

Suggested Recommendations re:
Regulator and City Accountability to Ratepayers
(A committee of the N.O. Energy Policy Task Force)

(As reported by Karen Wimpelberg, chair, after one committee meeting and several phone calls. Hopefully the members of this committee will take a few minutes to add to, correct or take exception to the recommendations and forgive her for not managing to hold another committee meeting or attend to this prior to this date – 7/13/07)

Committee members originally expressing interest: Myron Katz*, Forest Bradley-Wright*, Charles Allen, Wade Byrd, Audrey Evans (observer), Gladney Greta, Lea Young, Rev. Marilyn Jordan, Tommy Milliner, Joe Ryan*, Steve Shelton, Christopher Faust*, Phil Voss*, Mark Davis, Karen Wimpelberg*, Louis Martinez*, Seung Hong,* aid to Councilmember Shelley Midura
*attended July 5, 2006 meeting in person or by phone

Abstract

The New Orleans City Council and the City's executive branch should review their duties, commitments, and powers with regard to regulating the privately owned utility (ENO – a subsidiary of Entergy, Corporation) as specified in the amended (1996) New Orleans City Charter and the amended (many times – last time about 1990) franchise agreement with ENO (formerly NOPSI), dating originally to about 1935. Additionally, each branch should research the codes and ordinances which make up the body of detailed law which governs the city in order to find what is in place already that they might better enforce, remove, improve or expand with regard to energy delivery, use, regulation, public and environmental benefits and costs and public participation. Having several overarching strategies for meeting present and future energy needs would help guide this research and would facilitate the city to more quickly reach its goals for an energy policy that will place New Orleans at the forefront of national clean, green, safe and sustainable energy trends.

Issue the recommendation addresses:

Currently the ratepayers of N.O. are not very informed as to what they can expect from their utility or their regulators, what they have the right to understand, protest, question, and what basic help they should be able to receive with regard to their utility bills, and the delivery of gas and electricity to their homes and businesses. Additionally, when codes, laws, costs, fees, rates and processes for interacting with the utility (ENO), the regulators, (City Council and its regulatory staff), and various departments in city hall in relation to energy issues are changed, the ratepayers' knowledge of the change is usually ad hoc, last minute, by word of mouth or after the fact. It certainly does not include getting their input ahead of time. This ends up causing confusion at the least, frustration, worry, anger and depression at the worst. But it particularly creates the sense in ratepayer's minds that the utility and the government are not there to help them and there is nothing much they can do about it. After all, energy is a necessity so they just have to accommodate? But a clear set of procedures, easy access to information, clearly explained facts in various formats and languages about any energy policies, or technologies, rules or regulations would reduce anxiety and anger, as well as

take some of the burden off of utility employees and offices of elected officials. And would, in the end, establish or improve accountability and therefore more faith in government.

Basic of the recommendation:

Background -- Government bodies in the U.S were set up originally to provide protection and services to all of the people without discrimination. Government employees are actually public servants – there to help people get the services they pay taxes for. The government officials and regulators need to have a clearer understanding of their duties and powers and there needs to be a better connection to the people through the utility regulating system in order for the services provided by the utility, city officials or the regulators to be delivered more efficiently and with more humanity for everyone involved.

Start with knowing the laws as they stand: In New Orleans, the duties and powers with regard to the utility’s delivery of gas, electricity and streetlights, are very specific and provide, in the basic delineation of such laws and contracts, a reasonable balance of power as well as checks and balances to each branch. This form of governing was set forth in the U.S. Constitution as a way to attain fair representation under the law and an infrastructure for protecting the people, the format of which is expected to be followed by state and local laws.

The New Orleans City Charter along with the Louisiana Constitution work to carry out that concept to the individuals residing in their respective jurisdictions. The City Charter of N.O. has inalienable strength in the concept of “home rule”. It is the guide and law for protecting all of the residents of N.O. It was amended in 1996 to be ‘in line’ with the Louisiana Constitution so that the laws would not conflict with each other, be redundant or require double paperwork. No laws created in N.O. can be stronger than the state or U.S. constitution’s laws (if such laws exist in the particular in the constitution). However, the laws can be interpreted to include expanded, broader or more detailed explanations, which would thus strengthen the state and/or national laws, but would not supercede them.

The laws provide a clear guide for designing new or changing any legislation: The above is important to keep in mind when configuring legislation or regulations with regard to codes, standards, rights and any laws that apply to encouraging participation by the interested public (the open meetings or Sunshine, “right to know”, ethics, right to intervene and sue, public records requests and Freedom of Information laws, are some examples.

Accountability starts with knowing the laws, then following them, then changing them. There is great flexibility in the laws if you know what exactly they are to start with, follow them and then follow exactly the ways they, themselves, include for changing or improving them. The City Charter, the Louisiana and U.S. Constitutions are all living documents – they try to be less prescriptive so that they can be interpreted and changed as the times and needs of the people change.

Creating and designing an over-all Energy Policy naturally allows all decisions and laws regarding energy delivery and use to be easily codified, interpreted, changed to meet ever changing and evolving technologies, ratepayers needs, and environmental resource cultivation and protection.

General suggestions for possible implementation to improve accountability – those which would require some expenditure of funds should be carefully considered as appropriate for reimbursement through the regulatory budget allowed in the franchise.

1. Perform and compile a review of the existing laws, rules and regulations and franchises around energy delivery and use – including budgets and/or costs. Post them in the City Council regulatory office and those of the utility committee members of the City Council, and relevant departments in city hall. Compile a binder of them to be copied and placed in the public libraries, utility payment centers, etc. Post them on the city's and the City Council's websites. Be prepared to send out various sections of them in the utility bills, tax bills, etc. sent to the public from the city or the utility.
2. Develop an overarching progressive energy policy – research several other cities with aggressive energy efficiency and renewable energy targets for reducing energy use. See if they have an overarching energy policy, what it is and copy from them. Use the compilation of existing ordinances and resolutions to guide and inform the design of an energy policy for New Orleans (such as the LCPO (Least Cost Planning Ordinance) of 1991 or the 'Ratepayer Bill of Rights' of 2001) and to help expedite the establishment of an overarching energy policy.
3. Create national partnerships with organizations, departments, and cities who would provide experts in policy development to help us to quickly assess what we have and what we need to develop the energy policy. (Phil Voss and Joe Ryan from NREL both offered as did Louis Martinez from NRDC, and several from ASE (Alliance to Save Energy) and Public Citizen and DOE.)
4. Resolve the longstanding resistance (payment for mediation of disputed bills) that is blocking the of passage of the Ratepayer Bill of Rights (or "Service Regulations") established and approved by the City Council in 2001!
5. Any kind of rate change or change in the fuel adjustment charge should be discussed at public hearings/meetings, the dates and times announced in the newspapers and on television well in advance of the vote. Written comments should be encouraged. Until there is more public confidence in the utility and the regulators these hearings/meetings should be facilitated and filmed, then shown on the government channel – with the schedule of times and dates published..
6. The utility should not be allowed to insist upon "expedited" decisions. The regulators, their advisors and the intervenors cannot be expected to review thoughtfully, ask questions, and prepare comments in any less than a week. For larger cases, which have been vetted over many months, it should be at least two weeks with time to announce to the public the suggested 'agreement in principle'.
7. Design a better way to provide more detailed information about items on the agenda for a utility committee meeting or council meeting. The use of the excuse that there are legal ramifications should not be permitted to conspire to keep the public in the dark until the last minute. (A general description of the agenda item – in enough time for the public to ask the regulatory office for more detail or to file a public records request – should be adequate.)
8. Open the utility to being a partner with the city. Whatever it takes. They must believe in and feel they can earn a fair profit from investing in 'negawatts'. Investigate the process of decoupling the utility from need to 'sell more energy' - instead work together to set goals for reducing the demand. Get the interested public

and intervenors involved with experts in truly understanding the System Agreement with Entergy Corp. Use this understanding to help make decisions about the best relationship with the holding company would be for our city now.

9. A good start in building a more trusting relationship with the public, the regulators and the utility would be to insist in a transparency concerning monies and losses connected to the hurricanes. Now that ENO is out of bankruptcy, it would be helpful toward building trust for them (or the Council regulatory office) to post (in layman's terms) and/or make available (for purchase at a reasonable price, if necessary) the basic facts about the extent of damages to transmission lines, gas lines, loss of workers, use of other utilities, etc. to provide help in repair, real costs of repairs, storm damage insurance on hand before storm, line of credit from the holding company, the role of Grand Gulf fuel and any other fuels purchased through contracts, contracts in existence before the storm which played a large role in the bankruptcy, as source of energy supply, some of which was determined in the 'discovery' process of the rate case. Additionally, they should be made to post to the council's or city's website, the amounts of the \$200 million of CDBG monies, for which they have been approved, updated as they are approved for more.
10. Use the annual budget review, reconciliation and approval process to assess energy usage, code compliance, etc. in the various departments of city hall.
11. Evaluate the rules for reimbursement from the utility for regulatory costs. Include stakeholders in this evaluation.
12. Post the budget for regulatory work. Start publicly discussing this budget at least 6 weeks before it comes up for approval. If there is a holiday within that six weeks, increase it to 8 weeks.
13. Create a website for the regulatory meetings – and ordinances, etc. Use the Public Service Commission's website as an example.
14. Establish a consumer advocate office on utility/energy delivery and use.
15. Utility bills should include, in detail, what all the costs are to the consumer – breakdown the various parts of the fuel adjustment charge, the various fees (showing per customer costs for regulation, etc.
16. Have the utility hold monthly "workshops" for customers to bring their bills and learn what all the charges are for – especially after a settled rate case or adjustment to the fuel adjustment charge.
17. Charts should be prepared by the Council's advisors and regulatory staff showing what the rates were at the beginning of a rate case, what they were per customer class – so what is average kWh cost and what does that actually include - what the new rates will be, when and how often they will increase until they are completely phased in and what the final rate increase will cost have them – in \$'s and in percent increase. (The Alliance was forced to prepare such a fact sheet for the rate case in October of 2006, to be handed out at the actually hearing so that people could see what exactly was being proposed. This took us most of the night as we had to review many pages in different parts of the documents in order to pull together, to the best of our ability, what was being voted on the next morning.) We recommend that the breakdown of these rate increases be included in the bills in the next billing cycle after the increases are improved. They should also be posted on the Council and City's websites for the public to access and digest.
18. The Council as regulator should require that NOA-TV, the government channels, Cox Cable, and the newspaper of record (Times-Picayune) prepare an actual

schedule of programs and publish it so that the public can know in advance what public government meetings are available to be viewed and at what times. This schedule should be posted at regular times on the cable channels as well. The times of the showings of the meetings of the utility committee should be posted on the Council's website.

19. The Council should consider holding some of its regulatory meetings in the evenings or on the week-ends to allow for people who work during the regular work week hours to attend.
20. The mayoral administration needs to monitor and re-implement the duties of the Utility Department as stated in the City Charter (as these seem to have been absorbed by the Department of Finance but are not being carried out). This is opening up both the administration and the council to liabilities that could easily be avoided. Additionally, this would uphold the check and balance system of a democratic process.
21. We recommend that the city and the council review past written comments of the Alliance for Affordable Energy. In each, we recommend several actions that could be taken in order to improve accountability.

*In conclusion: from the book **Democracy and Regulation** by Greg Palast, Jerold Oppenheim and Theo MacGregor, pp.188-189 (referenced in the September 14, 2006 formal written comments by the Alliance for Affordable Energy, as an intervenor in the 25% rate increase request to cover costs of repair, renovation and establishing of a Storm Damage Fund):*

“In order to make democratic regulation work, the rules must be strict, detailed and tightly enforced – or all the work of regulation becomes meaningless. This is not a popular view today where there is faith that market systems can replace the hard work of regulation.” Part of the premise of this book, is that “democratic regulation produces lower prices, higher quality service and secure employment...” The Alliance would recommend this book to any who are interested in confecting a really useful and far-sighted energy policy for the city of New Orleans.