

RESOLUTION

NO. R-18-474

CITY HALL: October 31, 2018

BY: COUNCILMEMBERS WILLIAMS AND MORENO 

**IN RE: COUNCIL OF CITY OF NEW ORLEANS INDEPENDENT
INVESTIGATION OF ENTERGY NEW ORLEANS (“ENO”) RELATIVE TO
ALLEGATIONS OF THE USE OF PAID ACTORS IN COUNCIL PUBLIC MEETINGS
IN CONNECTION WITH DOCKET NO. UD-16-02 AND RESOLUTION NO. R-17-426**

**RESOLUTION INITIATING A SHOW CAUSE PROCEEDING REGARDING
IMPOSITION OF SANCTIONS AGAINST ENO BASED UPON REPORT OF
INDEPENDENT INVESTIGATORS FILED WITH THE COUNCIL ON OCTOBER 29,
2018**

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

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

WHEREAS, Entergy New Orleans, LLC (“ENO” or “Company”), is a public utility providing electric and natural gas service to all of New Orleans;¹ and

¹ On November 30, 2017, Entergy New Orleans, Inc. undertook a restructuring that resulted in the transfer of substantially all of its assets and operations to Entergy New Orleans, LLC, which since that date provides retail electric and gas utility service to New Orleans.

WHEREAS, ENO is a wholly owned subsidiary of Entergy Utility Holding Company, LLC (“EUH”) and 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, the Council is responsible for ensuring that New Orleans customers receive reliable electric and gas service at just and reasonable prices; and

WHEREAS, the Council is responsible for assuring that its proceedings relative to its utility regulatory function adhere to the highest standards of integrity, transparency, accuracy, efficacy, fairness and reliability; and

WHEREAS, on April 19, 2018 a lawsuit was filed in Civil District Court alleging that people were paid to attend one or more meetings, and alleging that as a result opponents of the New Orleans Power Station (“NOPS”) plant were prevented from entering due to the limited capacity of the meeting rooms; and

WHEREAS, in an ENO news release dated May 10, 2018, ENO stated that an internal investigation had been launched after the filing of the lawsuit alleging that people were paid to attend or speak at one or more public meetings; and

WHEREAS, the news release stated that ENO entered into a contract with The Hawthorn Group (“Hawthorn”) “to assist with organizing local grassroots support for NOPS at two public meetings relating to NOPS on October 16, 2017, and February 21, 2018;” and

WHEREAS, the news release further stated that ENO’s own investigation concluded that, in fact, Hawthorn retained Crowds on Demand, allegedly without ENO’s knowledge or consent, and that, allegedly without ENO’s knowledge or consent, Crowds on Demand paid individuals to

appear and/or speak at two meetings for which Hawthorn was contracted to organize supporters;
and

WHEREAS, based upon ENO's own investigation, which confirmed some key elements of the allegations about paid actors, the Council on May 24, 2018 considered and unanimously adopted Motion M-18-196 immediately initiating an independent third-party investigation of ENO relative to allegations that ENO, Entergy, or some other entity paid or participated in paying actors to attend and/or speak at one or more public meetings in connection with ENO's NOPS application;
and

WHEREAS, the Council also adopted Motion M-18-197 directing Council staff to issue a Request for Qualifications to begin the competitive selection process established under Council Rule 45 to select investigators to conduct the independent investigation; and

WHEREAS, a Request for Qualifications for an independent investigator was issued on May 25, 2018; and

WHEREAS, on June 21, 2018, the Council adopted Motion M-18-255 selecting Sher, Garner, Richter, Klein, and Hilbert, L.L.C. and Judge Calvin Johnson ("the Investigators") to conduct the investigation, and

WHEREAS, the contract between the Council and the Investigators was executed on August 4, 2018, and the investigation was formally commenced; and

WHEREAS, the Contract required that a report be filed with the Council on or before September 4, 2018; and

WHEREAS, Investigators met with some delays by ENO with respect to certain documents and information requested, Investigators requested and received two extensions from the Council for filing the report; and

WHEREAS, Investigators filed their final report with the Council on October 29, 2018;
and

WHEREAS, the Report finds, among other things that:

- Numerous individuals were paid to attend and/or speak in support of ENO;
- Instead of disclosing the payments and the affiliation with ENO these attendees and speakers were commissioned to pose as citizens genuinely in support of NOPS;
- Payment and the obligation to pay flowed from ENO through ENO's vendors to the individuals hired to attend and/or speak at meetings on October 16, 2017 and February 21, 2018;
- ENO took no corrective action and continued to deny any knowledge of the improper activity even after it was clear the conduct had occurred;
- ENO knew or should have known that such conduct occurred or reasonably might occur; and

WHEREAS, these findings are extremely troubling to the Council and show a complete disregard for the Council's high standards of integrity, transparency, accuracy, efficacy, fairness and reliability in the Council's utility regulatory process, and undermines confidence in the regulatory system; and

WHEREAS, it is not an excuse that prior to recent revisions Council rules² did not require that speakers disclose on comment cards whether they received or would receive compensation for speaking nor did they require other attestations or a signature; and

WHEREAS, the conduct detailed in the Report does not affect or alter the evidentiary record created in Docket No. UD-16-02 because the Code of the City of New Orleans specifically

² In June 2018 the Council revised the format of comment cards for speakers to include disclosure of compensation, attestation to truthfulness and require the speaker's signature.

states that “no part of statements made or evidence adduced at... [an] at-large public hearing shall, in legal terms form (and such matter shall not form) the basis of any council decision in a contested proceeding,” Code of the City of New Orleans, Section 158-431, however ENO’s conduct as detailed in the Report has affected the utility regulatory system by undermining the Council’s high standards of integrity, transparency, accuracy, efficacy, fairness and reliability;³ and

WHEREAS, ENO’s conduct also impeded the Council’s purpose in holding an at-large public hearing, which was for the Council to hear the opinions of the public regarding the matter; and

WHEREAS, ENO’s conduct has caused Council members, staff and Council Advisors to incur substantial hours of additional work to deal with the matter for the past seven months and will continue to cause additional work for the foreseeable future as sanctions are considered, imposed and monitored for years to come; and

WHEREAS, such conduct cannot be tolerated by a regulated utility and must be sanctioned and deterred in the future; and

WHEREAS, in addition to the conduct disclosed by the Report, the Council has observed several examples of an unacceptable decline in relations between ENO and the New Orleans community and its utility customers including:

1. Prolonged delays in implementing ENO’s firm commitment to acquire and deploy 100 MW of renewable resources despite the broad-based support of the community for renewables and the unanimous direction of the Council to expedite the projects, which resulted in the Council having to resort to using “show cause” enforcement proceedings. *See* Resolution R-18-97 (April 5, 2018).

³ In addition, the Report also confirmed that “Investigators did not uncover any information that showed any similar activity concerning the evidentiary hearing conducted by Judge Jeffrey S. Gulin.”

2. Allowing the demonstrable decline of distribution system reliability by severely underfunding maintenance, repairs and improvements that would have avoided the problem and the repeated inconvenience and dislocations suffered by customers as a result, while repeatedly exaggerating the claim that most outages were caused by animals and Mylar balloons and failing to acknowledge properly that the majority of outages resulted from equipment failures documented after the Council forced an analysis of the problem in connection with an additional “show cause” enforcement proceeding. *See* Resolution R-18-98 (April 5, 2018). (The Council will be launching by a separate resolution a full public prudence investigation into ENO’s past actions with respect to distribution system reliability.)
3. Filing an initial version of a combined rate case in which ENO proposed a rate increase for Algiers residential customers that would increase the average bill by \$22.00 per month despite the clear mandate from the Council in its resolution directing the filing of the rate case that ENO should take necessary steps to avoid and mitigate “rate shock” in the filing, which caused the Council and Advisors to express sufficient disapproval to cause ENO to withdraw and refile a more acceptable proposal. *See* Resolution R-17-504 (September 28, 2017).

WHEREAS, the Council has become exasperated by ENO’s “tone deaf” actions, which have understandably cause strained relations between ENO the community and its customers; and

WHEREAS, the Council, as ENO’s regulator, will not accept a utility that is disengaged from and unresponsive to the community and its customers; and

WHEREAS, the Council has determined that a sea-change in the corporate culture must occur at ENO to completely change its community and customer orientation to one that is focused on consistently positive community relations and customer engagement; and

WHEREAS, the Council has the expressed authority to impose penalties, monetary and otherwise, as provided in Code of the City of New Orleans, Section 3-130 (7) and Section 158-52; and

WHEREAS, determining the reasonableness of penalties is associated with several factors including: 1) the finding that ENO knew or should have known that the improper conduct occurred or reasonably might occur; 2) the nature and extent of the consequences of the conduct; and 3) the level of penalty that will deter future conduct so that bad conduct does not become simply a cost of doing business; and

WHEREAS, because ENO's conduct undermined the high standards of the Council's regulatory work, and given that ENO had net income of \$44.5 million in 2017, appropriate and reasonable penalties must be significant in size and scope; and

WHEREAS, the Council has lost trust in the management team responsible for the conduct described both generally above and in detail in the Report, which makes deterrence a more pressing concern; and

WHEREAS, a general survey of utility regulatory bodies has discovered that; the Massachusetts Department of Public Utilities imposed a \$24.8 million penalty on a group of the state's utilities for their poor preparation for and response to Hurricanes Irene and Sandy; and the North American Electric Reliability Corporation ("NERC") has imposed six figure penalties for poor vegetation management that results in risks to critical infrastructure and multi-million dollar penalties for improper data handling practices that increased cyber risks; and

WHEREAS, in 2005 Congress gave the Federal Energy Regulatory Commission (“FERC”) enhanced sanction authority to punish an entity for “willingly and knowingly” reporting certain false information in connection with the sale of natural gas or electricity, which penalties can total up to \$1 million per day; and

WHEREAS, it is clear that utility regulators around the country and on the federal level recognize the critical importance of using significant penalties to sanction and deter bad conduct by utilities, which can have such far-reaching impact on so many customers and communities; and

WHEREAS, it is incumbent on the Council to reflect this same concern in exercising its regulatory authority and in using its power to penalize and deter bad conduct; and

WHEREAS, the Council has determined that it is in the public interest to require ENO to take steps to determine “best practices” for improving and maintaining consistently positive community relations and customer engagement; creating and implementing training programs for key employees including at the management level; and periodic evaluation programs to determine progress and effectiveness and to remediate quickly any deficiencies; **NOW THEREFORE**

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

1. The Council hereby directs ENO to show cause within thirty (30) days of approval of this resolution by the Council as to why the following penalties and sanctions should not be imposed:
 - a. A cash payment of \$5 million to be paid in accordance with and for purposes determined by the Council;
 - b. Certification that each ENO management level employee has or will complete a third-party ethics training course;

- c. Submitting for Council approval an ENO Code of Conduct, developed with special emphasis on its dealings with and before the Council, which includes credible oversight and enforcement provisions specifically designed to avoid a repeat of the glaring breaches of ENO's existing Entergy Values and Ethics Statement;
2. Interested parties may file comments with the Council regarding the matters set forth herein within thirty (30) days of approval of this resolution by the Council.
3. Upon receipt of ENO's show cause filing and any comments received from the public, the Council shall determine whether any further proceedings in this matter are required.
4. CURO is directed to deliver to the Honorable Piper Griffin, Civil District Court, Parish of Orleans a copy of the Report and this Resolution for her information in connection with the open meetings litigation styled *Deep South Center for Environmental Justice v. New Orleans City Council, CDC 18-3343*.
5. All costs associated with the Investigation incurred by ENO, including monetary penalties and costs of complying with non-monetary penalties, are disallowed for recovery from ratepayers pursuant to Code of the City of New Orleans, Section 158-582 and Section 158-626.
6. All costs incurred by the Council in connection with any and all aspects of the Investigation shall be reimbursed to the Council and shall be disallowed for recovery from ratepayers pursuant to Code of the City of New Orleans, Section 158-582 and Section 158-626

7. All costs incurred by the utility Advisors in connection with any and all aspects of the Investigation, including, but not limited to, monitoring penalties and sanctions shall be billed and reimbursed as usual, however these payments will not be recoverable from ratepayers and they shall be outside of and in addition to the Advisors' contract budgets, subject to normal Council review and oversight.
8. ENO shall exclude all costs and penalties associated with this resolution, as well as their related regulatory ratemaking effects, from prospective rate action filings and clearly demonstrate the methodology by which such have been excluded.

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

1. Within sixty (60) days from the adoption of this resolution ENO shall file with the Council a detailed Community Relations and Customer Engagement Plan ("Plan") that must include, at a minimum, the engagement of independent experts to advise and assist in developing an effective Plan, including determining industry "best practices."
 - a. The Plan shall also include training programs for key employees, including at the management level, which can be devised and implemented with a due sense of urgency to achieve results as quickly as possible.
 - b. The Plan shall also include well-crafted, self-evaluation standards that can remain in place in perpetuity to periodically determine progress and effectiveness and to remediate quickly any deficiencies.

- c. The Plan shall also propose regular reporting to the Council in a form and on a time schedule that will provide the Council with sufficient timely information to determine the effectiveness of the Plan.
 - d. The Plan shall propose for Council consideration, modification and approval enforcement and sanction mechanisms.
2. Within 30 days of the submission of ENO's Plan filing, interested members of the public may file comments regarding ENO's proposal.
 3. Within 15 days of the filing of comments by the public, ENO may file reply comments.
 4. All aspects of the Plan are subject to Council modification and approval.

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