



February 1, 2019

Ms. Lora W. Johnson
Clerk of Council
City Hall - Room 1E09
1300 Perdido Street
New Orleans, LA 70112

RE: Response to Public Statement by Councilmember Moreno Pertaining to Decision by Entergy New Orleans, Inc. to Incur \$96 Million in Costs for a Proposed Gas Plant (Application of Entergy New Orleans, Inc. for Approval to Construct New Orleans Power Station and Request for Cost Recovery and Timely Relief, UD-16-02, Council Resolution R-18-65)

Dear Ms. Johnson:

Please accept this correspondence to the New Orleans City Council regarding the above referenced matter.

Thank you for your assistance.

Sincerely,

Logan A. Burke
Alliance for Affordable Energy

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BY:

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February 1, 2019

To: Members of the Council of the City of New Orleans
Mr. Jason R. Williams, Councilmember-at-Large
Ms. Helena Moreno, Councilmember-at-Large
Mr. Joseph I. Giarrusso, District "A" Councilmember
Mr. Jay Banks, District "B" Councilmember
Ms. Kristen Gisleson Palmer, District "C" Councilmember
Mr. Jared C. Brossett, District "D" Councilmember
Ms. Cyndi Nguyen, District "E" Councilmember

Dear Councilmembers:

As a utility regulatory body, the City Council must protect the ratepayers of New Orleans. However, in a statement emailed yesterday, Councilmember Helena Moreno asserts that "New Orleans' ratepayers are on the hook for at least \$96 million spent by Entergy since the approval." This statement, with otherwise encouraging points acknowledging the need for this Council to reconsider Entergy's proposed gas plant, is disturbing as it would abdicate the role of regulator to the errant behavior of Entergy by holding the residents and businesses in New Orleans liable for paying the costs Entergy incurred for a gas plant that is the subject of pending litigation and remains without all required environmental permits. The fact is that Entergy has incurred these expenses at its own risk.

First, the previous Council's 6-1 decision in favor of Resolution R-18-65 to approve the proposed Entergy gas plant has been appealed and is currently pending at the Orleans Parish Civil District Court. This is an appeal to reverse the Council's decision because it violates due process, is arbitrary and capricious, and fails to comply with local ordinances and orders. One of the issues on appeal is the lack of evidence showing a need for the gas plant in New Orleans when alternative options put forward by the previous Council were not analyzed by Entergy. See Petitioners' Reply Brief at pp. 11-17 filed in *Alliance for Affordable Energy v. Council of the City of New Orleans* (case no. 18-3471). Therefore, the Council's approval awaits a judicial decision and a hearing on this appeal is scheduled (after two delays requested by this Council) on March 26, 2019.

Given this pending appeal, Entergy's decision to incur expenses is reckless. The Louisiana Supreme Court makes it clear that when a company implements a regulatory decision "before the time for appeal has run or all appeals have been exhausted, **it does so at its own risk.**" *Louisiana Power and Light Co. v. Louisiana Public Service Commission*, 369 So.2d 1054, 1061 (1979).

Second, the challenged Council Resolution sets one condition for the approval of construction, cost recovery, and timely relief of the proposed Entergy gas plant. "ENO is required to demonstrate its compliance with all applicable laws and regulations by filing with the Council all permits granted, and orders or rulings issued by any local, state or federal agency with jurisdiction over the project, including, but not limited to the EPA and LDEQ." As explained by the Council's advisor, Ms. Emma Hand who presented the Resolution at the Council meeting on March 8, 2018: "[T]he Council's approval will be conditioned upon compliance with all EPA

and DEQ regulations and requirements.” *Official Transcript of New Orleans City Council Meeting*, March 8, 2018, p. 7, lines 20-22.

However, Entergy has decided to incur expenses for the gas plant without receiving all the required permits, a condition of the Council’s approval. The final results of these permits could require Entergy to change equipment and design plans for the gas plant. The permit process, which is subject to appeal, is far from over. In fact, Entergy recently applied to the Louisiana Department of Environmental Quality for a water permit (Louisiana Pollution Discharge Elimination System) in October 2018. This permit is currently under review by the department. Thus, before meeting the condition for Council approval and knowing this approval is on appeal in court, **Entergy incurred expenses at its own risk**. New Orleans ratepayers cannot be made liable to pay these expenses.

Third, any cost recovery Entergy can apply for must be reviewed in a public and transparent utility regulatory proceeding to determine whether the costs are indeed prudent. This means an examination as to whether Entergy used reasonable judgment when it incurred expenses based on the information it knows at the time. Simply providing unexamined invoices to the Council is not sufficient. Here’s what Entergy knew before it made those expenditures: 1) the previous Council’s approval is pending appeal in Civil District Court; 2) Entergy has not been granted all environmental permits required by DEQ and EPA, a condition of the Council’s approval; and 3) the Council, as utility regulator, is conducting investigations about Entergy’s use of paid actors to show sham support for the gas plant, issuing show cause proceedings on excessive power outages caused by Entergy’s failing distribution system, and repeatedly announces disappointment in Entergy’s actions. A prudent utility company that is aware of these facts would wait until these concerns were resolved before making expenditures for the proposed gas plant.

We urge the Council to protect New Orleans ratepayers -- families and businesses -- from Entergy’s ill-advised decision to spend \$96 million on a gas plant that is the subject of a court appeal and remains without all required permits. This expense was incurred by Entergy at its own risk.

Sincerely,

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