

RESOLUTION

NO. R-24-196

CITY HALL: May 2, 2024

**BY: COUNCILMEMBERS MORRELL, MORENO, GIARRUSSO, HARRIS, KING,
GREEN AND THOMAS**

**IN RE: DIRECTING ENTERGY NEW ORLEANS, LLC TO INVESTIGATE AND
REMEDiate ELECTRIC SERVICE DISRUPTIONS AND COMPLAINTS AND
TO ESTABLISH MINIMUM ELECTRIC RELIABILITY PERFORMANCE
STANDARDS AND FINANCIAL PENALTY MECHANISMS**

RESOLUTION AND ORDER APPROVING AN AGREEMENT IN PRINCIPLE

DOCKET NO. UD-17-04

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

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

WHEREAS, Entergy New Orleans, LLC (“ENO”), is a public utility providing electric and natural gas service to New Orleans; and

WHEREAS, in Resolution No. R-17-427 the Council established Docket No. UD-17-04, for the Council's investigation into electric outages, electric reliability issues in Orleans Parish in general, ENO's level of distribution operation and maintenance (“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 performance standards as established by the Council; and

WHEREAS, pursuant to Resolution No. R-18-47, the Council's utility Advisors conducted a prudence investigation; and

WHEREAS, after reviewing the findings of the prudence investigation, the Council found that ENO acted imprudently in the maintenance and repair of its system; and

WHEREAS, based upon the record of the investigation, the Council imposed on ENO a one-time \$1 million penalty for the prior imprudent conduct, which order was appealed by ENO to the Civil District Court, Parish of Orleans where the Court ruled that the matter of the penalty be remanded to the Council for further consideration consistent with the Court's ruling; and

WHEREAS, in accordance with the Court's order, the Council adopted Resolution No. R-23-150, which established a procedural schedule to allow parties to submit additional evidence regarding the amount of the penalty; and

WHEREAS, on May 19, 2023, ENO filed a petition at Civil District Court requesting the Court "set aside, reverse, and vacate Council Resolution R-23-150" ("CDC Petition Case"); and

WHEREAS, on April 22, 2024, ENO and the Council's utility advisors executed an agreement in principle ("AIP") wherein ENO agreed to invest \$500,000 reliability-related matters and said investment would not be subject to recovery from ratepayers; and

WHEREAS, the Council has reviewed the AIP and finds that it is in the public interest to approve the agreement; **NOW THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the AIP attached to this Resolution as Exhibit A is approved in its entirety.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the procedural schedule established in Resolution No. R-23-150 and amended in Resolution No. R-23-348 is terminated upon the Court granting ENO's motion to dismiss in the CDC Petition Case.

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

YEAS: Giarrusso, Green, Harris, Moreno, Thomas - 5

NAYS: 0

ABSENT: King, Morrell - 2

AND THE RESOLUTION WAS ADOPTED.

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Asst. Clerk of Council

EXHIBIT A

Agreement in Principle Regarding Reliability Investigation

This Agreement in Principle (“AIP”) is entered into by and among the Advisors to the Council of the City of New Orleans (“Advisors”); Entergy New Orleans, LLC (“ENO” or the “Company”) (together, the “Settling Parties”) for the purpose of resolving the reliability investigation under Council Docket UD-17-04 and the proceedings currently pending before the Civil District Court for the Parish of Orleans, State of Louisiana (“Civil District Court”), Docket No. 2023-04635.

Accordingly, ENO and the Council Advisors agree to the following provisions, terms, and conditions:

1. ENO and the Council Advisors plan to present and recommend adoption of this Agreement in Principle to the Council. This Agreement in Principle is non-binding and cannot be implemented without the Council adopting a resolution implementing the terms of this Agreement in Principle.
2. Upon Council approval of this AIP, the Council shall conclude, without further action, any pending reliability-related investigation in Council Docket UD-17-04, including any and all investigations, prudence reviews, and related proceedings forming the basis of, arising under, or specified in Council Resolutions R-17-427 (As Corrected), R-18-98, R-18-475, R-19-442, R-23-150, and R-23-348, and the Orders dated January 16, 2024 and April 15, 2024 issued by Hearing Officer Jeffrey S. Gulin in docket UD-17-04. This AIP should not be construed as altering, changing, or otherwise limiting or invalidating the Council’s Electric System Distribution Reliability Standards contained in Council Resolution R-23-73.
3. ENO agrees to file in Civil District Court Docket No. 2023-04635, a motion to dismiss its Petition for Appeal, Judicial Review, and (or Alternatively) Declaratory and Injunctive Relief Regarding Council Resolution R-23-150, with prejudice (with each party to bear its own costs and attorney’s fees), within 45 days of the Council’s approval of this AIP.
4. ENO agrees through this settlement to spend \$500,000 on ENO-funded reliability-related matters in Orleans Parish as described herein.
5. ENO agrees through this settlement not to seek from ENO customers recovery of, or a return on, the \$500,000 referenced in Paragraph 4.
6. The nature of the ENO-funded reliability-related matters that ENO selects for execution will be discussed with and expressly agreed upon by the Council’s Legal and Technical Advisors and/or the Council, as appropriate, prior to ENO expending any funds on such matters.

7. ENO shall recover all verifiable regulatory costs associated with any reliability-related investigation under UD-17-04 as well as any resulting judicial reviews. ENO shall recover such costs in its 2025 Formula Rate Plan through an outside the band adjustment.
8. ENO specifically reserves its right to seek judicial review of any future fine levied against it under the standards and penalties approved by the Council in Council Resolution R-23-73.

Miscellaneous Provisions

9. This Agreement in Principle reflects a compromise, settlement, and accommodation among the signatories and the terms and conditions herein are interdependent. All actions by the signatories contemplated or required by this Agreement in Principle are conditioned upon the Council expressing its authorization of and consent to all of the terms of this Agreement in Principle.
10. Except as otherwise expressly provided for herein, no party shall be deemed to have approved, accepted, agreed to, or consented to any ratemaking or other legal principle or policy, and nothing in this Agreement in Principle should be considered precedent for ratemaking, legal or policy purposes.

AGREED TO BY THE FOLLOWING PARTIES:

By: _____

Name: _____

REPRESENTING
ENTERGY NEW ORLEANS, LLC

By: _____

Name: _____

REPRESENTING
NEW ORLEANS CITY COUNCIL'S ADVISORS

Attachments are
in the Clerk of
Council Office for
Viewing.

City Hall

Room 1E09