by Resolution No. R-18-475, or the concerns expressed by the Council in connection with the distribution reliability prudence investigation for the stated time period; and

⁴² *Id.* at 15.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Direct Testimony of Melonie B. Stewart on behalf of Entergy New Orleans, LLC. in Response to Resolution R-18-98 at 3.

WHEREAS, Ms. Stewart’s references to the Storm Hardening Plan were characterized as “certain programs and expenditures that would begin to assist in hardening the distribution system to allow it to better withstand the impact of major storms affecting New Orleans.”⁴⁶ She described the program as “hardening service up to ‘critical customers.’”⁴⁷ Critical customers are defined as those whose services are most important in responding to major storm events and maintaining or restoring order after such an event and include facilities related to first responders, local and emergency preparedness centers, military facilities, airports, major land line and cell phone communications systems, and medical related facilities.⁴⁸

ADVISORS’ POSITION

WHEREAS, the Advisors are of the opinion that ENO’s Initial Response did not meet the burden of demonstrating that decisions related to maintaining and improving its distribution system were prudent. No regulator, including the Council, is responsible for directing a utility to operate in a specific manner with respect to distribution reliability. Every utility including ENO, is required to operate prudently in all aspects of its operations. ENO has an independent and indisputable responsibility to maintain and operate a reliable distribution system; and

WHEREAS, the responsibility of a utility has been well described in judicial opinions to the effect that “one of the most important duties of a public utility, inherent in its franchise to serve the public, is the duty to take the initiative in proposing reasonable rates and rendering adequate services, taking into account changing conditions; and the utility is not relieved from this duty

⁴⁶ *Id.* at 10.

⁴⁷ *Id.*

⁴⁸ *Id.* at 11.

because its activities are subject to government regulation, for a regulatory commission is not clothed with the responsibility or qualified to manage the utility's business;"⁴⁹ and

WHEREAS, Resolution No. R-18-475 instituted a prudence investigation independent of the development of reliability performance standards and/or financial penalty mechanisms. As stated in the resolution, "**in addition to** the establishment of financial penalty mechanisms for failure to meet minimum reliability performance standards, the Council intends to conduct a prudence investigation to determine whether ENO's **previous** inactions and omissions in mitigating and remediating electric service disruptions and complaints and unacceptable reliability performance should not be presumed imprudent."⁵⁰ Similarly, the resolution states that "the Council reiterates its intention to establish minimum reliability performance standards and financial penalty mechanisms after receiving all relevant information in connection with this docket;"⁵¹ and

WHEREAS, the Council clearly stated in the first ordering paragraph of the resolution that "[t]he Council hereby establishes a prudence investigation to determine whether ENO's inaction and omissions in mitigating and remediating electric service disruptions and complaints and addressing the performance of the distribution system as discussed herein were imprudent and whether financial and/or other penalties should be imposed by the Council;"⁵² and

WHEREAS, in ordering paragraph four the Council clearly directed ENO to file "such testimony, evaluations, analyses, workpapers, and other information, as the Company believes will

⁴⁹ *Pennsylvania. Water and Power Co. v. Consolidated Ga, Elec. Light & Power Co.*, 184 F.2d 552, 567 (4th Cir. 1950).

⁵⁰ Council Resolution No. R-18-475, dated October 31, 2018, at 9. (Emphasis added.)

⁵¹ *Id.*

⁵² *Id.* at 13.

be of assistance to the Council **in this prudence investigation**,”⁵³ which is a directive independent of the discrete process of gathering information to establish reliability standards and penalty mechanisms in the future; and

WHEREAS, this is consistent with the direction of the Council in Resolution No. R-18-98 in which the Council stated that “in determining a method of ensuring that ENO provides acceptable levels of reliability to its customers **prospectively**, it is prudent for the Council to consider the establishment of minimum reliability performance standards for ENO,”⁵⁴ clearly indicating reliability standards and penalty mechanisms were intended to be prospective and independent of the instant prudence investigation; and

WHEREAS, it is instructive that ENO’s argument was also **rejected** in a relevant ruling of the Maryland Public Service Commission (“MPSC”), which considered the utility’s argument that “the Commission may only penalize a utility pursuant to a regulatory standard with an objective metric...”⁵⁵ even though the MPSC was engaged in contemporaneous rulemaking related to establishing standards, as is the case with the Council; and

WHEREAS, additionally, ENO has been on notice since at least 1999 that inadequate distribution system reliability could result in penalties under Section 3-130(7) of the Charter of the City of New Orleans. In 1999, the Council reacted comprehensively to a previous decline in reliability with Resolution No. R-99-433. The resolution placed ENO “on notice” that failure to complete the remediation plans could result in the imposition of “financial penalties, which

⁵³ *Id.* at 14. (Emphasis added.)

⁵⁴ Council Resolution No. R-18-98 at 7. (Emphasis added.)

⁵⁵ *In re: Potomac Electric Power Company*, 102 Md.P.S.C. 408, 2011 WL 7164366 (Md.P.S.C.), 295 P.U.R.4th 373 at 34.

penalties shall be in an amount the Council deems sufficient to constitute reasonable penalties and which assures the ultimate achievement by ENO of a reliable electric distribution system.”⁵⁶ Also, Section 3-130(7) of the Charter provides: “The orders of the Council shall be enforced by the imposition of such reasonable penalties as the Council may provide...” and

WHEREAS, despite the Council’s repeated concerns over the unacceptable number of fair weather outages of long duration, and the Council’s repeated directions to ENO with respect to its insistence on urgent action by ENO, as expressed in (1) Councilmember Brossett’s June 8, 2017 letter to ENO voicing his concerns over ongoing customer complaints related to the mounting outages and reliability issues; (2) Resolution R-17-427 expressing the Council’s concern “with the overall level of ENO’s distribution system reliability throughout ENO’s service territory;”⁵⁷ and (3) the unanimous comments of concern and urgency by all Councilmembers at several meetings, ENO submitted an Initial Plan that was judged so deficient by the Technical Advisors as to be essentially useless, requiring a specific directive by the Council to file a revised reliability plan with mandated specific information; and

WHEREAS, it is widely recognized that two of the most important indices utilized by electric utilities to measure their reliability performance are the System Average Interruption Frequency Index (SAIFI) and System Average Interruption Duration Index (SAIDI). SAIFI measures the average number of interruptions of all customers over a defined period of time, usually a year. SAIFI is calculated by dividing the number of customer interruptions by the

⁵⁶ Council Resolution No. R-99-433 at 6.

⁵⁷ Council Resolution No. R-17-427 at 4.

number of customers served. An upward trend in SAIFI generally indicates a reduction in reliability;⁵⁸ and

WHEREAS, SAIDI is calculated by dividing the total hours of interruption by total customers served. Like SAIFI, an upward trend in SAIDI generally indicates a reduction in reliability. The following table provided by ENO witness Tad S. Patella confirms ENO’s decline in reliability starting after 2013;

Table 1:⁵⁹

ENO’s SAIDI and SAIFI (2013-2017)					
	2013	2014	2015	2016	2017
SAIDI	92	121.3	128	167.9	179.8
SAIFI	1.04	1.209	1.234	1.61	1.584

and

WHEREAS, subsequent to Councilmember Brossett’s June 8, 2017 letter requesting detailed information on the specific problems and causes of outages, data was provided to the Council and Advisors detailing outages during the period June 1, 2016 through May 31, 2017; and

WHEREAS, the Advisors review of that data provided by ENO determined that 56% of total outages occurred during fair weather conditions and that more than one-third of the outages were a result of equipment failures;⁶⁰ and

⁵⁸ Direct Testimony of Joseph W. Rogers, P.E. dated April 25, 2019 (“Rogers Testimony”) at 6.

⁵⁹ Direct Testimony of Tad S. Patella, Docket UD-17-04, June 6, 2018, at 14.

⁶⁰ Technical Advisors’ Review of Initial Report at 3.

WHEREAS, at the July 19, 2018 UCTTC meeting, ENO pointed to its aging legacy distribution system as an explanation for some reliability issues; however, the Committee members were frustrated by ENO’s inability to discuss its asset management plan, even in light of its legacy system:

COUNCILMEMBER GIARRUSSO:

... Do we know the condition of the transformers, how they are doing, which ones need to be replaced immediately, which ones are medium term? Do we have that data or are we going to get it at the next meeting?⁶¹

Councilmember Giarrusso asked for input from Mr. Movish, a Council Utility Technical Advisor:

MR. MOVISH:

... I think the genesis of the question that you got is: How are you tracking the overall condition and making your decisions on replacement, repair, etcetera, to the life of your assets, your distribution infrastructure? You know, a modern asset management program allows one -- allows a utility to track the history of each class of equipment, each type of equipment, from nut, bolt, washer up through transformers, insulators, lightning arresters, sectionalized switches, fuses, what have you.

And when you start seeing that, hey, we are determining that the fuse from this manufacturer is failing prematurely, a very high failure rate, this transformer is failing at an inordinately high rate, perhaps we should pull those things out, replace them with equipment from another manufacturer or design in support of maintaining system reliability.

What you are promoting today or what you are discussing today is a very reactive approach and what your projects in field are. There also should be, in my opinion, a program in place that would allow you to follow your assets through their life and make very judicious decisions, which if you followed those or made those judicious decisions on a timely basis, you could potentially avoid some of the outages that are occurring.⁶²

The 2018 Quanta Technology, LLC assessment of Entergy New Orleans Distribution Reliability Improvement Initiatives (“Quanta Report”) described why the asset management of

⁶¹ July 19, 2018 Transcript at 18.

⁶² *Id.* at 19-21. (Emphasis added.)

ENO's infrastructure that was being questioned by the Council and the Council's Technical Advisors could not be performed by ENO:

Similar to many urban utility companies in the United States, ENO has a high population of aged equipment. In the utility industry, aged does not mean that equipment is no longer functioning as designed. In fact, some older equipment designs and manufacture are much more robust than new equipment. Older facilities do, however, represent increased risk of failure simply due to approaching end of normal service life.

Entergy's current asset information does not allow for an in-depth analysis of age of a class of equipment or other analysis often done in review of equipment failure situations....⁶³

... Overall, ENO's distribution reliability practices are similar to the other utilities included in the survey. **The primary difference is related to the failure rate analysis which is not possible at this time**, but is expected to be available in the future as new systems are implemented;⁶⁴ and

WHEREAS, the Quanta Report identified asset management as an area in need of improvement:

Improvement in overall asset management capability is an identified need within Entergy at the corporate level. Currently at Entergy, asset management is located organizationally as a corporate services function supporting all Entergy operating companies. In order to implement a comprehensive asset management capability, Entergy **is in process of implementing** an enterprise asset management solution....⁶⁵

Accordingly, ENO as an individual operating company, did not have adequate asset management procedures in place prior to the decline of the distribution system, which could have reduced the number of customer outages. Moreover, according to the Quanta Report ENO is only now, six

⁶³ Quanta Technology, LLC's Assessment of Entergy New Orleans, LLC's ("ENO") Distribution Reliability Improvement Initiatives, dated October 31, 2018, ("Quanta Report") at 16. (Emphasis added.)

⁶⁴ *Id.* at 51. (Emphasis added.)

⁶⁵ *Id.* at 73. (Emphasis added.)

years after the beginning of the decline of ENO's reliability, **starting** to implement appropriate asset management systems; and

WHEREAS, the Quanta Report noted that Customer Interrupted ("CI") and Customer Minutes of Interruption ("CMI") are used as proxies for SAIFI and SAIDI and that ENO focuses on CI and CMI as the primary operating metrics to track reliability internally. In reviewing ENO outage data from 2013 to 2017, with respect to the CI and CMI indices, Quanta observed:

Analysis of ENO outage records indicates that 64% of the CI increase between 2013 and 2017 is due to three cause codes: **equipment (41%)**, conductor (12%), and vegetation (11%). The same cause codes contributed 61% of the CMI increase between 2013 and 2017: **equipment (42%)**, conductor (12%), and vegetation (7%),⁶⁶ and

WHEREAS, in its Initial Response, ENO suggested that its "now-aging infrastructure" "present increasing reliability challenges"⁶⁷ and asserted that "Quanta also confirmed our belief – and strongly emphasized – that, given our legacy distribution construction and infrastructure, we will need grid modernization and distribution automation to see significant improvements in distribution reliability."⁶⁸ As expert witness Rogers testified "[t]hese comments appear to be excuses rather than substantive responses or evidence of prudent conduct;"⁶⁹ and

WHEREAS, witness Rogers further testified "[l]egacy construction, no matter how aged, in and of itself is not unreliable if adequately maintained on an ongoing and prudent basis. Numerous electric utilities throughout the country operate systems that have aging legacy

⁶⁶ *Id.* at 20. While Quanta noted some improper coding by ENO that could result in a "higher number of outage events than what actually occurred," Quanta concluded that "[t]he extent of the impact of this practice is not known and is not anticipated to be highly significant, however, it does artificially inflate the number of outage events that have occurred." *Id.* at 22. (Emphasis added.)

⁶⁷ ENO Response to Prudence Investigation dated January 10, 2019 at 11.

⁶⁸ Supplemental Direct Testimony of Tad S. Patella, P.E. at 7.

⁶⁹ Direct Testimony of Joseph W. Rogers, P.E. dated April 25, 2019 ("Rogers Testimony") at 16.

construction, but still achieve acceptable levels of reliability. ENO’s assertion that its reliability problems stem from its legacy construction simply highlights ENO’s failure to maintain and improve its system over time;”⁷⁰ and

WHEREAS, Quanta confirmed that ENO never had in place an asset management system that could have more quickly recognized and stemmed the tide of dramatically increasing outages; and

WHEREAS, witness Rogers testified that a table provided by ENO witness Tad S. Patella in June 2018 clearly shows ENO’s decline in reliability since 2013.

Table 1⁷¹					
ENO’s SAIDI and SAIFI (2013-2017)					
	2013	2014	2015	2016	2017
SAIDI	92	121.3	128	167.9	179.8
SAIFI	1.04	1.209	1.234	1.61	1.584

Witness Rogers testified that these SAIDI and SAIFI numbers, as presented to the U. S. Energy Information Administration (“EIA”), can also be used to determine ENO’s reliability performance compared with other utilities. Rogers testified that: “A review of EIA data by separating the reporting utilities into quartiles shows that ENO’s reliability, as measured by SAIFI and SAIDI in comparison with other utilities, has dropped from second quartile performance in 2013 to third and then fourth quartile performance in the following years.”⁷²

⁷⁰ *Id.*

⁷¹ *Id.* at 6, *citing* Direct Testimony of Tad S. Patella, Docket UD-17-04, June 6, 2018, page 14.

⁷² *Id.* at 7.

Table 2⁷³					
System Average Interruption Frequency Index (“SAIFI”) without Major Event Days					
2013-2017 ⁽¹⁾					
	2013 ⁽²⁾	2014	2015	2016	2017
1 st Quartile Highest SAIFI	.739	.690	.700	.677	.680
2 nd Quartile Highest SAIFI	1.045	1.076	1.077	1.073	1.069
3 rd Quartile Highest SAIFI	1.653	1.503	1.580	1.560	1.519
Average # of Utilities in Each Quartile	121	132	142	154	164
Entergy New Orleans LLC Indices	1.032	1.222	1.413	1.816	1.796
	2nd Quartile	3rd Quartile	3rd Quartile	4th Quartile	4th Quartile
(1) Data sourced from US Energy Information Administration Form EIA-861					
(2) EIA began collecting and including SAIDI and SAIFI data in Form EIA-861 in 2013					

⁷³ *Id.* at 8.

Table 3⁷⁴
System Average Interruption Duration Index (“SAIDI”) without Major Event Days
2013-2017 ⁽¹⁾

	2013 (2)	2014	2015	2016	2017
1st Quartile Highest SAIDI	46.000	46.280	53.419	54.830	54.130
2nd Quartile Highest SAIDI	88.000	92.409	100.610	102.000	94.450
3rd Quartile Highest SAIDI	145.100	141.350	164.210	166.800	160.900
Average # of Utilities in Each Quartile	135	144	155	169	177
Entergy New Orleans LLC Indices	90.300	117.400	135.800	190.200	192.900
	3rd Quartile	3rd Quartile	3rd Quartile	4th Quartile	4th Quartile

(1) Data sourced from US Energy Information Administration Form EIA-861

(2) EIA began collecting and including SAIDI and SAIFI data in Form EIA-861 in 2013

and

WHEREAS, witness Rogers also testified that:

ENO was definitely aware of its decline in reliability performance by May of 2015, when its report to EIA was due. However, while not aware of the exact calculable annual SAIDI and SAIFI numbers for 2014, ENO either was or should have been aware of its decline in late 2014 based upon the increased need to respond to customer outages as compared to 2013. ENO witness, Melonie Stewart at the June 28, 2018, UCTTC meeting indicated that ‘[w]e are always monitoring the performance of our entire system to ensure that we are spending the dollars in the right places.’⁷⁴ At that same UCTTC meeting, Ms. Stewart indicated that ‘In 2013 we had outstanding distribution reliability, and we did back off slightly on our funding because we didn’t want to spend money on a system that was performing extremely well.’⁷⁵ Ms. Stewart went on to indicate that ‘As we backed off on that funding slightly, we did see the reliability go in the wrong direction.’⁷⁶ When questioned further about the reduction in funding, Ms. Stewart clarified that ENO reduced its investment in the distribution system by about one million dollars. In 2014, ENO was both aware of the decline in system reliability and the relationship

⁷⁴ *Id.*

between investment in the distribution system and the resulting system reliability;⁷⁵
and

WHEREAS, witness Rogers testified that in response to declining reliability, ENO did not adequately increase its distribution operations and maintenance expense in 2015 nor did ENO increase its distribution capital addition sufficiently in 2015;⁷⁶ and

WHEREAS, witness Rogers testified that ENO's Initial Response failed entirely to address the critical timeframe leading up to the increase in outages and complaints that led to the Council's urgent involvement in mid-2017. Rogers testified that the majority of the testimony submitted with ENO's Initial Response focuses on actions being taken **currently**, after the Council initiated its investigation into outages and reliability issues. For example, Mr. Patella discusses remedial actions started by ENO in April 2018, long after the problems were recognized and allowed to persist. The actions touted by Mr. Patella resulted from the filing of a Revised Reliability Plan in response to the Advisor criticism of the Initial Plan filed by ENO, which was deemed essentially useless. In addition, the engagement of Quanta Technology, LLC, which was incorporated into ENO's Initial Response by reference, did not occur until August 2018, again long after the Council intervened and well after the notable decline in reliability performance; and

WHEREAS, witness Rogers testified that the delay in engaging Quanta may be explained by the Supplemental Direct Testimony of Mr. Patella where Mr. Patella testified "In many ways, Quanta's review and conclusions confirmed what we already knew or suspected about ENO's distribution system. For instance, we knew that our reliability metrics had slipped in recent years and suspected that they would not match up favorably with the reliability metrics of high

⁷⁵ *Id.* at 9-10.

⁷⁶ *Id.* at 10-11.

performing utilities selected by Quanta for benchmarking.”⁷⁷ As Mr. Rogers testified “ENO knew it had a problem, yet avoided thoroughly addressing it until forced to do so by the Council, which, in my opinion, is not demonstrative of prudent or reasonable conduct;”⁷⁸ and

WHEREAS, witness Rogers also testified that no other witnesses in the ENO Initial Response provided testimony demonstrating that ENO acted prudently in addressing the declining performance of the distribution system. Rogers noted that “ENO’s only other witness who provided testimony in response to the prudence investigation, was Mr. William L. Sones. Mr. Sones’ testimony addresses only transmission reliability and the transmission related contribution to SAIDI and SAIFI.”⁷⁹ Rogers also noted that “[w]ith respect to transmission reliability efforts and results, Mr. Sones lists transmission projects completed from 2013 to 2018 to ‘...address compliance with NERC reliability standards, to adhere to MISO’s planning process, and to reliably serve customers.’”⁸⁰ Clearly, none of the efforts described by Mr. Sones were undertaken or intended to address the distribution reliability problems that began to cascade in 2014. In fact, witness Rogers notes that “Mr. Sones admits that the projects he identified ‘...do not specifically address the causes of the outages recently experienced by ENO....;’”⁸¹ and

WHEREAS, witness Rogers testified that ENO’s attempt to use storm hardening expenditures as evidence of prudent investment in the reliability of the overall distribution system was meritless. As Mr. Rogers testified, “Ms. Stewart makes that argument in testimony incorporated by reference. Storm hardening is a separate issue, which relates to the resiliency of

⁷⁷ *Id.* at 13, *citing* Supplemental Direct Testimony of Tad S. Patella at 6.

⁷⁸ *Id.* at 13.

⁷⁹ *Id.*

⁸⁰ *Id.*, *citing* Direct Testimony of William L. Sones at 12.

⁸¹ *Id.*, *citing* Direct Testimony of William S. Sones at 14.

the system in storms and hurricanes. It seeks to mitigate damage to the system and facilitate recovery. It does not address the day-to-day operation of the distribution system, even though there can be some carryover benefit.”⁸² Mr. Rogers goes on to explain that the storm hardening reference by Ms. Stewart was the result of other dockets in which the Council initiated action and caused ENO to make such upgrades and improvements. “Moreover, the storm hardening work was not in response to declining reliability and did not start until well into 2017;”⁸³ and

WHEREAS, the Quanta Report explained that “[t]he primary goal of the Storm Hardening program is to improve the resiliency of the circuits serving Critical Customers. Critical Customer examples include public safety and health facilities, civil defense facilities, and facilities important to ENO’s restoration process.”⁸⁴ As testified to by witness Rogers, storm hardening is a completely different category from whether or not ENO prudently invested in and maintained its day-to-day distribution system; and

WHEREAS, Mr. Rogers testified that: “There is simply no discussion [in ENO’s Initial Response] of what, if any, reasonable decision-making process informed the decision to reduce investment in the distribution system [as reported by Melonie Stewart, Vice President of Customer Service]. Nor is there any testimony that explains why ENO was not immediately proactive in mitigating the decline in reliability performance. ENO’s Response relies heavily on what they are doing currently to improve reliability, not on any prudent internal process or decision-making process;”⁸⁵ and

⁸² *Id.* at 14.

⁸³ *Id.*

⁸⁴ Quanta Report at 29.

⁸⁵ Rogers Testimony at 14.

WHEREAS, witness Rogers also questions why “ENO’s response fails to address why it did not investigate or adopt the use of best distribution maintenance practices to improve reliability performance of its distribution system when problems started and before the Council initiated an investigation.”⁸⁶ In fact, when ENO did finally engage Quanta to conduct an assessment in 2018, well after the decline in reliability had begun, the best Quanta could say about ENO’s distribution program was that it “includes **adequate** components to continue addressing existing and short-term needs in this area.”⁸⁷ Adequate components are hardly best practices. The prudence standard “essentially applies an analog of the common law negligence standard for determining whether to exclude value from rate base....That is, the utility must demonstrate that it ‘went through a reasonable decision making process to arrive at a course of action and, given the facts as they were should have been known at the time, responded in a reasonable manner;’”⁸⁸ and

WHEREAS, “the focus in a prudence inquiry is not whether a decision produced a favorable or unfavorable result, but rather, whether the process leading to the decision was a logical one, and whether the utility company reasonably relied on information and planning techniques known or knowable at the time.”⁸⁹ In addition, prudence is an ongoing obligation of the utility “the inquiry encompasses a public utility’s *continuation* of an investment as well as its decision to enter into that investment, and requires the utility to respond prudently to changing circumstances or new challenges that arise as a project progresses;”⁹⁰ and

⁸⁶ *Id.* at 18.

⁸⁷ Quanta Report at ii. (Emphasis added.)

⁸⁸ *Gulf States Utilities Co. v LPSC*, 578 So. 2d 71 at 85 (La. 1991), citing *Appeal of Conservation Law Foundation*, 127 N.H. 606, 507A 2d 652, 673 (1986) and citing *Re Cambridge Electric Light Co.*, 86 P.U.R.4th 574 (Mass.D.P.U.1987).

⁸⁹ *Id.* citing *Metzenbaum v. Columbia Gas Transmission Corp.*, Opinion No. 25, 4 FERC 161,277.

⁹⁰ *Id.* citing *Re Central Vermont Public Service Corp.*, 83 P.U.R.4th 532 (Vt.Pub.Serv.Bd.1987) and citing *In Re Long Island Lighting Co.*, 71 P.U.R.4th 262, 1985 WL 258217 (N.Y.Pub.Serv.Comm’n, 1985).

WHEREAS, when serious doubt about prudence is raised, as it is here, “the burden shifts to the utility....”⁹¹ “A ‘doubt’ is created if the challenge raises a question the answer to which is not arguably in favor of prudence. A doubt is ‘serious’ if there appears at least a possibility that, upon due investigation, the answer to the question will lead to a finding against prudence;”⁹² and

WHEREAS, the very essence of “serious doubt” is manifested in the following ENO actions:

1. ENO’s precipitous decline in reliability beginning in 2014, which by its own admission dropped its performance reliability from 1st and 2nd quartile to 4th quartile performance between 2013 and 2017;
2. ENO’s 2,599 outages for the period June 1, 2016 through May 31, 2017 occurring 56% of the time in fair weather conditions;
3. Equipment failures were implicated in 41% of the outages (as reported by Quanta);
4. Quanta’s identification of ENO’s deficient asset management system;
5. ENO representatives’ persistent inability to answer basic questions about its distribution system and reliability issues at two UCTTC meetings;
6. Ms. Stewart’s statement that funding was reduced by a million dollars after 2013;

⁹¹ *Id.* citing *Union Electric Co.*, 40 F.E.R.C. 61,046 (FERC 1987); *Long Island Lighting Co. v. Public Serv. Comm'n of New York*, 134 A.D.2d 135, 523 N.Y.S.2d 615 (3d Dept.1987); *Re Central Vermont Pub. Serv. Comm'n Corp.*, 83 P.U.R.4th 532 (Vt.P.S.B.1987).

⁹² *Alliance. for Affordable Energy, Inc. v. Council of City of New Orleans*, 578 So. 2d 949, 958 (La. Ct. App.), *writ granted sub nom. Alliance. for Affordable Energy, Inc. v. The Council of the City of New Orleans*, 585 So. 2d 554 (La. 1991), and *writ granted*, 585 So. 2d 555 (La. 1991), and *vacated sub nom. Alliance. for Affordable Energy v. Council of City of New Orleans*, 588 So. 2d 89 (La. 1991) citing *New England Power Co.*, 27 FERC # 63,037, at 65,157 (1984), *rev'd on other grounds*, 31 FERC # 61,047 (1985).

7. Mr. Patella’s statement about engaging Quanta admitting that ENO “knew that our reliability metrics had slipped in recent years and suspected that they would not match up favorably with the reliability metrics of high performing utilities selected by Quanta for benchmarking;”
8. ENO’s failure to engage Quanta until 2018;
9. ENO’s submission of an Initial Plan that was rejected as essentially useless; and
10. The Quanta Report characterizing ENO’s distribution reliability program as merely “adequate;”

all leading to the conclusion that serious doubt is raised about the prudence of ENO, which shifts the burden of demonstrating prudence to the utility; and

WHEREAS, in its Initial Response ENO has failed to provide any evidence of prudence sufficient to meet the standard as provided by applicable case law and regulatory standards; and

WHEREAS, the Code of the City of New Orleans Section 158-1045 addresses the enumerated rights of ENO customers:

Among the rights that are more fully set forth in the council-adopted customer service regulations governing the provision of utility services in New Orleans, customers shall have the following rights:

- (a) The right to safe and reliable service in accordance with industry standards; and

WHEREAS, Section 10 of the Service Regulations Applicable to Electric and Gas Service by ENO (“Service Regulations”) provides:

The Company shall use Prudent Utility Practice to provide safe, adequate and continuous Service but shall not be responsible for loss or damage caused by the failure or other defects of Service when such failure is not reasonably avoidable or due to unforeseen difficulties or causes beyond its control; and

WHEREAS, Section 2(W) of the Service Regulations defines “Prudent Utility Practice” as: “The practices, methods and acts, which, in the exercise of reasonable judgment in light of the facts (including but not limited to practices, methods and acts engaged in or approved by a significant portion of the utility industry) known at the time the decision was made, would have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition;” and

WHEREAS, ENO clearly had a pre-existing obligation to engage in practices, methods and acts typically engaged in or approved by a significant portion of the utility industry for the purpose of meeting its obligation and to provide safe and reliable service in accordance with industry standards. Reliability performance declines from the 1st to 4th quartiles while employing merely “adequate” reliability measures falls short of the Service Regulations requirements; and

WHEREAS, witness Rogers testified that “ENO’s Response fails to address the critical timeframe leading up to the increase in outages and complaints that led to the Council’s direct involvement in mid-2017. The majority of the testimony focuses on actions being taken currently, after the Council initiated its investigation into outages and reliability issues.... The actions touted by Mr. Patella resulted from the filing of a revised reliability plan in response to Advisor criticism. In addition, the engagement of Quanta Technology, LLC, which is incorporated in ENO’s Response by reference, did not occur until August 2018, again long after the Council intervened and compelled ENO to act;”⁹³ and

WHEREAS, witness Rogers also testified that: “There is simply no discussion of what, if any, reasonable decision-making process informed the decision to reduce investment in the

⁹³ Rogers Testimony at 12.

distribution system. Nor is there any testimony that explains why ENO was not immediately proactive in mitigating the decline in reliability performance. ENO's Initial Response relies heavily on what they are doing currently to improve reliability, not on any prudent internal process or decision-making process,"⁹⁴ and

WHEREAS, the Quanta Report only analyzed ENO's current reliability practices and their impact on future reliability performance, without any helpful examination of the time period after 2013 and before the submission of the Revised Reliability Plan:

Quanta conducted a review of ENO's distribution reliability program and a comparison of its distribution reliability practices versus industry leading practices and those of a selected group of high performing utility peers. ENO's distribution reliability performance had declined in the last five years, and its 2017 key distribution reliability indices (SAIFI and SAIDI) were close to the borderline between 3rd and 4th quartile of the 2017 IEEE Annual Distribution Reliability Benchmark. ENO has increased its reliability spending in the last three years and has planned further investments in key infrastructure, technologies, and systems to stop and reverse this trend and improve reliability performance....

The results of Quanta's assessment indicate that ENO's distribution reliability program includes adequate components to continue addressing existing and short-term needs in this area. If investments in distribution reliability and grid modernization continue as planned, it would be expected that ENO's distribution reliability indices improve to 2nd quartile performance....

The improvements in ENO reliability will not be immediate, since some investments (e.g., BACKBONE program) are essentially needed to stabilize performance and prevent further decline of reliability indices, while others (e.g., deployment of smart reclosers) are largely intended to improve performance, and most importantly, because of the legacy construction and design of ENO's distribution grid coupled with aging infrastructure. The overall effort to achieve reliability improvement on the ENO system should be viewed as a long-term initiative, as opposed to quick fixes;⁹⁵ and

⁹⁴ *Id.* at 14

⁹⁵ Quanta Report at ii-iii. (Emphasis Added.)

WHEREAS, witness Rogers testified, “In my opinion, as an expert in the utility industry, a prudent utility would be able to demonstrate that it had an active capital project and O&M program in place to maintain system reliability. Further, a prudent utility would have been able to demonstrate that once it realized that its capital project and O&M program was failing to maintain reliability that it took immediate steps to correct the reliability issues. ENO has failed to demonstrate that it used prudent utility practice;”⁹⁶ and

WHEREAS, Section 10 of the Service Regulations is particularly relevant for purposes of imposing a fine and/or penalty, because Section 10 provides specific circumstances under which ENO “shall not be responsible for loss or damages caused by the failure or other defects of Service.” The logical corollary of this clause is necessarily a counterfactual circumstance under which ENO shall be responsible for loss or damage caused by the failure or other defects of Service; and

WHEREAS, pursuant to Section 10, ENO shall be responsible for loss or damage caused by the failure or other defects of Service when such failure is reasonably avoidable, and due to foreseeable difficulties or causes within ENO’s ability to control. These standards -- reasonably avoidable, foreseeable, and ability to control -- are objective measures of Prudent Utility Practice. Accordingly, ENO has pre-existing reliability standards that it must either meet, or face the consequences for failing to do so; and

WHEREAS, Section 3-130(7) of the Charter provides: “The orders of the Council shall be enforced by the imposition of such reasonable penalties as the Council may provide....” The Council adopted the Service Regulations in Resolution No. R-17-228, and, in so doing, the Council

⁹⁶ Rogers Testimony at 15.

ordered ENO's compliance with Section 10's continuity of service obligations. To enforce ENO's compliance with those reliability obligations, Section 3-130(7) instructs that the Council may impose reasonable penalties; and

WHEREAS, ENO has been on notice since at least 1999 that inadequate distribution system reliability could result in penalties under Section 3-130(7) when the Council reacted comprehensively to a previous decline in reliability with Resolution No. R-99-433. That resolution placed ENO "on notice" that failure to complete the remediation plans could result in the imposition of "financial penalties, which penalties shall be in an amount the Council deems sufficient to constitute reasonable penalties and which assure the ultimate achievement by ENO of a reliable electric distribution system;" and

WHEREAS, a 2011 Order of the MPSC is highly instructive for determining an appropriate penalty in similar circumstances.⁹⁷ In that Order, the MPSC imposed a \$1 million civil penalty on Potomac Electric Power Company ("Pepco") for failing "to satisfy its legal obligation to provide its customers with reliable service."⁹⁸ The investigation was in response to "an unusually large number of customer complaints about chronic electric outages,"⁹⁹ which the commission found was a result of poor vegetation management. The commission further found that "the utility's failure to maintain its system properly subjected ratepayers to an excessively large number of power outages of long duration, both during storms and on fair weather days....

⁹⁷ *In re: Potomac Electric Power Company*, 102 Md.P.S.C. 408, 2011 WL 7164366 (Md.P.S.C.), 295 P.U.R.4th 373.

⁹⁸ WL 7164366 at 1.

⁹⁹ *Id.*

Pepco's imprudent mistake was in not committing adequate resources to vegetation management in order to attain an acceptable level of reliability;"¹⁰⁰ and

WHEREAS, the MPSC rejected Pepco's argument that SAIDI and SAIFI standards are not reliable because of "unique" tree canopy issues, not unlike ENO's legacy infrastructure argument. The commission responded that "as a matter of policy, each utility has an obligation to provide reliable service based on the particular circumstances and characteristics of its service territory."¹⁰¹ The commission noted that if a utility is presented with a unique challenge like an extensive tree canopy, "it should be more active than other utilities in executing tree trimming...it is not perpetually relieved from the obligation of maintaining a reliable system;"¹⁰² and

WHEREAS, the MPSC Order tracks directly witness Rogers' testimony that "ENO's assertion that its reliability problems stem from its legacy construction simply highlights ENO's failure to maintain and improve its system over time;"¹⁰³ and

WHEREAS, the MPSC also rejected Pepco's argument that "the Commission may only penalize a utility pursuant to a regulatory standard with an objective metric..." even though the commission was concurrently engaged in rulemaking related to establishing standards;¹⁰⁴ and

WHEREAS, MPSC found that Pepco acted imprudently and imposed a civil penalty of \$1 million. "After consideration of the substantial decline in reliability resulting from Pepco's inadequate vegetation management practices, and the significant costs, both economic and non-economic, imposed on the Company's Maryland ratepayers, we have determined that a penalty is

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 21.

¹⁰² *Id.*

¹⁰³ Direct Testimony of Joe Rogers at 16.

¹⁰⁴ WL 7164366 at 34.

appropriate in this case. In establishing the appropriate amount of any civil penalty, PUA §13-201(d) requires us to consider (i) the number of any other previous violations, (ii) the gravity of the current violation, (iii) the violator's good-faith efforts in attempting to achieve compliance after notification of the violation, and (iv) any other appropriate and relevant matters;”¹⁰⁵ and

WHEREAS, what constitutes a “reasonable penalty” is intentionally left to the Council, consistent with general regulatory principles:

We do not agree that the term “reasonable level” is susceptible of only one interpretation. “Reasonable level” is a vague term, and its presence in an administrative statute such as the Public Service Commission Law suggests that the General Assembly intended to entrust the formulation of specific standards to the technical expertise of those charged with enforcing the statute;¹⁰⁶ and

WHEREAS, the significant impact of the ever-increasing outages is documented by a representative sample of outages in 2017 and 2018 provided by witness Rogers in his testimony, which list includes:

March 15, 2017 - Mid City-Carrolton 14,000 customers affected

June 12, 2017 - Algiers 3,000 customers affected

June 15, 2017 - Algiers 3,000 customers affected

June 21, 2017 - Orleans Parish-wide 4,700 customers affected

August 25, 2017 - Gentilly 7,500 customers affected

January 1, 2018 - Algiers 2,400 customers affected

February 21, 2018 - Mid-City, Navarre, Hollygrove 5,000 customers affected

¹⁰⁵ *Id.* at 32.

¹⁰⁶ *Baltimore Gas and Elec. Co. v. PSC of Maryland*, 501 A. 2d 1307, 1314 (Md. 1986) citing *See Springfield Ed. Ass'n v. Springfield, Etc.*, 290 Or. 217, 621 P.2d 547, 555–57 (1980); *Brix v. City of San Rafael*, 92 Cal.App.3d 47, 50–51, 154 Cal.Rptr. 647 (Cal.Ct.App.1979); *Roberts v. Police & Firemen's Retirement, Etc.*, 412 A.2d 47, 50 (D.C.1980); *Kopp v. State*, 100 Idaho 160, 595 P.2d 309, 312 (1979); *WIPE v. Illinois Pollution Control Bd.*, 55 Ill.App.3d 475, 13 Ill.Dec. 149, 152, 370 N.E.2d 1176, 1179 (Ill.App.Ct.1977)

February 27, 2018 - Mid-City, Treme 4,000 customers affected

March 2, 2018 - Mid-City 1,900 customers affected and LSU Medical Education Building

March 3, 2018 - Gentilly 432 customers affected

March 4, 2018 - New Orleans Metro Area 2,427 customers affected

May 15, 2018 - Uptown 23,700 customers affected

June 5, 2018 - Uptown 1,000 customers affected

July 2, 2018 - Uptown 2,300 customers affected

September 17, 2018 - Uptown 7,500 customers affected

September 25, 2018 - Bywater 2,000 customers affected

September 30, 2018 - Bywater, Lower Ninth Ward 2,000 customers affected;¹⁰⁷ and

WHEREAS, even this small sampling of the total outages indicates the enormous and pervasive impact of ENO's precipitous decline in reliability during a portion of the relevant period, March 2017 - September 2018; and

WHEREAS, a similar point was made by Councilmember Banks during the July 19, 2018 UCTTC meeting

COUNCILMEMBER BANKS:

Gary, all of the technical stuff, that's real nice. I want you to walk real slow with me, though. April 30th, June 22nd, August 30th, October 2nd, January 17th, May 15th, May 16th, May 28th, June 11th, all of those dates I got a text on my phone telling me the lights are out at my house. Now, my issue with that is that at some point somebody has got to figure out something near [sic] there got a problem.

So at what point -- I hear you are saying you are trending up, but at what point do you get to the point where you figure that we either got to go change something, fix something, or do something. I hear all you are saying, but I ain't

¹⁰⁷ Rogers Testimony at 16-17.

making this up, man. Y'all sent me the texts. So, clearly, there is a problem. If it's a transformer, if it's a line, if it's mutant ninja squirrels, whatever it is in that area, there is clearly a problem there. I don't know how many outages are affecting the same person throughout the city, but I can tell you right there in mine, so I have got to believe that I am not that special and I am not that unique;¹⁰⁸ and

WHEREAS, the information provided by ENO to the Advisors showed that 56% of outages occurred during business hours, which multiplies the impact of the disruptions caused by the outages, as noted by Councilmember Williams:

COUNCILMEMBER WILLIAMS:

And I struggle with the fact that today you say you all realize that you are not investing enough and you are falling short. You said that, but the reaction to that again seems delayed, and I am certain that shareholders of Entergy did not suffer during those times. I am also certain that restaurants like Atchafalaya that go dark on Sunday when it's sunshining outside or when there's a little bit of rain -and, Mr. Huntley, you know I would call you when half of that portion of Magazine was dark and they lost their biggest day of revenue, that Sunday brunch crowd. Businesses, people, citizens, ratepayers suffered during those times. Why wasn't there a quicker reaction to reinvesting in that grid?¹⁰⁹; and

WHEREAS, New Orleans is largely dependent upon the tourist economy; power disruptions to hotels, restaurants and visitor venues are particularly disruptive to business operations and impact the City's reputation as a tourism venue; and

WHEREAS, the Maryland commission's penalty was similarly bolstered by the commission's recognition of the economic and non-economic impacts of outages:

Pepco's customers have paid a substantial price for Pepco's neglect, measured not just by direct economic costs such as closures of businesses leading to lost wages and reduced tax revenue, but also by less tangible costs, including the physical discomfort caused by multiple outages and the uncertainty of knowing when persistent outages will end;¹¹⁰ and

¹⁰⁸ July 19, 2018 Transcript at 36-37.

¹⁰⁹ June 28, 2018 Transcript at 77.

¹¹⁰ *In re: Potomac Electric Power Company*, 102 Md.P.S.C. 408, 2011 WL 7164366 (Md.P.S.C.), 295 P.U.R.4th 373, at 9.

WHEREAS, following the guidance of the MPSC Order with respect to the appropriate considerations for establishing a penalty the Advisors argue that with respect to the following:

1. The Number of Any Other Previous Violations. As noted above in 1998, as a result of numerous customer complaints to the Council regarding ENO's service reliability and continuity of service in New Orleans East, as well as complaints by residents in other areas of the City, on July 16, 1998 the Council adopted Resolution No. R-98-460, which addressed in aggressive fashion ENO's reliability deficiency, ultimately extending it City-wide in Resolution No. R-99-433. The resolution also placed ENO on notice that non-compliance could result in financial penalties "in an amount the Council deemed sufficient to constitute a reasonable penalty and which assure the ultimate achievement by ENO of a reliable electric distribution system;"
2. The Gravity of The Current Violation. Again, as noted above, in just the period June 1, 2016 through May 30, 2017 2,600 outages occurred affecting every area of the City impacting tens of thousands of residents, businesses and visitors, over 40% of which were caused by ENO equipment failures. Approximately, 56% occurred during normal business hours. Approximately 48% of all outages that occurred between 8:00 a.m. and 5:00 p.m. were greater than two hours in duration, and approximately 31% of outages during this period were greater than three hours in duration. 54% of all outages that occurred between 5:00 p.m. and 8:00 a.m. were

greater than two hours in duration and 38% of outages during this time period were greater than three hours in duration.¹¹¹

3. The Violator’s Good Faith Efforts. In attempting to ameliorate the outages, Resolution No. R-17-427 directed ENO to provide the Council with its formal plans, budgets, and schedules for improving the reliability performance of its distribution system. The Initial Plan filed by ENO on November 10, 2017 was reviewed by the Technical Advisors and found to be functionally useless. The Technical Advisors concluded that the Initial Plan’s lack of significant details and “**thwarts** the Council’s ability to perform a thorough and comprehensive review of ENO’s reliability plan and to constantly measure ENO’s performance in accomplishing its reliability plan as proposed.”¹¹²
4. Any Other Appropriate and Relevant Matters. The Advisors argue that throughout this process ENO has shown a lack of urgency that would remotely match the concerns consistently expressed by the Council. The best example of this lack of urgency and inability to address the concerns of the Council in even a fundamental fashion are the transcripts of the June 28, 2018 and July 19, 2018 UCTTC meetings.

ENO REBUTTAL AND ADVISORS’ RESPONSES

WHEREAS, on June 28, 2019, ENO submitted its “Rebuttal Comments in Response to the Advisors’ Comments on ENO’s Response to ENO Filing and Prudence Investigation” (“Rebuttal Response”), which included rebuttal testimony by Melonie P. Stewart and Tad S.

¹¹¹ Resolution R-17-427 at 2-3.

¹¹² Resolution No. R-18-98 at 2. (Emphasis added.)

Patella, P.E. The ENO Rebuttal Response reiterates ENO’s general reliability programs, which Ms. Stewart described as “extensive information about several major reliability-focused efforts that were in place from 2013 to 2018 and will continue to be in effect (or will be improved upon) in 2019 and beyond;”¹¹³ and

WHEREAS, Ms. Stewart went on to explain once again the **general** reliability programs. However, the Advisors argue that Ms. Stewart’s general descriptions of general reliability programs is not responsive to the prudence investigation mandate of Resolution R-18-475, nor responsive to their burden to provide evidence of prudence with respect to the specific occurrences that motivated the Council’s investigation in the first place. In addition, the Advisors’ argue that ENO’s parroting of their general programs is misguided in that the 2018 Quanta Report, relied on heavily by ENO, concluded only that “ENO’s distribution reliability program includes **adequate** components to continue addressing existing and short term needs in this area;”¹¹⁴ and

WHEREAS, the Advisors argue that while ENO was facing a reliability crisis it employed ordinary procedures rather than crisis management. Obviously, the ordinary procedures were inadequate, but ENO never rose to the occasion as the Council continually urged them to; and

WHEREAS, Ms. Stewart objected to Mr. Rogers’ testimony that ENO provided no evidence of any decision-making process in response to the decline in reliability. In response, Ms. Stewart says “ENO has provided detailed information about the reliability programs that it employs on a routine basis and other projects, efforts, and initiatives that are expected to improve distribution reliability (including efforts taken in response to the increase in outages in 2016).”¹¹⁵

¹¹³ Rebuttal Testimony of Melonie P. Stewart at 4.

¹¹⁴ Quanta Report at ii (Emphasis added.)

¹¹⁵ Rebuttal Testimony of Melonie P. Stewart at 20-21.

The Advisors again argue that routine projects are not responsive to a crisis. The Advisors argue that ENO never seemed to grasp that 2,600 outages during just one year of the period in question, which affected tens of thousands of residents, businesses and visitors, is not a routine situation; and

WHEREAS, the Advisors argue that ENO’s lack of appreciation of the situation and tepid response were also evident in its Initial Plan, which was so deficient that it was rejected by the Council upon the recommendation of the Utility Technical Advisors; and

WHEREAS, Ms. Stewart and Mr. Patella referred to the so-called “reliability blitz” in late 2016 and early 2017 as evidence of appropriate efforts to respond to the decline in reliability; and

WHEREAS, the Advisors argue the reliability blitz does not demonstrate best practices with respect to utility operations. The need for a reliability blitz, absent a storm or other abnormal event, represents ENO operating in an atypical mode that could have likely been avoided through improved asset management and increased investment and maintenance of the distribution system prior to the reliability decline. Such management and investment could have avoided both the significant decline in reliability and the need for ENO to bring in a number of outside contractor crews to assist in executing targeted reliability projects. Further, the Advisors argue that the MPSC Order confers that this is not evidence of prudence, but of prior deficiencies. The MPSC addressed a similar argument concluding that although the utility increased its reliability spending in one year, “it did so only because of imprudently inadequate expenditures in prior years.”¹¹⁶ The commission ruled that “the fact that we need this enhanced retroactive more aggressive vegetation

¹¹⁶ *In re: Potomac Electric Power Company*, 102 Md.P.S.C. 408, 2011 WL 7164366 (Md.P.S.C.), 295 P.U.R.4th 373, at 1.

management is a function of not having done appropriate vegetation management for some period of time before;”¹¹⁷ and

WHEREAS, Ms. Stewart also argued that Mr. Rogers did not take into consideration the cost minimization objective of prudent utility practice indicating that “ENO is expected to provide safe, reliable service at the ‘lowest reasonable cost’ to customers.”¹¹⁸ The Advisors argue that Ms. Stewart establishes a false dichotomy. The obligations of ENO are clear with respect to the obligation to provide reliable service. There is no exception to that obligation. There is no option for providing semi-reliable service. The obligation to provide it at the lowest reasonable cost does not abrogate the obligation to provide reliable service. New Orleans City Code Section 158-1045 makes clear that ENO customers have a right to safe and reliable service. The ENO Service Regulations provide that “the Company **shall** use Prudent Utility Practice to provide safe, adequate and **continuous service...**” (emphasis added); and

WHEREAS, Ms. Stewart admitted, though she tries to minimize it, that ENO “did reduce investment in the distribution system by about \$1 million in 2014....,”¹¹⁹ and

WHEREAS, the Advisors argue that it is truly ironic that ENO argues that the cost minimization objective is a defense against 2,600 outages affecting tens of thousands of residents, businesses and visitors between June 1, 2016 and May 31, 2017 when during that same period ENO was in a cycle of earning excess revenues estimated to be more than \$40 million. Specifically: 2014- \$10.6 million; 2015 - \$19.5 million; and 2016 - \$11.2 million;¹²⁰ and

¹¹⁷ WL 7164366 at 33, FN 182, *citing* June 16, 2011 Transcript at 182.

¹¹⁸ Rebuttal Testimony of Melonie P. Stewart at 20.

¹¹⁹ *Id.* at 22.

¹²⁰ Direct Testimony of Byron S. Watson (Docket No. UD-16-04, Advanced Metering) at 12, Table 1.

WHEREAS, both Ms. Stewart and Mr. Patella refer to a 2013 Quanta Study, which they cite as support for ENO’s compliance with industry practices in 2013.¹²¹ However, the Advisors argue that ENO’s reliance on the 2013 Quanta Study is misplaced. Unlike the 2018 Quanta Report which detailed an assessment of distribution reliability improvement initiatives, the 2013 Quanta Study focused predominantly on storm preparedness, storm restoration planning and emergency operations, and storm hardening as opposed to an evaluation of ENO’s compliance with industry practices in maintaining distribution reliability. In addition, 2013 was a well performing year for ENO’s distribution system as a result of improvements required by the Council in several resolutions in 1998 reacting to a previous substantial decline in reliability performance by ENO’s distribution system;¹²² and

WHEREAS, in addition, the Advisors argue that the 2013 Quanta Study was prepared as a post-event analysis of damage that resulted from the August 28, 2012 Hurricane Isaac.¹²³ Quanta’s opinion was that “condition of facilities is not a factor leading to more damage than what could be expected by a storm such as Hurricane Isaac and with a distribution system serving a major metropolitan area.”¹²⁴ The study addressed numerous storm related issues such as “Storm Restoration Planning and Emergency Operations,” “Infrastructure Hardening Business Analysis,” and “Technology as a Storm Hardening Strategy.” Accordingly, the 2013 Quanta Study is not evidence of prudent conduct with respect to the day-to-day performance of the ENO distribution system during the time period covered by Resolution No. R-18-475. In addition, there is nothing

¹²¹ Reliability Study of the Electric System in Orleans Parish, Quanta Technology, LLC, July 17, 2013.

¹²² See Resolution No. R-98-460 and Resolution No. R-98-433.

¹²³ See 2013 Quanta Study.

¹²⁴ *Id.* at 9.

in the Quanta Study that would support ENO's decision to reduce distribution system funding in 2014; and

WHEREAS, Ms. Stewart objected to the premise underlying the questions in Mr. Rogers' testimony regarding whether ENO increased its distribution O&M expenses and capital expenditures in 2015 in response to declining reliability; and

WHEREAS, in his testimony, Mr. Rogers relied on data as reported by ENO in its FERC Form-1 for the years 2009 through 2018 and testified on changes in distribution capital additions and distribution O&M expenses from 2015 to 2018 when ENO was aware of its declining reliability. Mr. Rogers was not solely focused on calendar year 2015; and

WHEREAS, Ms. Stewart focused her rebuttal to Mr. Rogers in this area on calendar year 2015. Ms. Stewart failed to recognize the significance of trends in the data that showed that ENO did not report remarkable increases in distribution O&M expenses (49.8% to 105.9% higher than the 2009-2013 five-year average) until 2017 and 2018; and

WHEREAS, Ms. Stewart, in her rebuttal testimony, criticized Mr. Rogers for not following up on a FERC Form-1 footnote regarding electric plant in service that states: "negative project additions include reversal credits from prior year additions for unclassified project costs closed to plant in service," which reversal credits materially reduce the amount reported in 2015 FERC Form-1 regarding distribution capital additions in 2015;¹²⁵ and

WHEREAS, Ms. Stewarts testified, "Without that adjustment, the form would have reflected distribution capital additions of over \$32.6 million in 2015."¹²⁶ The Advisors note,

¹²⁵ Rebuttal Testimony of Melanie P. Stewart at 27-28.

¹²⁶ Rebuttal Testimony of Melonie P. Stewart at 28.

however, that adjusted amount represents only a 4.1 percent increase over the \$31.3 million amount reported for 2014 and that the following year, 2016, the reported amount was \$30.7;¹²⁷ and

WHEREAS, ENO is responsible for the level of detail provided in its 2015 FERC Form-1. ENO did not provide, as directed by the Council in Resolution No. R-18-475, more detailed information in defense of its conduct, even after admitting a decline in reliability and a “backing off” in funding. It is disingenuous to suggest that an accounting note solely regarding 2015 in the FERC Form-1 data used by Mr. Rogers in any way affects Mr. Rogers’ fundamental conclusions; and

WHEREAS, Ms. Stewart testified that Mr. Rogers did not correctly apply the prudent utility standard in his testimony because “[h]e does not examine the causes of any of those outages or identify any ENO maintenance program, process, or decision that falls below what would be expected from a reasonable utility or, more importantly, what alternative decisions he believes ENO should have made based on what was known or reasonably knowable at the time.”¹²⁸ The Advisors’ argue that Ms. Stewart, not being a lawyer, would not be the best reference for the appropriate prudence standard, especially for the applicable burden of proof and ENO’s responsibility in this proceeding; and

WHEREAS, Resolution No. R-18-475 clearly directed ENO to “file...such testimony, evaluations, analyses, workpapers, and other information, as the **Company believes will be of assistance to the Council in this prudence investigation**,”¹²⁹ which ENO clearly did not do in its Initial Response; and

¹²⁷ Rogers Testimony, Table 5 at 11.

¹²⁸ Rebuttal Testimony of Melonie P. Stewart at 34.

¹²⁹ Council Resolution No. R-18-475 at 14. (Emphasis added.)

WHEREAS, serious doubt about ENO’s prudence was raised; therefore, “the burden shifts to the utility....”¹³⁰ The Advisors argue that: “A ‘doubt’ is created if the challenge raises a question the answer to which is not arguably in favor of prudence. A doubt is ‘serious’ if there appears at least a possibility that, upon due investigation, the answer to the question will lead to a finding against prudence;”¹³¹ and

WHEREAS, Resolution No. R-18-475 clearly “raises a question the answer to which is not arguably in favor of prudence,” leading to “at least a possibility that, upon due investigation, the answer to the question will lead to a finding against prudence,” a serious doubt about prudence was raised and the burden of demonstrating prudence was shifted to ENO, which burden it did not carry; and

WHEREAS, because the burden shifted to ENO, Mr. Rogers did not need to “examine the causes of any of those outages or identify any ENO maintenance program, process, or decision that falls below what would be expected from a reasonable utility or, more importantly, what alternative decisions he believes ENO should have made based on what was known or reasonably knowable at the time” as suggested by Ms. Stewart; and

WHEREAS, Mr. Patella questioned Mr. Rogers’ comparison of ENO’s reliability with that of other utilities while acknowledging that “[h]is conclusion is similar to what I advised the

¹³⁰ *Gulf States Utilities Co. v LPSC*, 578 So. 2d 71 at 85 (La. 1991) citing *Appeal of Conservation Law Foundation*, 127 N.H. 606, 507A 2d 652, 673 (1986), citing *Union Electric Co.*, 40 F.E.R.C. 61,046 (FERC 1987); *Long Island Lighting Co. v. Public Serv. Comm’n of New York*, 134 A.D.2d 135, 523 N.Y.S.2d 615 (3d Dept.1987); *Re Central Vermont Pub. Serv. Comm’n Corp.*, 83 P.U.R.4th 532 (Vt.P.S.B.1987).

¹³¹ *Alliance. for Affordable Energy, Inc. v. Council of City of New Orleans*, 578 So. 2d 949, 958 (La. Ct. App.), *writ granted sub nom. Alliance. for Affordable Energy, Inc. v. The Council of the City of New Orleans*, 585 So. 2d 554 (La. 1991), and *writ granted*, 585 So. 2d 555 (La. 1991), and *vacated sub nom. Alliance. for Affordable Energy v. Council of City of New Orleans*, 588 So. 2d 89 (La. 1991) citing *New England Power Co.*, 27 FERC # 63,037, at 65,157 (1984), *rev’d on other grounds*, 31 FERC # 61,047 (1985).

Council in my June 2018 testimony — for 2013–2015, ENO was generally in the second or third quartile among U.S. utilities, and scores for 2016–2017 placed ENO in the fourth quartile among U.S. utilities for those years.”¹³² Mr. Patella averred that “[l]ooking at nation-wide quartile comparisons, however, does not necessarily allow for meaningful conclusions about ENO’s distribution maintenance practices.”¹³³ Mr. Patella testifies that “Quanta’s own benchmarking study, by contrast, used EIA data and other publicly available data to identify potential peer utilities for comparison to ENO, but that was only the beginning of Quanta’s study.” and that “Quanta’s benchmarking study is far more helpful in comparing ENO with other utilities than the cursory quartile comparisons set forth in Mr. Rogers’s testimony.”¹³⁴; and

WHEREAS, the Advisors note that Quanta, utilizing Institute of Electrical and Electronics Engineers (“IEEE”) benchmark data in comparison with ENO’s historical reliability performance, determined that “...ENO’s reliability performance for 2017 is close to the borderline between 3rd and 4th quartile in the IEEE benchmark”¹³⁵. Quanta’s conclusion was not dissimilar from witness Rogers’ analysis that showed 2017 performance in the 4th quartile and the Council believes the Advisors’ comparison and the 2018 Quanta Report are each informative; and

WHEREAS, Mr. Patella questioned Mr. Rogers’ assertion that ENO did not provide information to address the critical timeframe leading up to the increase in outages and complaints that led to the Council’s direct involvement in mid-2017. Mr. Patella suggested that he provided information about the weather during that “critical timeframe.”¹³⁶ The Advisors argue that Mr.

¹³² Rebuttal Testimony of Tad S. Patella at 8.

¹³³ *Id.*

¹³⁴ *Id.* at 10.

¹³⁵ Quanta Report page 35

¹³⁶ Rebuttal Testimony of Tad S. Patella at 18.

Patella's testimony with respect to weather was pure speculation and did not provide any causal connection to any outages or the trend of outages after 2013; and

WHEREAS, specifically, Mr. Patella suggested that "both 2016 and 2017 were significantly hotter and wetter than the average of the preceding years."¹³⁷ Mr. Patella also testified that there was a substantial increase in lightning strikes during 2016 and 2017. However, the Advisors argue that Mr. Patella's testimony was abstract and theoretical. Mr. Patella did not tie his weather related testimony to any outages that actually occurred. However, in the information originally provided to the Council in response to Councilmember Brossett's letter, the specific weather conditions referred to by Mr. Patella *hypothetically* were not in existence during any significant portion of the outages reported on by ENO. Specifically, the weather condition described as "heat" accounted for just 3% of the total outages, while the weather condition described as "rain" accounted for only 5% of the total reported outages, and "wind" accounted for only 2% of the outages. Accordingly, Mr. Patella's weather-related speculation had no factual connections to the prevailing weather conditions during the overwhelming majority of the outages that occurred during what ENO's own data reported as "fair weather;"¹³⁸ and

WHEREAS, Mr. Patella also referenced the 2018 Quanta Report, which makes the statement "that ENO's service territory 'is very vulnerable to weather events,'"¹³⁹ and Quanta's additional statement that "weather parameters such as temperature, lightning flash density, precipitation and relative humidity have a direct effect on various aspects of distribution reliability

¹³⁷ *Id.*

¹³⁸ Technical Advisors' Review of Initial Report at 3.

¹³⁹ Rebuttal Testimony of Tad S. Patella at 18; *citing* Quanta Report at 74.

performance.”¹⁴⁰ The Advisors argue that these generic statements in the Quanta Report are not related to any conclusions by Quanta that any of these conditions or factors accounted for any particular outages among the thousands suffered by the local community during the time period covered by Resolution No. R-18-475; and

WHEREAS, Mr. Patella disagreed with Mr. Rogers’ testimony that ENO has used aging infrastructure as an excuse for its declining performance, citing selected sections of the Quanta Report to conclude that “[f]ailure rates do not seem excessive at this time but the legacy design features of the system along with high customer density and a congested urban environment do, in many cases, contribute to higher CI and CMI.”¹⁴¹ However, the Advisors argue that Mr. Patella has cherry-picked only two components of the overall picture of the state of the ENO distribution system and the problem inherent therein. Specifically, Quanta pointed out in its infrastructure discussion that “Entergy’s current asset information **does not allow for an in-depth analysis** of age of a class of equipment or other analysis often done in review of equipment failure situations. Some data on the distribution line transformer and wood pole population at ENO was obtained and is basis for discussion of those asset classes.”¹⁴² Accordingly, the Advisors argue that ENO’s rosy conclusion that failure rates did not seem excessive only applies to the limited data Quanta was able to obtain on certain distribution line transformers and wood poles. ENO’s lack of current information on the age of other classes of equipment prevents an “in-depth analysis...often done in review of equipment failure situations.”¹⁴³ Accordingly, Mr. Patella only reported on a small

¹⁴⁰ Rebuttal Testimony of Tad S. Patella at 18-19; *citing* Quanta Report at 39.

¹⁴¹ Rebuttal Testimony of Tad S. Patella at 24-25; *citing* Quanta Report at 19.

¹⁴² Quanta Report at 16. (Emphasis added.)

¹⁴³ *Id.*

part of the data of two components of all equipment classes subject to failure analysis. This flea on the elephant analysis provides no useful insight into ENO's aging legacy system and the age-related equipment failures for classes where ENO is not maintaining sufficient information; and

WHEREAS, in making peer comparisons Quanta concluded that “[o]verall, ENO’s distribution reliability practices are similar to the other utilities included in the survey. **The primary difference is related to the failure rate analysis which is not possible at this time**, but is expected to be available in the future as new systems are implemented.”¹⁴⁴ The Advisors argue that the Quanta benchmark survey is essentially useless because comparisons are not able to be made because of ENO’s lack of information necessary to make valid failure rate analysis comparisons; and

WHEREAS, Mr. Patella disagreed with Mr. Rogers’ assertion that ENO did not investigate or adopt the use of “best distribution maintenance practices” or “proactive measures” to improve reliability performance, primarily objecting that “Mr. Rogers does not explain what he considers to be “best distribution maintenance practices” or “proactive measures.””¹⁴⁵ The Advisors argue that the “Executive Summary” of the Quanta Report completely refutes any objection stated by Mr. Patella in that Quanta concluded that “[t]he results of Quanta’s assessment indicate that ENO’s distribution reliability program includes **adequate components** to continue addressing existing and short-term needs in this area.”¹⁴⁶ The sum total of the Quanta analysis is “adequacy.” By definition, that does not equal best practices or proactive measures; and

CONCLUSIONS

¹⁴⁴ *Id.* at 51. (Emphasis added.)

¹⁴⁵ Rebuttal Testimony of Tad S. Patella at 25; *citing* Rogers Testimony at 18.

¹⁴⁶ Quanta Report at ii.

WHEREAS, the Council, having reviewed the full record presented in this proceeding as well as the independent analysis performed by the Advisors, conclude that the burden of demonstrating prudent conduct legally shifted to ENO, and ENO did not prove that it acted prudently in the maintenance and repair of its distribution reliability system during 2014-2017, and that it did not act prudently in its investment in the system having reduced funding by \$1 million in 2014 after which its reliability performance declined annually resulting in ENO's SAIDI/SAIFI results falling from first or second quartile to fourth quartile; and

WHEREAS, the Council further concludes that ENO did not act prudently in its reaction to the reliability crisis, which caused ENO customers pay a substantial price, measured not just by direct economic costs such as closures of businesses leading to lost profits, lost wages, and reduced tax revenue, but also by less tangible costs, including the physical discomfort caused by multiple outages and the uncertainty of knowing when persistent outages will end; and

WHEREAS, the Council, having been advised on the applicable law, finds that a one-time penalty of \$1 million imposed against ENO is reasonable, appropriate and consistent with Code of the City of New Orleans, the Service Regulations Applicable to Electric and Gas Service by Entergy New Orleans, the precedent of the Maryland Public Service Commission in *Re: Potomac Electric Power Co.* (Case No. 9240, December 21, 2011) and other regulatory law; and

WHEREAS, the Council also finds that the one-time \$1 million penalty should be used to benefit ratepayers; and

WHEREAS, the omission from this decision of any argument or portion of the record that may exist or may have been raised by the participants does not mean it has not been considered.

All such arguments and portions of the record have been evaluated and found to add nothing further to the substance or effect of this decision;

NOW THEREFORE:

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

ENO is assessed a one-time \$1 million penalty to be applied/paid in accordance with further directions from the Council.

**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.