


**RESOLUTION**

**NO. R- 17-228**

**CITY HALL: May 4, 2017**

**BY: COUNCILMEMBERS  WILLIAMS, HEAD, GUIDRY, BROSSETT AND GRAY**

**APPLICATION OF ENERGY NEW ORLEANS, INC.  
FOR APPROVAL TO RESTRUCTURE**

**RESOLUTION AND ORDER APPROVING AGREEMENT IN PRINCIPLE  
ADDRESSING ENERGY NEW ORLEANS, INC.'S PROPOSED RESTRUCTURING**

**DOCKET NO. UD-16-03**

**WHEREAS**, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans (“Charter”), the Council of the City of New Orleans (“Council”) is the governmental body with the power of supervision, regulation and control over public utilities providing service within the City of New Orleans; and

**WHEREAS**, pursuant to its powers of supervision, regulation and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities; and

**WHEREAS**, Entergy New Orleans, Inc. (“ENO” or “Company”), effective September 1, 2015, is a public utility providing electric and natural gas service to all of New Orleans; and

**WHEREAS**, ENO is a wholly-owned operating company subsidiary of Entergy Corporation (“Entergy”). The other four operating companies are Entergy Arkansas, Inc. (“EAI”), Entergy Louisiana, LLC (“ELL”), Entergy Mississippi, Inc. (“EMI”), and Entergy Texas, Inc. (“ETI”). These five operating companies are referred to collectively as the (“Operating Companies”); and

**WHEREAS**, on July 22, 2016, ENO filed an Application for Approval of a Proposed Internal Restructuring and for Related Relief (“Application”); and

**WHEREAS**, ENO’s Application seeks Council approval of an internal restructuring of ENO (“Restructuring”) that will enhance the separation between ENO’s regulated utility business and Entergy Corporation’s unregulated business. In addition to providing more separation from the unregulated business, which has a fundamentally different risk profile and liquidity requirements than ENO’s regulated utility business, the Restructuring could provide an additional source of potential equity financing for ENO; and

**WHEREAS**, ENO will guarantee customer credits of \$10 million in 2017 contingent solely on Council approval of the Application.<sup>1</sup> Further, contingent solely on the further approval of the Restructuring by the Federal Energy Regulatory Commission (“FERC”) by December 31, 2018, ENO will guarantee customer credits of \$5 million in 2018, \$5 million in 2019, and \$5 million in 2020, with such credits being permanent and at the Company’s cost, and with the possibility of additional benefits in future years; and

**WHEREAS**, in its pursuit of the Restructuring, ENO intends to use the merger provisions of the Texas Business Organizations Code (sometimes referred to as the Texas merger-by-division (“MBD”) statute),<sup>2</sup> to transfer<sup>3</sup> substantially all of its assets and liabilities to a newly-created subsidiary, Entergy New Orleans Power, LLC (“ENO Power”), a Texas limited liability company

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<sup>1</sup> ENO had initially requested that in order for customers to receive the credits in 2016, Council approval would need to be obtained sufficiently in advance of the first December billing cycle to implement the credit on customers’ December bills. Due to the ongoing negotiation, ENO agreed to work with the Council and its Advisors to determine the appropriate method and timeline for flowing the credits applicable to 2016 through to customers in 2017.

<sup>2</sup> Tex. Bus. Orgs. Code, §§ 1.002(55) & 10.001, *et seq.*

<sup>3</sup> For clarity, ENO notes that certain assets and liabilities of a company may be described in its Application as being transferred or assigned to another company as a result of the merger that occurs in the transaction steps, even though the applicable merger statute states that such merger does not result in a transfer or assignment.

("LLC").<sup>4</sup> Thereafter, ENO would contribute its membership interests in ENO Power to an intermediate holding company named Entergy Utility Holding Company, LLC ("EUH"), also a Texas LLC. Once under EUH, ENO Power would be renamed Entergy New Orleans, LLC ("ENOL"). Under this corporate structure, EUH would provide additional separation between ENO's utility business and Entergy Corporation's unregulated business; and

**WHEREAS**, the Company notes that ELL is already a subsidiary of EUH and that comparable restructurings could be undertaken in the future by the remaining Entergy Operating Companies through which the resulting utilities would become EUH subsidiaries; and

**WHEREAS**, in support of its Application, the Company submitted the Direct Testimonies of Charles L. Rice, Jr., and Kenneth F. Gallagher; and

**WHEREAS**, the Company states that the Council would not lose any jurisdiction over the regulated utility business as a result of the Restructuring. The new utility - ENOL - would be subject to all of the orders that ENO is currently subject to and all other rules and regulations of the Council and the Code of the City of New Orleans; and

**WHEREAS**, ENO further notes that the Council would continue to have jurisdiction over the Company's long-term financings and securities issuances; however, FERC would also have jurisdiction over those matters; and

**WHEREAS**, the Company states that the proposed Restructuring will have no anticipated material future adverse effect on rates, and little to no effect on ENO's customers, operations, or

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<sup>4</sup> In connection with the Restructuring, ENO would redeem its outstanding preferred stock. That redemption, including an expected call premium of approximately \$819,000, is estimated to cost approximately \$21 million, plus any accrued dividends. ENO expects to fund the redemption from cash from operations and/or lines of credit and/or through an issuance of long-term debt. ENO's redemption of its outstanding preferred stock will result in the cost of that preferred stock being excluded from ENO's weighted-average cost of capital ("WACC"), while the cost of any additional long-term financing would be included in the WACC for ratemaking purposes in the future. The redemption and related funding are not expected to materially affect ENO's WACC or to have any material future adverse effect on rates.

employees.<sup>5</sup> Specifically, ENO asserts that its current senior executives would become employees of ENOL thus maintaining the Company's quality of management. Similarly, ENO's employees will also become employees of ENOL, so the same employees would be providing service to ENO's customers both immediately before and immediately after the Restructuring occurs; and

**WHEREAS**, according to ENO, the Restructuring should not affect generation, transmission, or distribution operations or customer service. Customers will not see any change in the metering and billing processes; customer contact centers will continue to be available; and customers will continue to be able to use an Entergy website to view and pay bills on-line, update their account information, check the status of work orders and permits, and view outage maps; and

**WHEREAS**, ENO notes that it will also need to obtain the following prior authorizations from the FERC under Federal Power Act ("FPA") sections 203 and 204<sup>6</sup> in order to effectuate the Restructuring:

- An application seeking FPA section 203 authorization of a proposed change in control of FERC-jurisdictional assets was filed on February 24, 2017;
- An application will be filed to establish FPA section 204 authorization for ENO to undertake any issuances of securities and assumptions of liabilities that would occur during the intermediate steps of the Restructuring and in addition, ENOL will apply to FERC to establish FPA section 204 authority to issue securities and to assume liabilities effective on and after the Restructuring closing date when ENOL becomes a public utility; and

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<sup>5</sup> If the Restructuring is approved, ENOL (and not ENO) would be the utility providing services in Orleans Parish. Accordingly, if the Restructuring is approved, ENOL would need to revise ENO's rate schedules/tariffs/ riders/terms of service to reflect that ENOL is the utility in New Orleans. The Company would accomplish this by making a compliance filing that attaches the "revised" rate schedules/tariffs/riders/terms of service that, but for the name of the utility on those documents, should be identical to ENO's existing rate schedules/tariffs/riders/terms of service.

<sup>6</sup> 16 U.S.C. §§ 824b, 824c.

**WHEREAS**, the Company states that ENO and/or ENOL also would make filings with FERC pursuant to FPA section 205,<sup>7</sup> including a market-based rate application to establish authority for ENOL to make wholesale market-rate sales of capacity, energy, and ancillary services effective as of the date of the Restructuring consummation, and post-consummation notices of succession for ENOL to succeed to the FERC-jurisdictional tariffs and rate schedules that it would acquire from ENO; and

**WHEREAS**, if the Restructuring includes a payment of dividends by a public utility (ENO and/or ENOL if it is a public utility at time of distribution), it may be necessary to obtain a FERC declaration that the Restructuring does not violate FPA section 305(a),<sup>8</sup> which prohibits dividend payments out of the paid-in capital account of a public utility. The Company notes that the payment of dividends by a public utility currently is not anticipated to occur before the Restructuring closes; and

**WHEREAS**, the Council issued Resolution No. R-16-330 on August 11, 2016, establishing a procedural schedule in Docket No. UD-16-03 to consider ENO's Application and setting a procedural schedule, including a period for interventions; and

**WHEREAS**, Air Products and Chemicals, Inc. ("Air Products"), the Alliance for Affordable Energy ("Alliance") and the City of New Orleans (the "City") and the Sewerage and Water Board of New Orleans ("SWBNO") intervened in Docket No. UD-16-03 during the intervention period following Council adoption of Resolution No. R-16-330; and

**WHEREAS**, on September 26, 2016, Air Products the Council's Advisors filed its Direct Testimony and the Alliance file comments; and

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<sup>7</sup> 16 U.S.C. § 824d.

<sup>8</sup> 16 U.S.C. § 825d(a).

**WHEREAS**, on October 7, 2016, the Council’s Advisors filed Direct Testimony and on October 17, 2016, ENO filed rebuttal testimony; and

**WHEREAS**, ENO, the Advisors and the intervenors agreed to engage in settlement negotiations in an attempt to resolve all outstanding issues related to ENO’s Application; and

**WHEREAS**, on April 25, 2017, ENO, Air Products, the Alliance, and the Advisors did, in fact, reach an agreement and executed a non-unanimous Agreement in Principle (“Restructuring AIP”) settling all issues in this docket raised by the Settling Parties and recommending approval of ENO’s Application subject to certain terms and conditions; and

**WHEREAS**, the Restructuring AIP is attached to this resolution and is incorporated herein and made a part hereof; and

**WHEREAS**, the Restructuring AIP specifically provides that customers will receive certain Guaranteed Customer Credits and have the potential to receive certain Contingent Customer Credits as a result of the Restructuring as follows:

1. Following Council approval of ENO’s Restructuring, commencing with the next reasonably feasible billing cycle and for the remainder of all billing cycles commencing in 2017, ENO shall credit the Purchased Power and Capacity Acquisition Cost Recovery (“PPCACR”) Rider (*i.e.*, reduce customer billing) a total of \$10 million, applied equally across all remaining 2017 monthly billing cycles on a kWh basis pursuant to the PPCACR Rider.
2. If the proposed Restructuring is approved by the FERC by December 31, 2018, ENO agrees to provide a credit to customers of \$5 million in each of the years 2018, 2019, and 2020 (*i.e.*, \$15 million total) for utility-related purposes as the Council may determine appropriate pursuant to its plenary authority under the *Home Rule*

*Charter of the City of New Orleans, the Constitution of the State of Louisiana, and all relevant and applicable laws; and*

**WHEREAS**, on April 25, 2017, SWBNO indicated by email that it was opposed to the Restructuring AIP because, according to SWBNO, the agreement does not contain a reasonable commitment by ENO/ENOL to improve reliability; and

**WHEREAS**, SWBNO did not file testimony or comments in this proceeding. In fact, beyond its intervention, SWBNO did not actively participate in this proceeding. Even after it had been contacted repeatedly over several weeks regarding the proposed Restructuring AIP, SWBNO remained substantively silent until just days prior to the Council's Utility, Cable Telecommunications and Technology Committee ("UCTTC") meeting on April 26, 2017; and

**WHEREAS**, usually when faced with a non-unanimous agreement, in order to assure the dissenting party has full due process, the Council would require that an evidentiary hearing be held to allow the parties to present evidence and argument for or against the proposed settlement. However, in this instance where SWBNO has not taken an active role in this proceeding, the Council will move forward with its consideration of the proposed Restructuring AIP so that the customer credits that will benefit all ratepayers can be implemented as soon as possible; and

**WHEREAS**, the Council notes that SWBNO has not objected to the allocation of the credits that will flow to ratepayers if the Restructuring AIP is approved. In fact, SWBNO's only stated opposition - ENO's commitment to reliability - is irrelevant to the subject matter of this proceeding and any further delay would be a grave injustice to all ratepayers as the effective date for implementing the credit to ratepayers would be postponed; and

**WHEREAS**, SWBNO has been given ample opportunity to raise its concerns through written testimony or comments and again at our UCTTC meeting on April 26, 2017; and

**WHEREAS**, the Council does not find that SWBNO's concerns would warrant rejection of the proposed ratepayer credits; and

**WHEREAS**, SWBNO will receive its share of the ratepayer credits under the Restructuring AIP in spite of its opposition; and

**WHEREAS**, on the basis of the agreement between ENO, Air Products, the Alliance, and the Council's Advisors and the record before us, the Council wishes to approve the Restructuring AIP including all terms and conditions included therein and find that ENO's proposed restructuring is just, reasonable and in the public interest; now therefore:

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

1. The Restructuring AIP filed by ENO on April 25, 2017 in Docket No. UD-16-03 is approved without modification; and
2. ENO's request for authorization to restructure is hereby approved subject to all terms and conditions included in the Restructuring AIP.

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

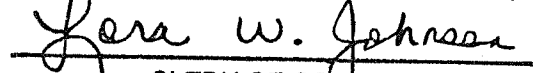
**YEAS:** Brossett, Cantrell, Gray, Guidry, Head, Williams - 6

**NAYS:** 0

**ABSENT:** Ramsey - 1

**AND THE RESOLUTION WAS ADOPTED.**

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY

  
CLERK OF COUNCIL