PUBLIC FINANCING OF

PROPOSED CITY COUNCIL BUYOUT OF

NEW ORLEANS PUBLIC SERVICE INC.

A LEGAL ANALYSIS

JANUARY 20, 1987

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A PROFESSIONAL LAW CORPORATION
NEW ORLEANS, LOUISIANA

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EXECUTIVE SUMMARY

This Executive Summary outlines the key points of a more complete report prepared for New Orleans Public Service Inc. ("NOPSI") analyzing the proposal that the New Orleans City Council buy out the Orleans Parish electric utility assets of NOPSI and Louisiana Power & Light Company ("LP&L") and form an Orleans Parish municipal electric utility. This buyout proposal has been triggered by speculations of some proponents that a buyout might effectively reallocate Grand Gulf electrical generating capacity away from Orleans Parish ratepayers.

In order to finance any such buyout, the City, or a new power authority created to operate the utility, would be required to incur a massive amount of new public debt, perhaps as much as $2,700,000,000 ($2.7 billion). This compares to the City's present total gross bonded debt of approximately $690,242,000 ($690.2 million). The process for issuing the new debt would be extraordinarily complex because of: (1) the nature of the assets to be acquired; (2) the nature and scope of the on-going utility operations to be undertaken; (3) the fact that the proposed terms for a buyout are virtually certain to be challenged by persons adversely affected, including NOPSI, LP&L, and state and local officials and consumers in Louisiana, Arkansas, Mississippi, and Missouri; and (4) the enormous dollar size of the transaction.

In pressing for a City buyout, proponents have made several very speculative and critical assumptions. Some of

these speculative assumptions of proponents are: (1) that a buyout by the City would, in effect, reallocate Grand Gulf capacity away from Orleans Parish ratepayers; (2) that tax-exempt bonds could be utilized to finance a buyout; (3) that a buyout and operation of an Orleans Parish utility is feasible from an engineering and economic standpoint; and (4) that the City Council could actually exercise the City's Option to buy its choice of NOPSI's assets and commence operating those assets of NOPSI and LP&L within a reasonably short period of time after deciding to act. Each of these assumptions is either unfounded, sufficiently unproven, or so subject to future contingencies that none of them can responsibly be relied upon as a basis for a NOPSI buyout now or in the foreseeable future.

Enormous and legitimate differences of opinion exist as to what assets the City would acquire and what compensation the City must pay to NOPSI and LP&L in buying those assets. Based on statements made by the City Council in a City Council Resolution adopted on March 20, 1986, the City Council apparently contemplates that it would initiate any buyout by giving NOPSI <u>notice of intent to exercise the City's Option</u> to buy NOPSI's assets. This buyout step, which the City Council has no legal basis for taking, would cause NOPSI tremendous harm in its ability to continue the financing needed for its operations during the years of regulatory proceedings, litigation and studies which would necessarily follow.

Another method of initiating a buyout, <u>actually exercising the City's Option</u> to buy NOPSI's assets, would obligate the City to take and pay for those assets upon actually exercising the Option or reasonably promptly thereafter. This legal result would apply upon an actual exercise of the City's Option, even if the City does not know with certainty what assets it would acquire in a buyout, the amount it would pay for those assets, or how it would generate power and operate a utility upon acquiring those assets. The City would be legally responsible for the potentially enormous financial harm it would cause NOPSI by acting in a manner inconsistent with NOPSI's rights and the City's obligations in connection with either of these methods of initiating a buyout.

Buyout efforts intended to reallocate Grand Gulf energy away from Orleans Parish ratepayers would put numerous parties other than NOPSI and LP&L at the risk of suffering potentially significant adverse effects. In particular, consumers in Arkansas, Missouri, Mississippi and Louisiana served by Middle South Operating Companies other than NOPSI -- namely, Arkansas Power & Light Company, Mississippi Power & Light Company and Louisiana Power & Light Company -- would be directly affected by any reallocation of Grand Gulf energy away from NOPSI customers to customers of those other Middle South Operating Companies. State and local officials and consumer groups representing these consumers, as well as others, are virtually

certain to vigorously litigate open legal issues now clearly known to be in dispute, including the following:

1. Is the City Council able to avoid NOPSI's Grand Gulf energy rights and associated obligations by exercising the City's Option? If so, to whom would Grand Gulf energy be reallocated? Other ratepayers in Louisiana? Ratepayers in Mississippi? Ratepayers in Arkansas and Missouri?

2. What price and other compensation must the City pay NOPSI and LP&L in buying their assets?

3. What conditions relating to Grand Gulf energy would be imposed on a City utility by the Federal Energy Regulatory Commission ("FERC")?

With respect to the very first of these open legal issues, it is our opinion that, upon exercising the City's Option, the City would acquire NOPSI's Grand Gulf energy rights <u>and obligations</u>, and that, consequently, exercising the City's Option would <u>not</u> avoid NOPSI's Grand Gulf rights and obligations for ratepayers in the City. A contrary result would permit the City Council to indirectly reallocate Grand Gulf energy away from Orleans Parish customers to others, contrary to the Grand Gulf allocation rulings already mandated by FERC. Indirectly overturning FERC's allocation of Grand Gulf energy to NOPSI is one of the principal aims of buyout proponents. The City Council expressly recognized that it has no power to achieve this result in a City Council resolution adopted in March, 1986:

> "Federal courts have clearly expressed their view that local regulatory bodies such as the Council do not have authority to alter or interfere with the FERC's allocation of Grand Gulf costs . . . ."

New Orleans City Council Resolution No. R-86-112, p. 6 (March 20, 1986) (Copy in Appendix).

In any event, a buyout certainly cannot be accomplished quickly and easily by a simple vote of the City Council. As the City Council has recognized, a buyout would require a number of years of enormously expensive regulatory proceedings, litigation, and feasibility and other studies -- in our judgment, requiring perhaps as much as a decade or more. In all likelihood, buyout actions will never achieve the results which proponents hope for and wish to believe. Certainly, the City Council's retained consulting engineer, R. W. Beck and Associates, has very carefully avoided taking any clear public stance that a City Council buyout of NOPSI would be feasible from an economic and engineering standpoint and would achieve the results hoped for by proponents, apparently to avoid any

risk of damaging its professional reputation if such results were not achieved.

For the City Council to exercise the City's Option at the present time, given current circumstances, would clearly be imprudent under legally-settled public financing concepts. New public financing techniques, which the City Council may be pressured to consider, raise new financial and legal uncertainties for bond purchasers, the City, and others. A buyout of NOPSI and LP&L would require the City or a new City power authority to incur perhaps as much as $2,700,000,000 ($2.7 billion) in new public debt and could increase the City's gross bonded debt to a figure almost 500% larger than at present. In light of the current and projected financial condition of the City of New Orleans, the implications for the City of undertaking this step and incurring this massive amount of new public debt creates significant doubt that a City Council buyout is in the City's best interest.

PUBLIC FINANCING OF PROPOSED CITY COUNCIL BUYOUT OF NEW ORLEANS PUBLIC SERVICE INC: A LEGAL ANALYSIS

1. INTRODUCTION.

This Legal Analysis, prepared for New Orleans Public Service Inc. ("NOPSI"), addresses the proposal that the Council of the City of New Orleans (the "City Council") buy out the Orleans Parish electric utility assets of NOPSI and Louisiana Power & Light Company ("LP&L") and form an Orleans Parish municipal electric utility. The purpose of this document is to analyze and clarify the legal and financial implications of the buyout proposal for the City of New Orleans (the "City"), City ratepayers, NOPSI, and other affected parties.

This Legal Analysis is intended to review several speculative assumptions being circulated regarding a buyout of NOPSI and to provide more complete information about the consequences likely to result from actions taken towards that end. This analysis discusses issues relating to the fiscal prudence of proceeding with buyout actions and outlines many of the legal hurdles which would have to be overcome in proceeding further.

City Council buyout of NOPSI and LP&L would require the City or a City power authority to incur a massive amount of new public debt. In the opinion of Black & Veatch Consulting Engineers, a City Council buyout could require the issuance of

as much as $2,662,000,000 ($2.662 billion) in additional public debt, see page 36 of the Black & Veatch Update Report (as defined below in this Section 1). This amount compares to a gross bonded debt for the City as of June 30, 1986 of approximately $690,000,000 ($690 million), see Moody's Municipal Credit Report: New Orleans, Louisiana (Sept. 30, 1986). Because this action could increase the City's overall gross bonded debt to a figure almost 500% larger than at present, public financing aspects of the matter are a focal element of this Legal Analysis.

Pronouncements made by buyout proponents reveal that considerable misinformation is being circulated about a possible buyout. In this Legal Analysis, we have identified and analyzed four of the most important assumptions being made by buyout proponents in advocating that course of action. Those assumptions are as follows:

- That buyout actions will reallocate Grand Gulf energy away from Orleans Parish ratepayers and thereby avoid Grand Gulf costs for those ratepayers;
- That the City may utilize tax-exempt bonds to finance a NOPSI buyout;
- That buyout and operation of NOPSI's electric utility assets is feasible from an engineering and economic standpoint; and
- That by simply acting on a buyout decision, the City Council could actually buy out and commence operating NOPSI's assets within a reasonably short period of time after deciding to act.

Each of these assumptions is either unfounded, sufficiently unproven or so subject to future contingencies that none of them can responsibly be relied upon as a basis for a buyout of NOPSI now or in the foreseeable future.

Background information essential to a more complete understanding of the legal and financial context in which any attempted buyout would operate is summarized in Section 2 of this Legal Analysis and is more fully discussed in the Appendix. Additional background information may be found in the following documents, which are referred to throughout this Legal Analysis:

- Ordinance No. 6822 C.C.S. of the City of New Orleans, April 21, 1922 (the "1922 Settlement Ordinance") (Copy in Appendix), amended by Ordinance No. 7068 C.C.S. of the City of New Orleans, September 2, 1922 ("Ordinance No. 7068 of 1922") (Copy in Appendix) (Collectively, the "1922 Ordinances")
- Resolution No. R-86-112 of the Council of the City of New Orleans dated March 20, 1986 (the "1986 Rate Resolution") (Copy in Appendix)
- Memorandum dated January 5, 1983 from Richard J. Pierce, Jr. to Salvador Anzelmo, City Attorney, regarding "Potential City Responsibility for Contract Obligations of New Orleans Public Service Inc. and Louisiana Power & Light Co." (the "Pierce Memorandum")
- Report to the City Council of the Task Force on Municipalization and Alternatives (the "Task Force") dated June 21, 1984 (the "1984 Task Force Report")
- Report to the City Council of the Task Force dated January 17, 1984 [sic: actual date January 17, 1985] (the "1985 Task Force Report") (Copy in Appendix)

- Document entitled "Engineering Report -- Preliminary Study -- Electric Utility Acquisition" dated May, 1984 prepared by R. W. Beck and Associates for the City Council (the "1984 Beck Preliminary Study")

- Document entitled "PRELIMINARY DRAFT - Letter Report - Update of Preliminary Study, Electric Utility Acquisition" dated February 21, 1986 prepared by R. W. Beck and Associates for the City Council (the "1986 Beck Preliminary Draft Report")

- Document entitled "Analysis of the Impact of Municipalization on Electric Ratepayers of the City of New Orleans" dated February 28, 1986 prepared by Black & Veatch Consulting Engineers (the "Black & Veatch Initial Report")

- Document entitled "Black & Veatch Analysis of R. W. Beck Reports Related to Electric Utility Acquisition by the City of New Orleans" dated May, 1986 prepared by Black & Veatch Consulting Engineers (the "Black & Veatch Update Report")

- Moody's Municipal Credit Report: New Orleans, Louisiana, dated September 30, 1986 (Copy in Appendix)

- Letter from the U.S. Department of the Treasury to the County Executive of Suffolk County, New York dated July 28, 1986 (the "Treasury Department Letter") (Copy in Appendix)

In addition, this Legal Analysis will use the following widely understood acronyms: "AP&L" and "MP&L", standing for Arkansas Power & Light Company and Mississippi Power & Light Company, operating company subsidiaries of Middle South Utilities, Inc.; and "FERC", standing for the Federal Energy Regulatory Commission, the principal Federal energy regulatory

agency, located in Washington, D.C.

2. SUMMARY OF BACKGROUND INFORMATION RELATING TO THE POSSIBILITY OF CITY COUNCIL BUYOUT OF NOPSI.

The Appendix to this Legal Analysis contains an analysis of background information essential to a more complete understanding of the legal and financial issues involved in a possible buyout of NOPSI. This background information relates to: the City ordinances which grant the City its option (referred to below as the "Option") to purchase all of NOPSI's electric utility assets (see Appendix, Section A.1); the legal and contractual process by which the City's Option must be exercised (see Appendix, Section A.2); certain open legal issues relating to any exercise of the City's Option (see Appendix, Section A.3); and a brief discussion of the different legal proceedings which would be involved in any buyout of LP&L's assets, which are not subject to the City's Option (see Appendix, Section A.4). The background information discussed in the Appendix is summarized below:

1. The City of New Orleans Ordinance granting NOPSI the franchise under which it operates was adopted in 1922. The relevant 1922 Ordinances grant the City an Option to buy all of NOPSI's assets "of every description" at a price to be established through a given formula. However, these 1922 Ordinances are silent as to the practical and legally valid means by which the Option may be exercised, providing no legally certain steps by which the City might proceed to accomplish a buyout. Furthermore, enormous and legitimate

differences of opinion exist between the City Council and NOPSI as to the Option price and other compensation which the City must pay for NOPSI's assets and as to the assets and associated obligations which the City acquires upon exercising the Option. In this connection, it is our opinion that upon exercising the City's Option, the City would acquire NOPSI's Grand Gulf energy rights <u>and</u> associated obligations. (See Appendix, Sec. A.1)

2. The City Council apparently contemplates initiating buyout efforts by giving NOPSI "<u>notice of its intent</u>" to exercise the Option, a step which would cause NOPSI tremendous harm in its ability to maintain the financing needed for continued operations. Giving NOPSI such a notice of intent is not sanctioned by any agreement between the City and NOPSI. For this reason, it is our opinion that the City has no legal basis to initiate buyout by giving such a notice of intent, and the City would be legally responsible for the potentially enormous and foreseeable adverse consequences to NOPSI which would flow out of the giving of a notice of intent.

The City could initiate a buyout by <u>actually exercising the Option</u>. However, such action legally obligates the City to take and pay for NOPSI's properties upon exercising the Option or, at the latest, reasonably promptly thereafter, and the City would be legally responsible for the harm caused to NOPSI by acting in a manner inconsistent with that obligation. (See Appendix, Sec. A.2)

3. NOPSI, the City Council, and numerous other parties have an interest in the conditions under which the City Council could buy out NOPSI. Interested parties include State and local officials and consumers in Arkansas, Louisiana, Mississippi and Missouri. These interested parties have interests which would conflict with crucial objectives of any buyout plan. Conflicting interests would likely be reflected in strong opposition to the City Council on open legal issues affecting objectives crucial to any buyout plan. These issues include the following:

<u>Open Legal Issue No. 1.</u> If the City Council were to exercise the City's Option and buy out NOPSI's electric utility assets, would the Grand Gulf contract obligations/FERC-mandated allocations of Grand Gulf capacity be binding on the City, City ratepayers and/or the regulated assets of NOPSI acquired by the City? If not, to whom would Grand Gulf capacity be reallocated: LP&L customers? MP&L customers? AP&L customers?

<u>Open Legal Issue No. 2.</u> What price and other compensation must the City pay to buy out NOPSI's assets by exercising the City's Option?

<u>Open Legal Issue No. 3.</u> What FERC authorization or approval of a City Council buyout of NOPSI is required? If FERC authorization or approval is required, what conditions would FERC impose in authorizing the City Council buyout?

In view of the irreconcilable differences of opinion between

NOPSI and the City Council on these open legal issues, it is clear that these open legal issues are virtually certain to be extensively litigated in regulatory and court proceedings before they could be conclusively resolved.
(See Appendix, Sec. A.3)

4. LP&L's Orleans Parish assets, unlike those of NOPSI, are not subject to the City's purchase Option. For this reason, any attempted buyout of LP&L's Orleans Parish assets would involve an expropriation proceeding. Expropriation proceedings are court proceedings subject to a variety of constitutional protections for persons whose property is being expropriated. The City Council's acquisition of LP&L's assets by expropriation proceedings would involve many of the same issues likely to be raised by interested parties in connection with any buyout of NOPSI. Expropriation of LP&L assets would complicate NOPSI buyout efforts because of the involvement of two completely different types of legal proceedings not susceptible to easy coordination. Such proceedings would also greatly complicate any attempt by the City Council to retreat from efforts to acquire NOPSI and LP&L without compensating NOPSI and LP&L for the damages caused by those actions. (See Appendix, Sec. A.4)

3. THE PUBLIC FINANCING PROCESS.

During the past 100 years or so, state and local governments desiring to issue public debt have found it necessary to employ bond counsel having specialized knowledge

and recognized competence in municipal bond financing to structure the transactions and deliver the opinions required by persons who may wish to purchase the bonds. Over this period, a relatively well-defined body of municipal bond law has emerged. In addition, bond counsel, underwriters and other professionals have developed certain municipal bond financing practices and techniques. These practices and techniques have been tested by the courts, the municipal bond markets and others, and have been found to involve legally valid and financially appropriate methods of issuing municipal debt. The public financing process utilizing these practices and techniques may be characterized as a fairly standardized (if complex) process which is understood and accepted by bond issuers, bond counsel and bond markets.

Municipal bond purchasers require a high degree of certainty in making these investments. For this reason, bond issuers and bond purchasers have traditionally attempted to follow very closely the well understood and accepted public financing process and techniques. During the 1980's, some issuers, bond counsel and underwriters have attempted to develop other concepts and techniques for issuing municipal bonds which differ from those more clearly understood and accepted. These mostly untested concepts and techniques have arisen largely to circumvent limitations in, and to take maximum advantage of, Federal tax and securities laws.

This Section 3 will analyze the process by which the City Council would issue the type of bonds which would be used to

finance a NOPSI buyout. Subsection 3.1 will provide an overview of the time-tested and proven process of issuing such bonds. Subsection 3.2 will analyze specific issues which the City Council would find necessary to address in attempting a buyout following this process. Subsection 3.3 will analyze newer, less certain municipal bond financing techniques and concepts which the City Council might be pressured to consider.

3.1 OVERVIEW OF THE SETTLED PUBLIC FINANCING PROCESS AND TECHNIQUES.

In a typical tax-exempt municipal bond transaction, the legally tested and financially settled process for obtaining public financing of a project is ordinarily a fairly straightforward proposition. The right team of trained professionals may readily accomplish the typical transaction when the basic prerequisites are satisfied and all of the principals involved actively cooperate to accomplish the transaction. Governmental regulatory agencies and other third parties typically have little or no legal right or practical interest in interfering with the typical transaction.

Briefly, the legally tested and financially settled process followed in a typical tax-exempt municipal bond financing might be described in four phases, as follows:

1. Feasibility Phase - This phase involves a fundamental and detailed assessment and determination of the basic feasibility of accomplishing the transaction and of achieving the benefits sought to be realized from the financing. The engineering, financial and legal

feasibility of the project is carefully considered by experts in those fields who assess whether the objectives sought to be accomplished will be satisfied. Based on determinative conclusions that those objectives will be satisfied, the principals come to an understanding among themselves regarding the financial structure and other financial aspects of the transaction. The accomplishment of these steps is intended to permit a team of public finance professionals to formally commence the financing with the second (or Formal Action) phase.

The matter of engineering and economic feasibility of the project deserves additional discussion. For a bond transaction financing the acquisition or construction of an electric utility system, a comprehensive feasibility study conclusively demonstrating the economic and engineering feasibility of the contemplated project plan is ordinarily developed and completed at this initial stage, before the public financing proceeds further. <u>Such a comprehensive feasibility study is absolutely essential to any sale of bonds for such a purpose. Certainly, neither the 1984 Beck Preliminary Study nor the 1986 Beck Preliminary Draft Report satisfies the requirement that there be such a comprehensive feasibility study of a buyout plan prior to the sale of the bonds, nor do they adequately resolve numerous buyout issues analyzed in the Black & Veatch Initial Report and the Black & Veatch Update Report.</u>

2. Formal Action Phase - This phase of the public financing process ordinarily involves official action by the governmental issuer of the bonds. Such official action authorizes the taking of steps necessary to issue the bonds, the retaining of underwriters and bond counsel, and other formalities. In our experience, the governmental entity commences this phase and commits itself to undertake the project plan only after its engineering and economic feasibility has been proven and the fundamental financial structure and other aspects of the bond financing have been understood and accepted by the principals during the Feasibility Phase.

3. Documentation and Proceedings Phase - This phase involves the completion of legal documents and legal proceedings necessary for the issuance of the bonds. In this phase, at least three tasks are undertaken: bond documents are drafted in accordance with the financial structure and other aspects accepted by the principals during the Feasibility Phase; "due diligence" and other legal and financial tasks are completed; and the governmental entity conducts the official proceedings necessary to authorize issuance of the bonds. Tasks carried out during this phase are rarely controverted. Rather, the focus of these efforts is for the team of bond professionals to carry out the wishes of the principals to the financing.

4. Bond Marketing and Funding Phase - This phase involves three elements: the marketing, sale and issuance of the bonds in accordance with the terms previously agreed upon; the funding of various accounts by the governmental entity; and the utilization of bond proceeds by the governmental entity to acquire or construct the project. It is fundamental that, as a practical matter, this phase of the public financing process cannot be initiated by the marketing of bonds until all relevant factual questions and legal issues have been finally resolved to the satisfaction of the principals and the bond professionals hired by them.

Municipal bond issuers ordinarily proceed beyond the Feasibility Phase only if and when the contemplated period of time required to complete the Formal Action Phase, the Documentation and Proceedings Phase and the Bond Marketing and Funding Phase is relatively brief -- say, one year or less. Public financings expected to extend substantially beyond such brief periods are rarely taken into the Formal Action Phase until the time expected to be required has been reduced. This is because changes in circumstances and applicable law are likely to occur with the passage of time. Material changes may render useless all of the work previously done, may require that the financing be completely restructured or abandoned, and may create significant practical and legal problems for the principals in attempting to carry on with other activities during the process.

3.2 THE SETTLED PUBLIC FINANCING PROCESS AS IT APPLIES TO THE POSSIBILITY OF A NOPSI BUYOUT.

According to published accounts, the City Council has begun to actively consider how it might accomplish a NOPSI buyout by exercising the City's purchase Option. In our judgment, any such attempted buyout will require a number of years to complete -- perhaps as much as a decade or more of regulatory proceedings, litigation and studies. Under present circumstances, an attempted buyout would be an extraordinarily complicated and fragile venture which will, in all likelihood, never accomplish the results sought to be achieved.

The basis for these conclusions is set forth in this Subsection 3.2. Subsection 3.2.1 will express and analyze some of the basic assumptions being made by proponents of the buyout proposal. Subsection 3.2.2 will analyze in more detail the complexities involved and time required in concluding any buyout of NOPSI, key factors in the assumptions being made by those buyout proponents.

3.2.1 BASIC ASSUMPTIONS BEING MADE BY PROPONENTS OF THE PROPOSAL TO EXERCISE THE CITY'S OPTION AND BUY OUT NOPSI'S ASSETS.

Underlying the proposal that the City Council exercise the City's Option and buy out NOPSI are certain assumptions which proponents hope would be accomplished by that course of action. These assumptions are sometimes unstated, and some of them apparently have not been given much thought. Further, there are scant few persons advocating buyout -- and, in particular, very few experts -- who have in any meaningful way

staked their professional reputation and potential for professional liability to the City and its citizens behind the validity of these assumptions.

Four of the most important of these assumptions are expressed and analyzed as follows:

ASSUMPTION NO. 1: That buyout actions will effectively reallocate FERC-mandated Grand Gulf energy allocations away from Orleans Parish ratepayers, thus avoiding Grand Gulf energy costs.

Some proponents of a NOPSI buyout unequivocally state that the City Council can avoid NOPSI's contractual and FERC-mandated allocations of Grand Gulf energy by exercising the City's Option to purchase NOPSI's electric utility assets. For example, a letter to the Editor of the Times-Picayune states:

> "A public buy-out of NOPSI's assets, as provided for in NOPSI's franchise, will void the Grand Gulf contract."

Letter to the Editor, The Times-Picayune, October 12, 1986 (p. B-2) [Emphasis supplied].

Assumed within this theory is the position that, upon exercising its Option, the City is not obligated to purchase all of NOPSI's electric utility assets, and may pick and choose among the electric utility assets of NOPSI which it wishes to purchase. In this connection, the City Attorney has suggested to the U. S. Fifth Circuit Court of Appeals that the City might exercise its Option and purchase certain of NOPSI's "physical assets" while

rejecting other electric utility assets of NOPSI, including NOPSI's legal and contractual rights to Grand Gulf capacity and energy:

> ". . . some citizens suggested that the interest of the City and of its ratepayers would be best served if the City exercised the purchase option granted by NOPSI in 1922 so that the City could acquire the physical assets necessary to operate a municipal electric utility system. Such an exercise of the option would leave NOPSI in possession of its gas utility plant and of whatever other non-electric properties it possessed in Orleans Parish, together with its incorporated assets, such as its right to electric capacity and energy from Grand Gulf (which rights NOPSI could market as it pleased, subject to applicable law)."

Original Brief of Defendants-Appelles [sic] at 8-9, Middle South Energy, Inc. and New Orleans Public Service Inc. v. The City of New Orleans and The Council of the City of New Orleans, No. 85-3619 (U.S. 5th Circuit Court of Appeals 1986) [Emphasis supplied].

Another approach contends that, by simply giving NOPSI notice of its intent to exercise the City's Option, the City Council may, in effect, reallocate Grand Gulf energy and thereby avoid further Grand Gulf costs. Thus, in Section 32 of the 1986 Rate Resolution (see copy in Appendix), the City Council states:

> ". . . the City contends that it has the legal right to purchase and acquire, at the City's option, all of the property and assets owned by NOPSI, without obligation to continue a deferral schedule [established in the 1986 Rate Resolution to pay for Grand Gulf energy], and without remuneration or compensation for any or all of NOPSI's obligation incident to Grand Gulf, except for the deferrals of Grand Gulf 1 costs that have accumulated pursuant to this [1986 Rate Resolution] settlement prior to the City providing official notice to NOPSI of its intent to municipalize."

That is, the City Council recognizes in the 1986 Rate Resolution that NOPSI is entitled to compensation for Grand

Gulf 1 costs which are accumulated pursuant to the 1986 Rate Resolution "prior to the City providing official notice to NOPSI of its intent to municipalize". However, the City Council contends it may acquire NOPSI's assets "without remuneration or compensation for any or all of NOPSI's [other] obligation incident to Grand Gulf", including Grand Gulf energy costs accumulating after notice of intent has been given.

> ANALYSIS: Conflicting opinions of attorneys indicate that this assumption cannot responsibly be relied upon because it can be decided with finality only by the courts after extensive regulatory proceedings and litigation.

Attorneys for the City and attorneys for NOPSI have presented conflicting opinions regarding the issue whether buyout actions will reallocate Grand Gulf energy away from ratepayers in the City. We disagree with any conclusion that, upon exercising the Option, the City would not be bound by NOPSI's legal and contractual obligations with respect to Grand Gulf energy. As is discussed more fully at Appendix Sections A.1 and A.3, it is our opinion that, by exercising the Option, the City would acquire NOPSI's legal and contractual rights to receive Grand Gulf energy and, at the same time, would be deemed to have assumed and been delegated the associated Grand Gulf energy obligations of NOPSI. However, for purposes of analyzing this assumption, we do not attempt to resolve that open legal issue, precisely because conflicting opinions of attorneys on this crucial issue mean that the matter is

virtually certain to be the subject of extensive litigation in the event further buyout actions are taken. The issue will be conclusively and finally resolved only by FERC and the court systems. Opinions of attorneys regarding the legal issues arising out of this assumption may be informative; however, where attorneys give conflicting opinions about material and crucial matters which seem certain to be litigated, only a final decision of the courts will form a valid basis for relying on the assumption in proceeding with a public financing.

ASSUMPTION NO. 2: That the City may utilize tax-exempt bonds to finance a buyout of NOPSI's electric utility assets.

Municipal bonds which qualify for tax-exempt treatment may be sold with a lower interest rate cost to the issuer than if the bonds do not qualify for tax-exempt treatment. Tax-exempt treatment is largely determined by Federal law under the Internal Revenue Code and regulations at the time the bonds are issued.

The 1984 Beck Preliminary Study contemplates, at page I-13, that the City would issue tax-exempt revenue bonds for any NOPSI buyout:

> "For a municipally owned electric utility, outside capital for major construction or acquisition programs is obtained through the sale of revenue bonds, interest on which is exempt from Federal, and in some instances, state and local income taxes." [Emphasis supplied.]

Consistent with this approach, the City Council Task Force submitted its 1985 Task Force Report to the City Council,

recommending that the City establish a public power authority "under the provisions of Louisiana Revised Statute 33:4161 and particularly under the provisions of Section 4172 thereof" and that the public power authority purchase NOPSI and LP&L assets "through the issuance of revenue bonds" secured by the revenue of the authority. Thereafter, the City Council adopted Ordinance No. 10394 M.C.S. (Feb. 28, 1985) establishing a public power authority having the power to issue municipal bonds under the above statute.

ANALYSIS: The tax-exempt status of bonds which, if issued, would be issued a number of years in the future is so speculative that present reliance on their tax-exempt status would be imprudent and without justification.

Whether or not the City may utilize tax-exempt bonds to finance a buyout of NOPSI is not a matter which can be determined at the present time. The tax status of any municipal bonds which might be issued to finance a buyout of NOPSI would certainly be subject to law in existence when the bonds are issued. As is discussed more fully in Appendix Section A.3, material legal issues relating to any buyout plan are known to be in dispute among persons with the standing to litigate them. Responsible underwriters and bond counsel would not attempt to issue municipal bonds to finance a NOPSI buyout under legally tested and financially settled public financing concepts until all material regulatory proceedings and litigation affecting the bonds and the assets to be acquired

from their proceeds has been finally resolved by regulatory agencies and the courts.

In our judgment, the material legal disputes now known to exist mean that a number of years -- perhaps as much as a decade or more -- of regulatory hearings and litigation in the courts may be expected before matters in dispute could be resolved sufficiently to permit issuance of the bonds. The tax status of municipal bonds which may be issued so far in the future is extremely speculative. Present reliance on the tax-exempt status of such bonds which may be issued so far in the future would be imprudent and without justification.

ASSUMPTION NO. 3: That buyout and operation of NOPSI's electric utility assets is feasible from an engineering and economic standpoint.

The 1985 Task Force Report stated the conclusion of the City Council Task Force that "events since the [1984 Task Force Report] indicate significant savings over the next ten years would be realized by municipalization." Buyout proponents now apparently believe that the engineering and economic feasibility of a plan of buyout has been established: "The merits of municipalization are enormous . . . . I urge the Council to municipalize . . . ." Letter to the Editor: "Municipalize NOPSI now", The Times-Picayune, October 16, 1986 (p. A-22).

ANALYSIS: No buyout plan has been evaluated and conclusively demonstrated by qualified consulting engineers to be feasible from engineering and economic standpoints.

A comprehensive study by qualified consulting engineers conclusively demonstrating and opining on the engineering and economic feasibility of a plan to buy out NOPSI and LP&L and operate an Orleans Parish utility would be an absolute prerequisite to obtaining public financing for that purpose. Certainly, neither report of the Task Force satisfies this prerequisite. Neither the 1984 Task Force Report nor the 1985 Task Force Report purports to technically address the engineering and economic feasibility of any buyout plan. These reports discuss only "potential" and "projected" savings to the City in the event of a buyout. In any event, bond markets certainly would not view the opinion or recommendation of the Task Force as qualified on the matter of the engineering and economic feasibility of any buyout plan.

The 1984 Beck Preliminary Study and the 1986 Beck Preliminary Draft Report analyze certain assumptions regarding a buyout. Both documents are preliminary in nature. The 1984 Beck Preliminary Study is entitled "ENGINEERING REPORT - PRELIMINARY STUDY, ELECTRIC UTILITY ACQUISITION". The 1986 Beck Preliminary Draft Report is entitled "PRELIMINARY DRAFT - Letter Report - Update of Preliminary Study, Electric Utility Acquisition". That letter report is unsigned, underscoring its status as a "PRELIMINARY DRAFT".

Those R. W. Beck preliminary documents set forth a

technical analysis of a great deal of material. Notably missing, however, is any conclusion, even in preliminary draft form, that any plan to buy out and operate NOPSI's assets is feasible from engineering and economic standpoints. Furthermore, those R. W. Beck preliminary documents do not resolve numerous buyout issues analyzed in the Black & Veatch Update Report. Indeed, the Black & Veatch reports directly contradict key elements of the R. W. Beck preliminary documents and cast serious doubt on R. W. Beck's conclusions. At this point, then, the engineering and economic feasibility of any buyout plan is an open issue which the 1984 Beck Preliminary Study and the 1986 Beck Preliminary Draft Report do not resolve; certainly those preliminary documents are inadequate for the purpose of proving the economic and engineering feasibility of a buyout for the purpose of selling municipal bonds.

ASSUMPTION NO. 4: That by simply acting on a buyout decision, the City Council could actually buy out and commence operating NOPSI's assets within a reasonably short period of time after deciding to act.

A columnist in the Times-Picayune states:

> "The time must be fast approaching when the New Orleans City Council will decide whether to buy out NOPSI and establish a municipal utility.
>
> Proponents of municipalization suggest this simple move will save the city close to $1 billion."

"NOPSI buyout on the back burner", The Times-Picayune, September 28, 1986 (p. B-3) [Emphasis supplied].

ANALYSIS: The City Council has recognized that this assumption is not valid. The nature of the issues and interests involved is such that a buyout is likely to be contested for a number of years -- perhaps as much as a decade or more -- before crucial buyout issues would be resolved.

Contrary to assertions of buyout proponents, the City Council recognizes that buyout of NOPSI's electric utility assets cannot be accomplished in a short period of time. In the 1986 Rate Resolution, the City Council states:

> " Finally, we have given and continue to give serious consideration to municipalizing NOPSI's facilities. However, that option, even if it were activated in the near future, would not be likely to shield ratepayers from the "rate shock" of a Grand Gulf pass-through until the takeover was completed -- a process that could take several years."

1986 Rate Resolution, p. 3 [Emphasis supplied].

This Legal Analysis, in Section 2 above and in Appendix Section A.3, analyzes several open legal issues which are virtually certain to be extensively contested before regulatory bodies and in the courts if the City Council takes formal action with respect to a NOPSI buyout. The nature of the issues and the economic and political interests involved for such a large number of persons is such that these matters are likely to be contested for a number of years -- perhaps as much as a decade or more -- before crucial buyout issues would be finally resolved. Based on the statement of the City Council in the 1986 Rate Resolution, it is highly unlikely that the City Council could actually buy out and commence operating NOPSI's assets within a period of time consistent with the assumptions of buyout proponents.

We note here that the City Council is being pressured to initiate buyout actions on the grounds that the matter is simple and has been sufficiently proven to be undertaken. *However, not even the City Council Task Force has been willing* to take on the responsibility of recommending that the City buy out NOPSI's assets. It has been reported that the City Council Task Force "came out unanimously in favor of a buy-out in January, 1985", see "NOPSI buyout on the back-burner", The Times-Picayune, September 28, 1986 (p. B-3). In fact, the Task Force recommended "unanimously" (with two abstentions) only "that the City Council give notice of its intention to undertake to purchase" the assets of NOPSI and LP&L, and stated:

> "The responsibility for what must be done now rests in the hands of the members of the City Council."

See 1985 Task Force Report, p. 4 [Emphasis supplied]. Thus, the Task Force did not come out "unanimously in favor of a buy-out". The Task Force came out unanimously (with two abstentions) only in favor of the City Council giving "notice of its intention to undertake" a buyout, a very different legal and practical proposition. (See Appendix, Section A.2.) Having made this tentative recommendation, the Task Force then quickly washed its hands of the matter, clearly placing any further responsibility for the matter "in the hands of the members of the City Council."

We feel there is a good reason why buyout proponents wish to pass on to someone else responsibility for the decision. Each of the buyout assumptions discussed above is either unfounded, sufficiently unproven or so subject to future

contingencies that none of them can responsibly be relied upon as a basis for a buyout of NOPSI now or in the foreseeable future. Although buyout proposals may seem attractive to some at first blush, careful analysis shows that the buyout action advocated would clearly be imprudent.

3.2.2 COMPLEXITIES INVOLVED IN CONCLUDING A PUBLIC FINANCING AND BUYOUT OF NOPSI.

The public financing process which would likely unfold from formal action of the City Council to exercise the City's Option and buy out NOPSI would be substantially more complicated and difficult to achieve than the process outlined in Subsection 3.1 for a typical municipal bond financing transaction.

The typical multi-million dollar public financing transaction is a very complex matter requiring a high degree of coordination and cooperation among the principals and other persons having an ability to affect the transaction. Any effort to buy out and commence operating the assets of an existing, highly-complex and capital intensive business such as NOPSI would require an even higher, extraordinary level of coordination and cooperation among persons affected by the transaction. The state officials of other states and other interested persons having the legal ability to interfere with a NOPSI buyout are unlikely ever to willingly cooperate in any buyout plan which could reallocate Grand Gulf energy from Orleans Parish ratepayers to ratepayers outside Orleans Parish. This being the case, it is highly unlikely that the

level of cooperation and coordination needed to address the complexities involved in a buyout of NOPSI will ever be achieved in the present context.

Some of the complexities which the City Council would face in the public financing of a buyout of NOPSI are as follows:

(1) Feasibility Phase - This phase would involve the resolution of a variety of engineering, financial and legal prerequisites which must be resolved before the City Council could prudently proceed with exercising the City's Option. Some of these engineering, financial and legal prerequisites are discussed below:

(a) Engineering Prerequisites

As mentioned above, one prerequisite to any public financing would be completion of a comprehensive study by qualified consulting engineers conclusively demonstrating the engineering and economic feasibility of a plan to buy out NOPSI's assets and operate a City utility. Such a comprehensive feasibility study would necessarily address such issues as: (1) the identification of specific NOPSI and LP&L assets to be acquired and the timing of their acquisition; (2) the identification and detailed plans for sources of power generation for the City utility over the long term; (3) the sources of power generation and power interconnections, physical inventory items, etc. to be called upon routinely and during peak, emergency and other periods over the medium term; and (4) fuel and operating cost projections. Such a comprehensive feasibility study by its nature would necessarily

analyze and base opinions on a massive amount of interrelated information about a possible buyout. Any changes in one aspect of the study could be expected to have a ripple effect on other aspects of the study.

In addition, such a comprehensive feasibility study should address in rather specific terms many other factors important to bond purchasers. Such factors would include the practical means of assuring bond purchasers that the City utility would be properly managed and the bonds repaid. Of particular concern to bond purchasers would be political pressures on the City Council to make decisions which conflict with responsible City utility management policies.

Certainly, neither the 1984 Beck Preliminary Study nor the 1986 Beck Preliminary Draft Report meets this engineering prerequisite. Furthermore, preparing such a comprehensive feasibility study before all regulatory approvals and matters in litigation have been finally resolved would in all likelihood prove to be a largely futile exercise. Many of the assumptions forming the basis for such a comprehensive feasibility study might later be found invalid as a result of regulatory and court proceedings or as a result of material changes in the facts which occur with the passage of time. For example, a comprehensive feasibility study might be prepared at the present time based on the assumption that FERC-mandated allocations of Grand Gulf capacity and costs are not binding upon City ratepayers. If, ultimately, the courts were to hold that FERC-mandated allocations of Grand Gulf capacity and costs

are binding on City ratepayers, a comprehensive feasibility study based on the assumption found to be incorrect would necessarily be inadequate for the purpose of issuing bonds.

Alternatively, the City Council might consider a feasibility study based on a number of alternative assumptions. It is impractical to expect that such a study would necessarily address the exact set of events which might occur years in the future. In any event, it would be necessary that such a study be updated after the passage of a substantial period of time. Updating the study after the passage of a substantial period of time would require that the entire matter be re-studied, meaning that the City would incur the expense of such a study a second time. For these reasons, a feasibility study prepared now based on a number of alternative assumptions occurring years in the future is simply impractical if it is to be used for the purpose of issuing municipal bonds.

Any feasibility study prepared before the conclusion of determinative regulatory and legal proceedings and substantially before the bond proceeds could be utilized would be, by definition, preliminary, and would be conditioned upon legal and factual assumptions made at the time of its delivery. Such a conditional feasibility study clearly would not be sufficient for the purposes of marketing or issuing the bonds.

(b) Financial Prerequisites

One financial prerequisite to public financing of a buyout is to project the amount, character and timing of the debt

issues involved.

The amount of debt which must be incurred will depend upon a variety of factors, including: (1) the NOPSI assets to be acquired, the method of acquisition, and the applicable pricing and compensation formulas; (2) the LP&L assets to be acquired, the method of acquisition and applicable compensation formula; (3) projected working capital needs for a City utility; and (4) the type and timing of electric power generating capacity to be utilized and acquired. Many issues relating to these factors cannot be addressed until the related open legal issues have been conclusively resolved by regulatory proceedings and litigation.

The character of debt issues involved would depend upon the type of assets involved and the treatment of those issues under Federal tax law at the time the debt is issued. Presumably, a portion of the indebtedness would be long-term bonds and a portion would be short-term indebtedness such as certificates of indebtedness or anticipation obligations. The extent to which interest on this debt would be Federally tax-favored would depend upon Federal tax law when the debt instruments are issued, a matter which cannot be known at this time.

The timing and number of bond issues which the City would find it necessary to issue in buying out NOPSI's and LP&L's assets would depend upon a variety of engineering, investment banking, legal and other considerations. Multiple bond issues (and multiple expenses) could be expected under present

circumstances. This is because it would be extraordinarily difficult for the City Council to coordinate all of the elements involved in the buyout of NOPSI and LP&L in only one debt issuance. Elements requiring coordination include: the acquisition of NOPSI's assets by exercising the City's Option; conclusion of proceedings expropriating LP&L's assets and fixing the price and damages for which LP&L would be compensated by the City; and financing and constructing long-term power generating facilities. The cost of those multiple bond issues would be borne by electricity customers of a City utility.

A second financial prerequisite would be projecting the burden of annual debt service charges, based on the amount of debt to be issued and the projected interest rates on such debt, and also projecting the burden of other charges, such as the City's obligations to former NOPSI employees under NOPSI pension plans, personnel policies and agreements. All of these debt service and other charges would necessarily be reflected in electricity rates which Orleans Parish customers would be required to pay. Failure of the bonds to qualify for Federal tax exemption would radically affect buyout analysis by changing annual debt service charges which City utility ratepayers would bear. In this connection, it is important to note that the chief architect of tax policy for the U. S. Treasury Department, the Assistant Secretary of the Treasury for Tax Policy, recently wrote the County Executive of Suffolk County, New York and strongly questioned whether revenue bonds

proposed to be issued by Suffolk County, New York, in connection with the proposed hostile buyout of Long Island Lighting Company ("LILCO") would be exempt from Federal income taxes. See, Treasury Department Letter to the County Executive of Suffolk County, New York, dated July 28, 1986, in Appendix. That Treasury Department Letter states in part on page 2:

> "Should you [Suffolk County, New York] proceed with the [municipal bond] offering, we will direct the Internal Revenue Service to conduct an in-depth audit of the matter and to proceed as necessary, depending on the results of the audit. Please inform potential purchasers of the bonds of the concerns expressed by the Department of the Treasury in this letter."

A third financial prerequisite would be the need to project the effect of a buyout on City tax revenues. Presumably, any City utility would make payments to the City in lieu of taxes to compensate for lost City tax revenues, such as franchise, utility and ad valorem taxes presently paid by NOPSI and LP&L. Such payments in lieu of taxes, of course, would be reflected in the electricity rates to be charged to consumers.

Yet another financial prerequisite to operation of any City utility is insurance and risk management planning for the City and the City utility. An operating utility has huge and enormously complex insurance and other risk management needs. NOPSI presently shares the overhead and risks of an extremely sophisticated risk management and insurance function through a Middle South subsidiary which is not subject to the City's Option. The cost of appropriate insurance and other risk management mechanisms for a City utility would be reflected in the rates which would be paid by consumers. Such mechanisms

would certainly need to be in place before buying out NOPSI's assets. However, the cost and availability of appropriate insurance and other risk management mechanisms apparently have not even been addressed in any meaningful way at this point. In this day of uncertainty in the insurance industry, particularly for municipalities, development of such mechanisms in a cost-effective manner would require that a high level of novel and sophisticated risk management techniques be brought to bear.

Similar analysis would apply to the highly-specialized data processing and fuel purchasing and transportation needs of a modern utility. The computer hardware and software needed by a modern utility is highly-specialized -- in many cases, specially designed to meet the unique needs of the particular utility user. There is no doubt that the ability to purchase and transport large volumes of fuel reliably and cost-effectively is tremendously important to the operating economics of a modern utility. NOPSI shares the overhead and benefits of highly specialized data processing hardware and software systems and fuel purchasing and transportation equipment and systems through Middle South subsidiaries not subject to the City's Option. Planning for these needs must be relatively complete and developed for implementation before their public financing can even be contemplated. However, these needs apparently have not even been addressed in any meaningful way at this point.

The foregoing points make it clear that, if the City

Council were to decide to proceed further to acquire NOPSI and LP&L, it would be prudent, if not necessary, for the City Council to retain a host of highly-specialized advisors in a broad range of fields long before taking any formal action committing the City to a buyout. These fields in which specialized advice would prudently be sought include: investment banking, municipal bond law, electric utility engineering and management, pension plans, Federal taxes, personnel compensation, consulting engineering, insurance and risk management, data processing, fuel purchasing and transportation and other areas of highly specialized expertise. It is important to note that bond underwriters might well insist that nationally-recognized experts not found locally be hired for many of these tasks.

(c) <u>Legal Prerequisites</u>

One legal prerequisite to any public financing of a buyout of NOPSI, already mentioned, would be the need for legal clarity as to the tax-exempt status of the proposed bonds. If the interest on such bonds is not exempt from Federal income taxation, not only would their effective interest rate be significantly higher, but lack of tax-exempt status may prove to mean, under still emerging interpretations of Federal securities laws, that such bonds must be registered as "securities" with the Federal Securities and Exchange Commission (thereby involving another layer of on-going Federal involvement).

In today's climate in the U. S. Congress, ever-increasing

pressures appear likely to make the tax status of all Federally tax-favored bonds a high-profile target over the next few years. The recently enacted Tax Reform Act of 1986 substantially reduced the tax benefits associated with a broad range of municipal bonds, including the type of bonds which would be used to fund any buyout of NOPSI. See generally, "Tax Bill's Crackdown On Municipal Bonds Angers Local Officials," The Wall Street Journal, October 22, 1986 (p. 1). This Federal legislation has now imposed major limitations on the use of tax-exempt financing by municipal utilities. In particular, the Tax Reform Act of 1986 has severely limited the types of contracts which municipal utilities may enter into with outside management and with business and industrial customers, and has imposed other limitations on the financing of "output facilities" and on unrelated and disproportionate use of bond proceeds. In view of the Federal budgetary pressures exerted by the Gramm-Rudman-Hollings legislation and controversy, as well as pressures for tax simplification and reform, the tax status of almost all types of municipal bonds will be under constant attack for the foreseeable future from those members of Congress responsible for the Federal budgeting process as well as those in favor of tax simplification and reform.

A second legal prerequisite to public financing of a NOPSI buyout would be the conclusion of all litigation, regulatory proceedings, agreements and other legal barriers to formally commencing with buyout proceedings, including formal resolution of the legal issues discussed in Section 2 and in

the Appendix, Section A.3. These matters must be finally resolved before formally undertaking the public financing process, in order to clarify with a high degree of precision the legal framework which would govern the public financing. Any buyout and public financing commenced before these legal issues have been definitively resolved would constitute a commitment of the City Council and the City to a course of action known to be fraught with uncertainty at the most fundamental and basic levels.

(2) Formal Action Phase - The Formal Action Phase of any attempted buyout would be initiated by formally exercising the City's Option or, if the City Council chose to so act, by giving NOPSI notice of the City's intent to exercise the Option. Either of these actions would carry enormous legal ramifications for the City and for NOPSI. If the City Council were to exercise the Option, the City would thereby be legally and contractually committed to taking and paying for NOPSI's assets. Bond purchasers certainly would not be comfortable funding bonds to accomplish a buyout if the price of those assets and the answers to other critical legal issues were unknown.

If the City Council were to give NOPSI notice of the City's intent to exercise the Option and buy out NOPSI's assets, a great cloud of uncertainty would be cast over NOPSI, its assets, and its ability to repay its borrowings. It is obvious that no creditor (not even an affiliate of NOPSI) would feel comfortable with an extension of credit to a company

facing that type and extent of problem. In that circumstance, giving NOPSI such a notice of intent would create tremendous problems for NOPSI in obtaining and continuing the financing NOPSI needs for its operations. This conclusion would be even clearer if the City Council were to maintain its present contention that NOPSI is not entitled to be compensated for Grand Gulf costs accruing after the date of the notice of intent, see 1986 Rate Resolution, Section 32.

Following the analysis at Subsection 3.2.1 above and Appendix Section A.2, if the City Council gave notice of its intent to exercise the City's Option, present circumstances are such that the City would not acquire NOPSI's assets for a number of years. If the City Council gave that notice of intent but did not promptly exercise the Option and take and pay for the assets covered by the Option, in our opinion, such action would create in the City substantial potential liability to NOPSI for the damages arising out of the financial and other problems created for NOPSI by the giving of the notice of intent. In other words, such action by the City Council would expose the City to potentially enormous liability to NOPSI for damages in giving NOPSI notice of the City's intent to exercise the Option but not promptly carrying out that act.

(3) Documentation and Proceedings Phase - Regarding the completion of documentation and the conclusion of bond proceedings, these steps cannot be taken in the settled public financing process until all material litigation and regulatory proceedings have been concluded. The completion of

documentation necessary to issue municipal bonds to fund a City utility would prove to be extremely difficult as long as NOPSI, the City Council and other affected parties are on opposing sides of the many open legal issues surrounding a buyout of NOPSI.

(4) Bond Marketing and Funding Phase - Regarding the marketing, sale and issuance of bonds, funding of accounts and utilization of bond proceeds, in our judgment, bonds could not be marketed, sold or issued to fund a NOPSI buyout until all of the fundamental and interrelated engineering, economic and legal questions material to the transaction have been finally and ultimately resolved, all as discussed more fully above. This phase could not be commenced, then, until these questions had been conclusively resolved by regulatory proceedings, litigation and studies.

3.3 RELATIVELY UNTESTED APPROACHES TO PUBLIC FINANCING.

The legally tested and financially settled public financing process and techniques have been described above in Section 3.1. In recent years, some bond underwriters and others have attempted to develop a variety of relatively untested public financing concepts as alternatives to the tested and settled process and techniques, in order to overcome hurdles to municipal bond financing erected by Federal authorities.

One relatively untested approach advanced recently has been the use of taxable municipal bonds. Municipal bonds which

are taxable carry a higher rate of interest than equivalent risk tax-exempt municipal bonds because of the difference in the tax treatment of interest on the two types of bonds. Further, commentators state that taxable municipal bonds pose a variety of potential risks for bond purchasers which are not presented by tax-exempt municipal bonds. See "Taxable Municipal Bonds May be Riskier Than Traditional Muni Investors Expect", Wall Street Journal, Oct. 27, 1986 (p. 23). These risks are ordinarily addressed by the governmental borrower paying the bond purchaser a higher rate of interest than the bond purchaser could command on otherwise comparable tax-exempt bonds. If taxable bonds were utilized to fund a buyout of NOPSI and LP&L, then, the additional interest cost of the taxable bonds would be reflected in higher City utility rates.

Municipal finance commentaries make it clear that taxable municipal bonds also involve uncertainties for governmental issuers such as the City, particularly with respect to the status of such bonds under the Federal securities laws. See generally, Clark, Taxable Municipal Bonds: A Working Guide to Federal Securities Law Considerations, 7 Municipal Finance Journal 183 (1986). In certain circumstances, taxable municipal bonds lose their exemption from registration as "securities" under the Federal securities laws. Among other things, this means that such bonds registered as "securities" with the Federal Securities and Exchange Commission are subject to additional legal steps and protections for bond purchasers. These steps and protections include: the initial, costly,

registration of the bonds, a process which would further complicate timing and coordination of any City Council buyout efforts; on-going reporting requirements; and compliance with the Trust Indenture Act of 1939.

The taxable municipal bond is a very new public financing technique the legal implications of which have not yet been fully developed. Municipal finance commentaries indicate that it can be expected that a variety of presently unforeseen regulatory and legal developments will occur over time if the technique is extensively utilized and is subjected to scrutiny by the courts and governmental agencies such as the Internal Revenue Service and the Federal Securities and Exchange Commission. Id. at p. 191. Issuing taxable municipal bonds for the purpose of buying out NOPSI's assets would involve a number of uncertainties, the full implications of which would not be known for a number of years after their issuance. For these reasons, issuance of taxable municipal bonds to finance a City Council buyout of NOPSI would be a much different situation than that faced if the City were to issue legally tested, traditional tax-exempt municipal bonds.

Another approach which has been advanced in recent years involves the issuance of municipal bonds with the expectation of investing the proceeds for a period of time in some use other than the contemplated project and at a higher rate of return than the interest rate yield on the bonds. Such bonds, thought to be exempt from Federal income taxation and the Federal securities laws at the time of issuance, may prove to

be "arbitrage bonds" which are not so exempt. The County of Suffolk, New York, apparently contemplated issuing $7.3 billion in municipal bonds to finance a possible buyout of Long Island Lighting Co. ("LILCO"). The scheme was designed "to ensure that Suffolk County would not suffer any material financial detriment and indeed could reap a considerable windfall" if the bond proceeds were not used to accomplish their stated purpose of financing a hostile buyout of LILCO.

The Assistant Secretary for Tax Policy of the U.S. Department of the Treasury recently wrote the County Executive of Suffolk County, New York, in a letter dated July 28, 1986 (see copy of Treasury Department Letter attached in the Appendix). This Treasury Department Letter makes it clear that the bonds which Suffolk County, New York, contemplated issuing faced attack from the U. S. Treasury Department and the Internal Revenue Service as "arbitrage bonds" which are not tax-exempt. The Treasury Department Letter states at page 1:

> "Our concerns are based primarily upon the fact that the bond proceeds will be invested so as to ensure that the County will not suffer any material financial detriment, and indeed could reap a considerable windfall, if the bond proceeds are not used to accomplish their stated purpose."

On page 2, the letter goes on to mention that two of the key facts causing the U. S. Treasury Department to take this position were:

> " -- The difficulty that is likely to be encountered in successfully consummating a hostile take over attempt of this kind prior to the redemption date. (We are informed that LILCO will resist the take over vigorously.)"

and

" -- The fact that the bonds are structured in such a way as to ensure that the County will not suffer any material financial detriment if the bond proceeds are not used to finance the take over. This structure increases the likelihood that the take over will not be feasible and will not be consummated."

As mentioned in Subsection 3.2.2 above, the U.S. Treasury Department warned Suffolk County that it would direct the Internal Revenue Service "to conduct an in-depth audit of the matter and to proceed as necessary", if the bond offering were undertaken. According to published reports, utility analysts believe it unlikely that a hostile buyout of LILCO by Suffolk County, New York, will take place in light of the possibility of treatment of the proposed bonds as "arbitrage bonds."

The foregoing analysis indicates the dangers inherent in utilizing non-traditional public financing devices. It would certainly be prudent for the City Council to most carefully consider and fully understand the implications of using any non-traditional public financing technique or device, particularly in this time of Federal hostility to state and local public finance "gimmickry" and in this case of a buyout not welcomed by NOPSI and LP&L on the terms proposed by the City Council.

4. IMPLICATIONS OF THE PUBLIC FINANCING PROCESS AS APPLIED TO POSSIBLE CITY COUNCIL BUYOUT AND OPERATION OF NOPSI'S AND LP&L'S ELECTRIC UTILITY ASSETS.

From the foregoing analysis, we believe the following implications inevitably flow from the possibility of City Council action to buy out and operate the electric utility assets of NOPSI and LP&L.

4.1 It is very doubtful that crucial objectives advocated as achievable by buyout proponents can ever be accomplished; even finding out the terms on which the City Council may buy out and operate NOPSI's and LP&L's electric utility assets will be an enormously expensive, time-consuming process requiring massive commitment of City Council resources.

Given the complexity of the factual and legal issues involved in any buyout attempt, the multiple parties and interests, and the economic and political interests involved for consumers in the States of Arkansas, Louisiana, Mississippi and Missouri, it appears to us virtually certain that a number of interested parties would oppose in regulatory proceedings and in the courts any action of the City Council designed to reallocate Grand Gulf energy by means of a buyout of NOPSI's assets. Legal issues surrounding an attempted City Council buyout would be determined by regulatory bodies and the courts only after a large number of parties with very different interests have marshalled considerable legal and other professional talent to support the position each of them wishes to take. In view of these conclusions, it is very doubtful that crucial objectives advocated as achievable by buyout proponents can ever be accomplished. Furthermore, finding out the circumstances under which the City Council may buy out and operate the assets of NOPSI and LP&L will be an enormously expensive, time-consuming process to which the City Council would be required to commit massive resources.

4.2 A City Council buyout cannot be accomplished quickly and easily by simple vote of the City Council; instead, the City Council faces a number of years -- perhaps as much as a decade or more -- of enormously expensive regulatory proceedings, litigation, studies and planning which may, at

their conclusion, end in highly unfavorable results to the City, its ratepayers and to NOPSI.

The open legal issues addressed in Section 2 above and in Appendix Section A.3, and the multiplicity of parties who can affect the outcome of those legal issues, lead us to conclude that, even if NOPSI and LP&L were in absolute accord with the City Council regarding City Council buyout and operation of their electric utility assets, regulatory proceedings and litigation would determine the terms and conditions of any City Council buyout attempt. In a hostile environment, the City Council, NOPSI and other affected parties would face a number of years -- perhaps as much as a decade or more -- of such regulatory proceedings, litigation, and studies before fundamental questions regarding the terms and circumstances of any City Council buyout could be finally resolved by the courts. Thus, a simple vote of the City Council will not trigger the rapid buyout of NOPSI and LP&L. Rather, a buyout vote by the City Council would initiate endless regulatory proceedings, litigation and studies. When those regulatory proceedings, litigation and studies have been concluded, the ratepayers and voters of the City would in all likelihood learn with finality that the assumptions being made by buyout proponents were unfounded, and that the intervening years of enormously expensive effort by the City and NOPSI were a futile exercise harmful to City ratepayers, the City and NOPSI.

4.3 Other public financing factors make it very doubtful that any buyout of NOPSI would be in the City's best interests.

We believe the foregoing analysis has demonstrated that important assumptions being made by buyout proponents are unfounded and subject to future contingencies not within the City's control. The foregoing analysis also demonstrates that, because of the multiple parties and adverse interests and the enormous economic and political stakes involved for consumers in Arkansas, Louisiana, Mississippi and Missouri, a City Council buyout of NOPSI will not likely be accomplished within a period of time consistent with the assumptions being made by buyout proponents. However, more factors than these are involved.

To finance a NOPSI buyout, the City Council contemplates issuing revenue bonds of a City utility authority. Such revenue bonds, when issued in a series of as much as $2,662,000,000 ($2.662 billion), see Black & Veatch Update Report, page 36, would be perceived by the bond markets as an extremely significant undertaking of the City and its ratepayers and taxpayers. Such bonds, issued in the amount needed to buy out NOPSI and LP&L, would color the perception in the market of the City's other bonds and their rating. In this connection, Moody's Municipal Credit Report on the City dated September 30, 1986 recently revised its current rating of City bonds downward, noting the City government's weak financial operations and increasing debt responsibilities.

The significance of the influence of a City utility revenue bond issue on the market's perception of the City's general obligation bond indebtedness would increase directly

with the magnitude of the utility bonds issued and the risks associated with them. The City's gross bonded debt as of June 30, 1986 (including an offering dated September 26, 1986) was *$690,242,000 ($690.2 million), see Moody's Municipal Credit* Report: New Orleans, Louisiana (September 30, 1986). A City Council buyout of NOPSI and LP&L assets would require, in the opinion of Black & Veatch Consulting Engineers, the initial issuance of up to $2,662,000,000 ($2.662 billion) in revenue bond indebtedness, see Black & Veatch Update Report, page 36. These figures mean that buyout of NOPSI and LP&L would possibly increase the City's overall gross bonded debt to a figure almost 500% larger than at present. Given the magnitude of the increase in City gross bonded debt required by this one undertaking, the market's perception of the City's general obligation bond indebtedness and limited obligation indebtedness is likely to be significantly influenced by the initial issuance of City utility revenue bonds.

Further, the market's perception of City bonds would be affected not only by an initial issuance of City utility bonds but also by the subsequent operational track record of the City utility and any additional bonds issued by it. Any default by a City utility on its bonds would certainly have a long term deleterious effect upon the rating of any other bonds issued by the City, including private activity bonds which do not depend for payment upon the City's fiscal soundness. Even threatened default on or reduction in the rating of such City utility bonds would have a variety of other, more subtle, effects.

Among other things, bond rating agencies would be much more wary about public finance matters involving New Orleans and Louisiana generally as a result of such an event.

All of these public finance factors are likely to influence the City's bond rating and, as a result, the interest rates paid by the City and other issuers linked to the City in the minds of potential bond purchasers. These public finance factors make it very doubtful to us that the advocated buyout of NOPSI and LP&L would achieve results in the City's best interests.

5. SUMMARY OF CONCLUSIONS.

- Major assumptions being made by proponents of a buyout of NOPSI are either unfounded, sufficiently unproven or so subject to future contingencies that they cannot responsibly be relied upon as a basis for a NOPSI buyout now or in the foreseeable future.

- In our opinion, City Council exercise of the City's Option would not reallocate Grand Gulf capacity away from Orleans Parish ratepayers because, upon exercising the Option, the City would acquire all of NOPSI's electric utility assets, including NOPSI's legal and contractual rights to Grand Gulf energy capacity, and the City would thereby be delegated and be deemed to have assumed the associated Grand Gulf energy obligations.

- A buyout of NOPSI cannot be accomplished quickly and easily by simple vote of the City Council. An attempted buyout will require a number of years -- perhaps as much as a decade or more -- of enormously expensive regulatory proceedings, litigation, feasibility studies and planning and in all likelihood will never achieve the desired result.

- The City Council may be pressured to consider utilizing new public financing techniques which are more uncertain than legally-settled techniques. Such new public financing techniques involve new and unknown levels and types of uncertainty for bond purchasers, governmental issuers and others involved in the process.

- The implications of incurring as much as $2.7 billion in additional public debt to fund a buyout of NOPSI and LP&L, thereby increasing the City's overall gross bonded debt to a figure almost 500% larger than at present, makes it very doubtful that a City Council buyout would achieve results in the City's best interests.

APPENDIX

A.1 THE 1922 ORDINANCES ESTABLISHING THE CITY'S OPTION.

By Ordinance No. 7068 C.C.S. (September 2, 1922) ("Ordinance No. 7068 of 1922"), the City granted NOPSI an indeterminate permit to provide electrical service to the City. Ordinance No. 7068 of 1922 amends Ordinance No. 6822 C.C.S. (April 21, 1922) (the "1922 Settlement Ordinance"), and grants the City a continuing Option to acquire all of NOPSI's electric utility assets. Ordinance No. 7068 of 1922 provides, in pertinent part:

> "Sec. 3 Be It Further Ordained, That the City of New Orleans shall have the right and continuing option to purchase and acquire <u>all of the property and assets of every description</u> owned by and constituting the rate base of the electrical department of said companies [NOPSI and its predecessor], including net current assets for the price and sum of $15,256,557.00 plus or minus an amount equal to the additions to or deductions from the rate base made subsequent to December 31, 1920, and up to the date of the exercise of said option; all as defined and set out in Ordinance No. 6822 C.C.S. as changed and amended by the provisions of this Ordinance; . . . ." [Emphasis supplied.]

The 1922 Settlement Ordinance and Ordinance No. 7068 of 1922 pose a number of problems as to interpretation and implementation. First, these 1922 Ordinances are silent as to the practical and legally valid steps by which the City Council would proceed in exercising the Option. That is, these 1922 Ordinances provide no guidance as to how a transfer of ownership or control of NOPSI's assets would practically

occur. In particular, they do not address any right of the City Council to commence a buyout of NOPSI's assets by giving NOPSI "notice of its intent" to exercise the Option, the procedure which the City Council apparently contemplates following at the present time, see, 1986 Rate Resolution, Section 32.

Second, these 1922 Ordinances do not, on their face, state the exact price which the City must pay for NOPSI's electric utility assets upon exercising the Option. Section 1 of the 1922 Settlement Ordinance sets forth a formula by which the "rate base" used to establish the Option purchase price is to be increased or decreased from the initial dollar amounts established in 1922. NOPSI and the City Council dispute what constitutes NOPSI's "rate base" for purposes of establishing a price which the City must pay to buy out NOPSI's assets by exercising the City's Option. Since the parties do not agree as to the Option purchase price, that crucial legal question would be resolved through the court system.

Third, there is an enormous difference of opinion as to what assets and property of NOPSI would be acquired by the City upon exercising the Option. Ordinance No. 7068 of 1922, at Section 3, grants the City the

> "option to purchase and acquire all of the property and assets of every description owned by and constituting the rate base of the electrical department of said companies [NOPSI and its predecessor]. . . ."

[Emphasis supplied.]

Although the foregoing language appears to be quite clear,

a dispute has arisen in interpreting this clause because of the complexity of NOPSI's business, the intangible nature of some of NOPSI's assets, and the changes which have occurred since 1922. As noted in Section 3.2.1 of this Legal Analysis, the City Attorney has suggested that the phrase "all of the property and assets of every description" used in Ordinance No. 7068 of 1922 would be interpreted to mean only "physical assets necessary to operate a municipal electric utility system". See Original Brief of Defendants-Appelles [sic] at 8-9, Middle South Energy, Inc. and New Orleans Public Service Inc. v. The City of New Orleans and The Council of the City of New Orleans, No. 85-3619 (U.S. 5th Circuit Court of Appeals 1986). According to the City Attorney, this interpretation would leave NOPSI in possession of certain of its electric utility assets, including "its incorporated assets, such as its right to electric capacity and energy from Grand Gulf. . . ". Id.

We know of no basis for this suggestion by the City Attorney. It appears to us that the phrase "all of the property and assets of every description" of NOPSI, insofar as it applies to NOPSI's electric utility assets, would mean just that. In our opinion, the phrase includes not only "physical assets necessary to operate a municipal electric system", but also NOPSI's other electric utility assets. It applies to NOPSI's electric utility assets "of every description," including NOPSI's legal and contractual "right to electric capacity and energy from Grand Gulf". We know of no legal basis for the City Attorney's position that the City may pick

and choose among NOPSI's assets, acquiring those electric utility assets it wants and needs and rejecting those it does not want. The Option is not drafted in a way which permits that strained interpretation.

We note here that LP&L's electric utility assets in Orleans Parish, unlike those of NOPSI, are not subject to any City purchase option. Because of this difference, entirely different types of legal proceedings would likely be involved in any attempted buyout of NOPSI's and LP&L's Orleans Parish assets. The complications arising out of those different legal proceedings are discussed at Appendix Section A.4.

A.2 THE CONTRACTUAL PROCESS OF EXERCISING THE CITY'S OPTION.

The 1922 Settlement Ordinance, as amended by City Ordinance No. 7068 of 1922, constitutes a contract between the City and NOPSI on a variety of matters. One of those matters is the grant to the City of the Option to acquire all of NOPSI's electric utility assets. The City and NOPSI, as parties to an option contract, certainly could have specified with a great deal of clarity the exact procedure which may or must be followed by the City in exercising its Option rights. Since NOPSI and the City have not reached any agreement specifying the procedure to be followed, the procedure by which the City may validly and legally exercise the City's Option is a question which, in our opinion, would be determined from generally applicable principles of law.

In the absence of express agreement between the parties as

to the proper procedure for the exercise of an option, courts considering generally applicable principles of law could be expected to consider external factors such as established commercial practices to clarify the intent of the parties. In simple and more typical option transactions, well-known commercial practices might be proven to clarify ambiguities in the option agreement.

Options to purchase a portion of the assets of a large, on-going and capital-intensive commercial operation are infrequently granted and exercised. For this reason, no well-established commercial practice or other similar evidence establishing the proper procedure for exercising such options is likely to be proven. Therefore, the procedure by which the City may validly exercise its Option is likely to be a matter which will be the subject of extensive litigation.

Section 32 of the 1986 Rate Resolution, discussed at Section 3.2.1, indicates that the City Council apparently contemplates initiating formal buyout actions by giving NOPSI notice of intent to exercise the Option. Presumably, the City Council would contemplate actually exercising the Option at some later date. Apparently, the City Council's reason for initiating buyout actions by giving NOPSI notice of its intent to exercise the Option, rather than by actually exercising the Option, would be to reduce the probability that a court would hold such action to contractually commit the City to buy out NOPSI's assets. Some authorities hold that even giving such a notice of intent contractually commits the option-holder to

take and pay for the assets. In any event, it is clear that the giving of such a notice of intent would be an intentional act foreseeably causing NOPSI tremendous harm, the effect of which is not governed by any agreement between NOPSI and the City. Accordingly, in our opinion, the City has no legal basis to initiate buyout by giving such a notice. Rather, the giving of such a notice would be an intentional action for which the City would be legally responsible to NOPSI for the foreseeable consequences which flow out of it. It may be highly impractical under present circumstances for the City Council to simply exercise the Option and reasonably promptly take and pay for NOPSI's assets and commence business as a City electric utility. However, in our opinion, the City has no legal basis for doing otherwise since no agreement to that effect has been reached between NOPSI and the City.

A.3 OPEN LEGAL ISSUES.

Potential City Council buyout of NOPSI's assets is a matter which is clouded by a large number of uncertainties. These uncertainties are heightened by a variety of legal issues which, as a practical matter, should be resolved before the City Council exercises the City's Option and commits itself to buying out NOPSI's electric utility assets. At this time, all of the interested parties may not have developed definite opinions or positions with respect to all of the open legal issues likely to arise in the course of an attempted buyout. However, we believe that over time the opinions and positions

of the various interested parties are likely to become more definite and that material conflicts among the parties are likely to emerge.

Among the most important legal questions which remain unresolved at this time are the following:

OPEN LEGAL ISSUE NO. 1: If the City Council were to exercise the City's Option and buy out NOPSI's electric utility assets, would the Grand Gulf contract obligations/FERC-mandated allocations of Grand Gulf capacity be binding on the City, City ratepayers and/or the regulated assets of NOPSI acquired by the City? If not, to whom would Grand Gulf capacity be reallocated: LP&L customers? MP&L customers? AP&L customers?

The City Council has apparently decided to follow the analysis that Richard J. Pierce set forth in his Memorandum dated January 5, 1983 to the City Attorney (the "Pierce Memorandum") (see copy in Appendix). In that document, Professor Pierce concluded:

> "if the City acquired the properties of LP&L or NOPSI either through expropriation or through exercise of a purchase option, it is unlikely that a court would hold the City bound by the contractual obligations of NOPSI or LP&L to purchase [Grand Gulf] electric power . . . ."

We do not agree with this conclusion. The Pierce Memorandum, which states that this question is the "threshold" question of any buyout, does not address whether the specific language of the Option would compel the City to acquire all of NOPSI's electric utility assets, including its legal and contractual right to receive Grand Gulf capacity and energy. Significantly, the Pierce Memorandum does not address the

specific terms of the specific Option which NOPSI has granted. The Option granted by NOPSI applies to "all of the [electric utility] property and assets of every description owned by and constituting the rate base of [NOPSI] . . . ." As stated in Appendix Section A.1 above, in our opinion, upon exercising the Option, the City would acquire all of NOPSI's electric utility assets, including NOPSI's legal and contractual rights to receive Grand Gulf capacity and energy. When the City exercises the Option and acquires NOPSI's Grand Gulf energy rights, the City is thereby obligated for, and is delegated and assumes NOPSI's associated Grand Gulf energy obligations.

Furthermore, <u>the Pierce Memorandum does not address whether, under principles of Federal law arising under the Federal Power Act, the FERC-mandated allocations of Grand Gulf capacity and costs would be binding on the City, City ratepayers or the FERC-regulated assets of NOPSI acquired by the City</u>. In addition, the Pierce Memorandum does not address to whom Grand Gulf capacity and energy would be reallocated: LP&L customers? AP&L customers? MP&L customers?

These aspects not addressed by the Pierce Memorandum are important because the opinion in the Pierce Memorandum being relied upon by the City Council addresses only limited aspects of State law. Other crucial State law questions and governing Federal law questions have not even been considered in the Pierce Memorandum. Furthermore, a complete analysis of the question would answer which affected parties -- which State officials, which local officials, and which consumers -- are

likely to actively oppose actions of the City Council effectively reallocating Grand Gulf capacity away from Orleans Parish ratepayers to others.

NOPSI and the City Council do not agree on this question of the reallocation of Grand Gulf capacity away from Orleans Parish ratepayers to others. However, numerous persons other than NOPSI and the City would have a material interest in the resolution of this question. Those persons include: State officials of Mississippi, Missouri, Arkansas and Louisiana; officials of Louisiana parishes and municipalities outside of Orleans Parish served by LP&L; consumer groups in Mississippi, Missouri, Arkansas and Louisiana (outside of Orleans Parish); and other utilities affected by buyout actions. The legal posture taken by each of these interested parties would likely reflect general opposition to any approach which would reallocate Grand Gulf capacity away from New Orleans ratepayers to customers of the Middle South System outside of Orleans Parish. In particular, State officials of Arkansas, Mississippi, Missouri and perhaps Louisiana, and certainly local officials of Louisiana parishes and municipalities outside Orleans Parish served by LP&L, can be expected to oppose any action of the City Council which would reallocate Grand Gulf capacity away from New Orleans customers to customers whom they represent.

Similarly, although FERC's position on the issue is not known at this time, FERC might well view the matter as simply another attack on its authority to regulate interstate commerce

in electricity. In effect, buyout efforts would involve an attempt by the City Council to do indirectly that which the Federal courts have said the City Council cannot do directly: to alter the FERC-mandated allocations of Grand Gulf energy. As recently as March, 1986, in settling a NOPSI rate matter, the City Council expressly recognized that it cannot interfere with the Grand Gulf energy allocations mandated by FERC:

> "Federal courts have clearly expressed their view that local regulatory bodies such as the Council do not have authority to alter or interfere with the FERC's allocation of Grand Gulf costs, even in the exercise by such local regulatory bodies of their traditional function to regulate local retail rates. Although we deeply resent such Federal interference with our ability to fulfill our role as local regulator, we cannot ignore the substantial threat that a Council decision issued in the absence of settlement would be reversed on judicial review."

1986 Rate Resolution, p. 6, copy in Appendix.

In the event the City Council were to act to initiate a buyout and thereby attempt to avoid NOPSI's FERC-mandated allocation of Grand Gulf energy rights and obligations, FERC would probably oppose those actions on the grounds that they impermissibly alter and interfere with FERC's allocation of Grand Gulf energy to NOPSI, and, in effect, reallocate Grand Gulf energy away from New Orleans ratepayers to other persons.

Given the multiplicity of parties and adverse interests, and the magnitude of the economic and political stakes involved for consumers in the States of Arkansas, Mississippi, Missouri and Louisiana, it appears to us highly unlikely that the parties whose interests would be affected by City Council buyout efforts will be able to amicably resolve this open legal

question. For this reason, it appears to us highly likely that, if the City Council further acts to buy out NOPSI's assets and thereby indirectly reallocate Grand Gulf energy away from Orleans Parish ratepayers, the reallocation issue will be resolved only after extensive regulatory and court proceedings.

OPEN LEGAL ISSUE NO. 2: What price and other compensation must the City Council pay to buy out NOPSI's assets by exercising the City's Option?

The cost of a buyout, estimated to be as much as $2.7 billion, would be composed of several cost elements, one of which would be compensation to NOPSI and LP&L for the assets bought out. In the 1986 Beck Report, R. W. Beck and Associates, the City Council's consulting engineers, estimate that a buyout plan would require that the City pay NOPSI and LP&L approximately $257,400,000 ($257.4 million) in acquisition costs and $21,600,000 ($21.6 million) in severance damages, for a total price payable to NOPSI and LP&L of approximately $279,000,000 ($279 million). See, 1986 Beck Preliminary Draft Report, p. 11. Black & Veatch, nationally-recognized consulting engineers, have concluded that the 1985 Beck Report understates acquisition costs by more than $172,000,000 ($172 million) and severance damages by as much as $648,000,000 ($648 million). See, Black & Veatch Report, pp. 14 and 21. Based on the Black & Veatch analysis, the 1986 Beck Preliminary Draft Report understates the price which NOPSI and LP&L would be paid in a buyout plan by a total amount of as much as $820,000,000

($820 million), and the compensation to which NOPSI and LP&L would be entitled in the event of a buyout would amount to as much as $1,100,000,000 ($1.1 billion). A substantial portion of this $820 million difference in opinion relates to the Option price and other compensation to which NOPSI would be entitled in the event of a buyout.

It appears to us highly unlikely that the Option price and other compensation which the City would be required to pay NOPSI in the event of a buyout would be resolved by amicable discussions and agreement between the City Council and NOPSI before the date of any exercise of the Option. The amount of compensation to which NOPSI would be entitled is likely to be determined only after extensive litigation at the trial and appellate levels. Furthermore, it appears to us that the Option price and other elements of compensation which must be paid by the City in buying out NOPSI's assets might not be determined until some date fairly late in the buyout process: under present circumstances, long after the City exercises its Option.

OPEN LEGAL ISSUE NO. 3: What FERC authorization or approval of a City Council buyout of NOPSI is required? If FERC authorization or approval is required, what conditions would FERC impose in authorizing the City Council buyout?

This question is related to Open Legal Issue No. 1 above, but is different in that FERC authorization or approval of a City Council buyout of NOPSI may be necessary even if

FERC-mandated Grand Gulf allocations were ultimately determined not to be binding on the City, City ratepayers or FERC-regulated assets. The City Council might take the position that no FERC authorization of a City Council buyout of NOPSI's assets is required. To the extent that the City Council's position on this issue advances efforts of the City Council to reallocate Grand Gulf energy away from Orleans Parish ratepayers to others, interested parties affected by a buyout of NOPSI can be expected to take a variety of positions at odds with the City Council's position on this issue.

In view of the foregoing, it appears to us that this open legal issue will be finally settled only after extensive adversarial proceedings, certainly in the trial and appellate courts and probably before FERC as well.

A.4 LP&L ASSETS IN ORLEANS PARISH.

Unlike NOPSI's electric utility assets, which are subject to a purchase Option in favor of the City, LP&L's Orleans Parish assets are not subject to any purchase option in favor of the City. Any City Council buyout of LP&L's assets in Orleans Parish would have to be conducted through an expropriation proceeding. Such an expropriation proceeding would be a court proceeding subject to a variety of constitutional limitations regarding the City's power to expropriate and the compensation which the City must pay for expropriated assets and for consequential, severance and other damages suffered as a result of that action.

Legal proceedings expropriating LP&L's assets would raise certain legal questions not relevant in separate NOPSI buyout litigation. In addition, many of the same legal questions which would be litigated in a buyout of NOPSI's assets -- such as those discussed at Appendix Section A.3 above -- would be litigated in an acquisition of LP&L's assets. Thus, the City Council is likely to face many of the same issues in two different sets of legal proceedings.

Furthermore, legal proceedings to expropriate LP&L's assets and legal proceedings related to an exercise of the City's Option would be very different types of litigation proceedings. Among other things, the two types of proceedings move forward at very different paces. They resolve somewhat similar legal and factual issues at very different times in the course of such proceedings. Consequently, the City Council would find it extremely difficult to coordinate the two proceedings in such a way that NOPSI's and LP&L's assets would be acquired at even nearly the same time. This being the case, the City Council is likely to encounter the difficult proposition of proceeding with an acquisition of only one of the utilities, and leaving until a later date resolution of the uncertainties which would arise in an acquisition of the other.

Different proceedings to buy out the assets of NOPSI and LP&L, then, compound the difficult coordination problem which the City would face in attempting an acquisition of either utility alone. Furthermore, commencement of proceedings to acquire one utility, as a practical matter, may commit the City

to proceedings to acquire the other, and these different types of proceedings would greatly complicate any attempt by the City Council to retreat from either course of action without compensating NOPSI and LP&L for the damages caused by those actions.

A.5 BACKGROUND DOCUMENTS.

Copies of the following documents (described more fully in Section 1) are attached as background information:

- 1922 Settlement Ordinance
- Ordinance No. 7068 of 1922
- 1986 Rate Resolution
- 1985 Task Force Report
- Moody's Municipal Credit Report: New Orleans, Louisiana
- Treasury Department Letter to Suffolk County, New York

<u>BACKGROUND DOCUMENT</u>

1922 Settlement Ordinance

Mayoralty of New Orleans.
City Hall, April 21st, 1922.
Calendar No. 7053.

NO. 6822 COMMISSION COUNCIL SERIES

Be It Ordained, That in the exercise of its powers of regulation, supervision and control over the street railway, electric and gas properties in the city now owned by the New Orleans Railway & Light Company, the Commission Council of the City of New Orleans does hereby find and order as follows:

VALUATION FOR RATE-MAKING

Section 1. Valuation for Rate-Making (Rate Base) of the properties of the New Orleans Railway & Light Company and its subsidiaries, as of December 31, 1920, shall be the aggregate sum of $44,700,000.00 (divided into Gas Department $8,652,000.00, Electric Department $15,256,557.00, Railway Department $20,791,443.00) and the value for rate-making (Rate Base) at any date subsequent to December 31, 1920, shall be the said aggregate sum (and said respective departmental sums), and in addition thereto the following:

(a) New construction and other expenditures subsequent to December 31, 1920, and chargeable to "Capital or Investment" account, under the Interstate Commerce Commission or other standard classification of public utility accounting, approved by the Commission Council, plus the balance of proceeds, if any, from the sale of securities approved by the Commission Council and held in escrow for the payment of expenditures chargeable to said "Capital or Investment" account; said balance to be adjusted for the amount of said expenditures, if any, applicable for payment from funds so held in escrow.

(b) From said rate base of $44,700,000.00 as of December 31, 1920, as hereinbefore defined, there shall be deducted the then cash value of any property of any description, that in the future, for any reason, purpose or cause, shall be disposed of by the Company or its successors; provided, that if said cash value shall be re-invested in expenditures chargeable to said "Capital or Investment" account, then no amount shall be added to nor deducted from the Rate Base.

(c) There shall be added or deducted (as the facts may show) the average increase or decrease, if any, in current working capital and investment in materials and supplies over or under the average working capital and investment in materials and supplies for the calendar year 1920, such increase or decrease to be determined by the standard classification accounting referred to above.

(As Amended by Ordinance No. 8423 C.C.S., May 2, 1925).

FARES, RATES AND CHARGES

Sec. 2. Fares, rates and charges for the respective services shall be such as to produce a net revenue (after operating expenses, taxes and adequate renewal and replacement and other reserves, necessary to maintain the operating efficiency of the property at all times) equivalent to 7½ per cent per annum allowable rate of return on said Rate Base. The Commission Council shall, under its regulatory power, make such rules in respect to service and operations as may be necessary or proper; and it will at all times require the properties to be efficiently and economically managed and operated.

FINANCIAL PLAN

Sec. 3. Subject to the approval of the Federal Judge, who has jurisdiction of the existing receivership, the financial plan of the new Company shall make disposition in reference to existing outstanding securities of the New Orleans Railway & Light Company as follows:

(a) Outstanding underlying bonds to remain undisturbed.

(b) Present outstanding 4½ per cent General Mortgage Bonds, due July 1, 1935 (for subordinate of their lien so as to provide for future betterments and improvements and for necessary refunding operations through a new first and refunding Open Mortgage Bond Issue) shall be exchanged for 25% in cash and the remaining 75% in New General Lien 4½ per cent Bonds, due July 1, 1935, in the form of a closed mortgage. The said new 4½ per cent mortgage shall rank immediately after and be subordinated to, the said New First and Refunding Open Mortgage.

(c) The present outstanding Refunding and General Lien 5% Bonds, due November 1, 1949, with defaulted interest thereon, to be refunded by $5,129,000.00 Income Bonds, due November 1, 1949, bearing 6% per annum interest (adjusted for defaulted interest subsequent to June 1, 1922).

(d) The present outstanding defaulted 7% Gold Notes and defaulted interest thereon, to be refunded by $3,955,000.00 Preferred 7% Cumulative Stock (adjusted for defaulted interest subsequent to June 1, 1922).

(e) The balance (after the issuance of securities to provide for Receiver's Certificates and the expenses of the Receivership) up to the amount of the allowable Rate Base, at the date of re-organization, shall be common stock issue to represent the equity in the property, now represented by stock.

(f) Said re-organization into said new company to be accomplished at the earliest possible date and within six months from the date of the passage of this ordinance

by the Council, subject to legal delays, beyond control; provided, however, that if said re-organization shall not be accomplished within nine months from said date, then the Commission Council reserves the right to abrogate this arrangement.

RATES FOR TEST PERIOD

Sec. 4. Upon the termination of the existing receivership and the re-organization into the new company, the following rates and charges will be adopted as a test for a twelve-month period:

Car fare..7 cents

Gas..................$1.30 net per 1000 cubic feet

Domestic and Retail Light and Power, Electric Rates..........................As at present.

The general transfer system, now in effect upon the railway system shall continue subject to modifications according to future exigencies under the regulatory powers of the Commission Council.

BOOKKEEPING AND REPORTS

Sec. 5. The books of account of the new company shall be kept in accordance with a standard accounting system, applicable to similar utilities, and approved by the Commission Council. Quarterly reports showing details of the operations, revenues and expenses, and resources and liabilities of the Company shall be filed with the Commission Council and made public documents, subject to public inspection in the office of the Commissioner of Public Utilities. The accredited representatives of the city shall have access at all reasonable times to the books of account and records of the Company and also to its power houses and car barns and gas plant and other properties.

DISPOSITION OF REAL ESTATE

Sec. 6. Any real estate not now used nor reasonably likely to become useful in the operations of the properties shall be sold as soon as practicable and the proceeds thereof shall be reinvested in property useful for the Company's purposes.

PERPETUAL OPTION

Sec. 7. The City shall have the perpetual option to purchase the properties at the sum of $44,700,000.00 as of December 31, 1920, plus or minus additions or deductions hereinafter provided for, divided into:

- All property and assets of every description, including net current assets (including cash) owned by the New Orleans Gas Light Company on December 31, 1920 ....$8,652,000.00

- All property and assets of every description, including net current assets (including cash) owned by the Electric Light & Power Department of the New Orleans Railway & Light Company on December 31, 1920..............$15,256,557.00

- All property and assets of every description including net current assets (including cash) owned by the Railway Department of the New Orleans Railway & Light Company on December 31, 1920 ....$20,791,443.00

And the City shall have a perpetual option to purchase one or more of said departmental properties at the said respective figures, plus or minus an amount equal to the additions or deductions to or from the Rate Base of said one or more properties (determined and defined in Section 1 of Ordinance No. 6822 C. C. S., as changed and amended by this Ordinance) subsequent to December 31, 1920, and up to the date of the exercise of the option.

(As Amended by Ordinance No. 8423 C.C.S., May 2, 1925).

FRANCHISES

Section 8. (a) The City and the New Company (or those responsible for organization prior to the organization thereof) will agree to details covering necessary new franchises or extensions of old franchises, the arranging of new routes and the making of any other changes in the physical property which will contribute to more economical and satisfactory operation.

(b) As soon as the revenues of the street railway property make it feasible within the limitations of the provisions hereof to reduce the fares for school children attending public and parochial schools, a reduced fare for such school children will be inaugurated.

FIXED VALUATION

Section 9. So long as the City of New Orleans or its successors as the regulatory authority with supervision, regulation and control of the company and its properties—shall not disturb, interfere with or change the valuation or rate of return herein fixed, the conditions and restrictions hereinafter set out shall be and continue in full force and effect and shall be binding upon and observed by the Company, its successors and assigns.

While nothing herein contained shall be or is intended to be construed as affecting or impairing the police powers of said City of New Orleans, or its successors, in respect to any matter or thing within its jurisdiction as regulatory body or as constituting any agreement on the part of the City to forego the exercise of any of its lawful powers or functions, nevertheless it is a condition hereof that each and all of the stipulations, restrictions and conditions

hereinafter contained or provided for shall be, remain and continue in effect only so long as the City of New Orleans or its successor as the regulatory authority, shall not change or modify the provisions hereof concerning the rate base and the rate of return; and if said regulatory authority should change or alter either of said factors, then these conditions, stipulations and restrictions shall cease and become inoperative and the Company and its successor, at its option, shall be released from the obligations in respect to same. Said restrictions and conditions are as follows:

(a) The total par value of the outstanding securities of the new company in the form of capital stock, funded debt and other evidences of debt having greater than twelve months' maturity, including underlying bonds (less deduction for unamortized discount on said securities, sold with the approval of the Commission Council) shall never exceed the rate base determined as defined in Section 1 hereof.

(b) Two-thirds of the members of the Board of Directors shall be residents of New Orleans and representative citizens, and the president shall at all times reside in New Orleans.

(c) Before any disbursements in any fiscal year can be made out of earnings or surplus to securities, junior in rank to the new 4½ per cent bonds, there shall be created a fund of $200,000, out of which fund 50 per cent shall be invested in betterments and improvements and 50 per cent shall be utilized for the purchase and retirement (by lowest bid) of said new 4½ per cent bonds; provided that said fund may be created either out of earnings or by the sale of securities junior in rank to said new 4½ per cent bonds. Said securities to be issued in accordance with Paragraph G of this section.

(d) Furthermore, before any disbursement in any fiscal year can be made on the preferred stock herein referred to in sub-section (d) of Section 3, there shall also be created an additional fund of $100,000. Said fund shall be used for the purpose and under the conditions, and shall be created in the manner provided in sub-section (c) hereof for the said $200,000 therein referred to.

(e) (Repealed by Ordinance No. 1443 M.C.S., Aug. 21, 1958).

(f) All dividends declared on the common stock issued at the time of reorganization, as provided in paragraph (e) of section 3 hereof, shall be reinvested in the property by the purchase of common stock at par until the aggregate amount of dividends declared shall equal 40 per cent on said stock.

(g) No securities of the new Company, other than evidences of debt having maturities of twelve months or less and securities issued as stock dividends neither of which has any effect on the rate base, shall be issued without the previously obtained approval of the Council.
(As Amended by Ordinance No. 1443 M.C.S., Aug. 21, 1958).

RATE BASE AND RATE OF RETURN AGREEMENT

Sec. 10. The Company binds itself never to infringe or violate or go contrary to any of the provisions of Sections 7 and 9 so long as the City shall not change or disturb the rate of base and/or rate of return.

DISPOSITION OF SUIT

Sec. 11. The suit of J. D. O'Keefe and others against the City of New Orleans now pending in the United States District Court shall be held in beyance. Upon putting the within plan in operation, said litigation shall be dismissed. Meanwhile no prejudice to any party to said litigation shall result by reason of this arrangement, so that if the plan is not carried into operation, said litigation may be revived and continued without prejudice.

METHOD OF ACCEPTANCE

Sec. 12. This Ordinance shall take effect only upon written acceptance and approval by the Creditors of the New Orleans Railway & Light Company and other parties at interest who may have the legal right to accept same, which acceptance must be made not later than fifteen (15) days after the final passage of this Ordinance by the Commission Council.

BACKGROUND DOCUMENT

Ordinance No. 7068 of 1922

Mayoralty of New Orleans.
City Hall, September 2nd, 1922.
Calendar No. 7302.

NO. 7068 COMMISSION COUNCIL SERIES

AN ORDINANCE supplementing Ordinance No. 6822 C. C. S., which provides for the reorganization of New Orleans Railway and Light Company, and granting an indeterminate permit for the operation of electric light and power plants and systems in the City of New Orleans and providing for an option to the City of New Orleans, to purchase same.

Whereas, Under Ordinance No. 6822 C. C. S. (hereinafter called the "Settlement Ordinance") certain orders have been made and entered by the City of New Orleans in the exercise of its regulatory power over and control of the public utilities now owned by or controlled through subsidiary companies of New Orleans Railway & Light Company (hereinafter called the "Old Company") and an arrangement has been made and entered into by and between the City of New Orleans and certain creditors of and other parties in interest in said Old Company looking to the re-organization of the Old Company and the rehabilitation of its properties so as to improve the public service and reduce rates and charges; and,

Whereas, As contemplated by the Settlement Ordinance, a new company has been, or is being, organized under the laws of the State of Louisiana, to be known as "New Orleans Public Service Inc.", to acquire at Master's sale, which is about to be made in the pending receivership proceedings of the Old Company, all the properties of the Old Company, including the stock of its subsidiary, New Orleans & Carrollton Railroad, Light & Power Company, which is entirely owned by the Old Company; and,

Whereas, Existing franchises for the operation of electric light and power plants in the City of New Orleans and the distribution and vending of electricity for light, heat, power and other purposes are held by New Orleans Railway & Light Company under Ordinance No. 3651 C. C. S., and the contract made in pursuance thereto dated October 27, 1916, and by said New Orleans & Carrollton Railroad, Light & Power Company under Ordinance No. 806 C. S., dated August 8th, 1884, granted originally to Louisiana Electric Light & Power Company and acquired by mesne conveyances by said New Orleans & Carrollton Railroad, Light & Power Company; and

Whereas, It is contemplated by the Settlement Ordinance that said New Orleans & Carrollton Railroad, Light & Power Company shall be consolidated with said new company—New Orleans Public Service Inc.; and

Whereas, It is contemplated in said Settlement Ordinance that new permits or franchises will be granted, or existing permits or franchises extended, so as, through co-operative effort, to bring about more economical and satisfactory operation of said properties; now, therefore, public convenience and necessity requiring:

Section 1. Be It Ordained by the Commission Council of the City of New Orleans that the New Company and—New Orleans Public Service Inc. and New Orleans & Carrollton Railroad, Light & Power Company, their respective successors or assigns, be and they are hereby granted the right and authority, in the form of an indeterminate permit, subject to the faithful and prompt compliance with all of the conditions herein contained, to construct or otherwise acquire, own, maintain and operate plants, works and systems in the City of New Orleans for the generation and distribution of electrical energy for heat, light, power and other purposes, and to erect, construct, maintain and operate in, over and through all streets, alleys, highways, squares, parks, bridges and other public places in the City of New Orleans, all poles, wires, conductors or cables, conduits and other accessories, including the right to cross the Mississippi River and other water courses within the limits of the City of New Orleans, at convenient points, in so far as the City of New Orleans has the right to grant such authority.

Sec. 2. Be It Further Ordained, That, in that portion of the city known as the underground district, or hereafter included in the underground district, no poles shall be erected; nor shall any wires or electrical conductors be strung or maintained above the surface of the ground along the streets, alleys or other public places, but all wires and electrical conductors shall be placed underground in said underground district, in accordance with Ordinance No. 13885 C. S., and all ordinances amendatory thereof now or hereafter existing; and

In that portion of the city outside of the underground district, all poles, wires and electrical conductors and fixtures shall be erected and maintained in accordance with Ordinance No. 13970 C. S., and all ordinances amendatory thereof now or hereafter existing.

Sec. 3. Be It Further Ordained, That the City of New Orleans shall have the right and continuing option to purchase and acquire all of the property and assets of

every description owned by and constituting the rate base of the electrical department of said companies, including net current assets for the price and sum of $15,256,557.00 plus or minus an amount equal to the additions to or deductions from the rate base made subsequent to December 31, 1920, and up to the date of the exercise of said option; all as defined and set out in Ordinance No. 6822 C. C. S. as changed and amended by the provisions of this Ordinance; provided, however, that except as, in and by this Ordinance changed or modified and subject further only to such other changes and modifications, if any, as may heretofore have been authorized by the Commission Council of the City of New Orleans, said Ordinance No. 7068 C. C. S. and all the terms and provisions thereof shall be and remain in full force and effect.

(As Amended by Ordinance No. 8423 C.C.S., May 2, 1925).

Sec. 4. Be It Further Ordained, That said grantees, their successors and assigns, shall, subject to the conditions of said Ordinance No. 6822 C. C. S. (the existing schedule of rates for Domestic and Retail Light and Power referred to therein being now on file in the office of the Commissioner of Public Utilities) be entitled and authorized to charge and collect such fair and reasonable rates for electrical energy furnished and delivered in the City of New Orleans as may be established by the City of New Orleans and or other regulatory authority in accordance with law.

Sec. 5. Be It Further Ordained, That nothing herein contained shall be construed as affecting the obligation of the grantee hereof, as successor and assignee of New Orleans Railway & Light Company, to furnish electrical energy to the City of New Orleans for lighting its streets and other public places and buildings for the term and at the rates set forth in said Ordinance No. 3651 C. C. S., and said contract of October 27th, 1916; nor shall anything herein contained affect or impair the right of the City of New Orleans, as set forth in said ordinance and said contract, to become the owner of the ornamental lighting system provided for by said ordinance and said contract when the city shall have performed its obligations in respect thereto as set out in said ordinance and said contract; nor shall anything herein contained or done hereunder affect or impair the rights and obligations of the city and the grantee, its successors or assigns, under said Ordinance No. 806 C. S., dated August 8th, 1884, except as herein otherwise provided; and that all other rights under this indeterminate permit and said ordinance No. 806 C. S., shall be subject to the exercise of the police power and to the regulation and control of the City of New Orleans, and or other regulatory authority in accordance with law.

Sec. 6. Be It Further Ordained, That any violation by said grantees, their successors or assigns, of any condition of this ordinance granting an indeterminate permit shall be sufficient cause and grounds for the forfeiture of the said indeterminate permit, in which event, or for other legal cause, the City of New Orleans may sue for the forfeiture, cancellation or revocation of said permit, or, at its option, may sue for the enforcement of such permit or for damage suffered, if any.

Sec. 7. That, so long as any rights are exercised under this indeterminate permit, in consideration of the use of the streets, highways, bridges, etc., as hereinabove provided, the grantee, its successors or assigns, shall pay to the City of New Orleans a street use franchise tax equal to two and one-half per cent (2½ pct.) of the gross receipts of the grantee, its successors or assigns, from the sale of electrical energy in the City of New Orleans under this indeterminate permit, except receipts from energy sold to another utility for resale. The proceeds from said tax shall be used for street and other civic projects and seventy-five per cent (75 pct.) of such proceeds is hereby specifically dedicated to the construction, paving, repairing, improvement and maintenance of streets over which transit service is operated or will be operated or other street projects. The tax herein provided for shall be effective beginning with April 1, 1970, with payment of the amount due for each month to be made to the City of New Orleans on or before the twentieth day of the succeeding month.

(As Amended by Ordinance No. 4272 M.C.S., April 23, 1970).

Sec. 8. Be It Further Ordained, That said new company, New Orleans Public Service Inc., and said New Orleans & Carrollton Railroad, Light & Power Company, shall file with the Commissioner of Public Utilities of the City of New Orleans their written acceptance of this ordinance not later than three months from the date of its passage.

Adopted by the Commission Council of the City of New Orleans, September 2nd, 1922.

GEORGE FERRIER, JR.,
Clerk of Commission Council.

Approved September 2nd, 1922.

ANDREW J. McSHANE,
Mayor.

A true copy:

F. C. FONT,
Secretary to the Mayor.

BACKGROUND DOCUMENT

1986 Rate Resolution

RESOLUTION

R-86-112

CITY HALL: March 20, 1986

BY: COUNCILMEN WAGNER AND GIARRUSSO

IN THE MATTER OF EX PARTE APPLICATION OF
NEW ORLEANS PUBLIC SERVICE INC..
FOR AN INCREASE OF ITS ELECTRIC RATES
(DOCKET NO. CD 85-1)

WHEREAS, on May 17, 1985, New Orleans Public Service Inc. (NOPSI or the Company) filed with the City of New Orleans a formal written application for permanent rate relief for electric service supplied by it to New Orleans ratepayers, which application was modified on September 3, 1985 and October 11, 1985 to conform to the Council's Standard Filing Requirements; and

WHEREAS, in such application, NOPSI requested this Council's permission to increase its electric rates and charges, in part, to produce additional revenue to meet non-fuel expenses of approximately $168 million annually associated with its purchase of power and energy from the Grand Gulf Unit No. 1 nuclear-fueled electric generating station (Grand Gulf 1); and

WHEREAS, by Resolution R-86-43, adopted February 6, 1986, the Council established an expedited schedule, subsequently modified in certain respects, whereby the Council intended (in the absence of a settlement) to issue a final decision on NOPSI's permanent rate increase application in April 1986; and

WHEREAS, on February 20, 1986 the Council conducted a public hearing on the settlement proposal submitted by NOPSI on February 5, 1986, and, thereafter, extensive settlement discussions with NOPSI have occurred; and

WHEREAS, on March 6, 1986, on March 13, 1986, and on March 20, 1986 the Council afforded the City's consultants, intervenors and the public the opportunity to discuss and comment upon NOPSI's proposed offer of settlement of the issues raised by NOPSI's permanent application; and

WHEREAS, the Council has serious misgivings regarding the entire history of NOPSI's participation in the Grand Gulf nuclear station but is desirous of obtaining a resolution of these issues that can withstand judicial review and is in the best interests of the ratepayers as well as the economic well being of the City and its residents; and

WHEREAS, the Council deems a settlement to be feasible only if such settlement does not affect all existing legal rights of the City, including but not limited to rights concerning municipalization, the investigation of NOPSI's prudence regarding Grand Gulf, and the abrogation litigation regarding NOPSI's contract with Middle South Energy, Inc.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, that the following action is taken with respect to NOPSI's application for rate relief filed on May 17, 1985, as supplemented thereafter:

Preliminary Matter

We have serious misgivings concerning the entire history of NOPSI's participation in the Grand Gulf generating station. We are aware, however, of the decisions in federal appellate and district courts with respect to the FERC's allocation of Grand Gulf costs, which affect regulatory commissions and other utility companies on the Middle South System and place severe limitations on state and local regulatory actions in related retail cases. We are also aware of judicial comments made orally and in writing at the federal appellate and district court levels in cases concerning our efforts to address NOPSI's application to increase rates to reflect Grand Gulf-related costs. Taken together, these court decisions and comments convince us that federal courts will limit our discretion in actions we may wish to take in furtherance of the interests of the intervenor or NOPSI's ratepayers. Judicial decisions and comments also make clear that we do not have extensive time in which to resolve this matter.

Although we acknowledge these judicial views with extreme reluctance, it is our intent to reach a resolution that will protect the interests of the ratepayers and, at the same time, withstand judicial review. As our brethren on the Arkansas Public Service Commission noted: "We hate to approve this settlement, but under the circumstances we do not feel we have any choice." We note, however, that this Resolution is made conditioned on the City's reservation of all its existing rights as set forth herein.

We also are reluctant to settle this matter now because questions remain concerning the prudence of NOPSI's conduct in incurring non-fuel costs associated with Grand Gulf 1 and also because of NOPSI's subsequent behavior in these proceedings, particularly with respect to the prudence

aspects of the case. It had been our intent to decide issues related to the rate application, the Grand Gulf adjustment and the prudence inquiry at the same time, so that we could establish electric rates and charges reflecting our consideration of each of those matters. In our view, NOPSI has contributed substantially to the delay in resolution of the prudence inquiry by its repeated failures to cooperate in providing requested data, by its refusal to follow Council directives, and by its interruption of the orderly processes of the inquiry through repeated efforts to secure judicial action before exhausting its remedies in this proceeding.

Were this a normal rate application we would not entertain this settlement offer until we had completed our prudence inquiry. Nevertheless, despite our serious reservations, we conclude that it is in the best interests of the rate payers to accept NOPSI's settlement offer (as modified) at this time, subject to the terms and conditions stated herein, and we believe that the risks associated with not doing so are not acceptable.

If we were to reject NOPSI's settlement offer, the City would face protracted litigation with a highly uncertain outcome; NOPSI potentially would face imminent insolvency; and the New Orleans community would confront a substantial risk that the federal courts would order a full and immediate pass-through of NOPSI's entire 17% Grand Gulf allocation determined by the FERC, which would cause an immediate rate increase of 50-60%. These are risks to which we cannot and will not expose the ratepayers of New Orleans. We note that regulatory commissions with authority over MSU operating companies in other states have ordered or approved settlements on terms less favorable to ratepayers than those reflected herein.

Finally, we have given and continue to give serious consideration to municipalizing NOPSI's facilities. However that option, even if it were activated in the near future, would not be likely to shield ratepayers from the "rate shock" of a Grand Gulf pass-through until the takeover was completed - a process that could take several years. Accordingly, municipalization, while having significant potential for the long run, does not offer an effective solution to the potential immediate impact of Grand Gulf costs.

Evidence Pertaining To Permanent Rate Relief:

The Council has conducted public hearings on the issue of permanent rate relief, at which NOPSI, the Council's consultants and the public were afforded an opportunity to be heard. In addition, the Council has considered written testimony submitted in advance of these hearings. Testimony was presented by NOPSI and the City's consultants. No testimony was submitted by a witness for the intervenor. The testimony of NOPSI considered by the Council and discussed during these hearings consisted of its direct testimony filed in May 1985, its testimony setting forth and discussing a proposed settlement dated February 5, 1986, its rebuttal testimony submitted February 26, 1986, and its testimony discussing a further settlement offer given orally, with exhibits, at public hearings on March 6 and March 13, 1986. The testimony of the City's consultants considered by the Council consisted of that filed on February 20 and 21, 1986.

The written testimony of NOPSI on February 5, 1986, as amended on March 6, 13 and 20, 1986, sets forth a proposed offer of settlement. The terms of this offer can be briefly summarized as follows:

First, acceptance of the offer of settlement in no way affects any legal rights of the City existing at this time, including but not limited to (1) municipalization, (2) the Council's ongoing prudence investigation of NOPSI with respect to Grand Gulf, and (3) the abrogation litigation relating to NOPSI's contract with MSE. Retention of the City's legal rights is provided for herein. NOPSI will likewise retain all its legal rights existing at this time.

Second, NOPSI's stockholders will permanently absorb $51.2 million of Grand Gulf 1 costs previously unrecovered.

Third, NOPSI will agree to phase-in the costs of Grand Gulf 1 such that the estimated first year's immediate effect on rates to its residential customers will be an increase of no more than 5.4% when compared to what such customers paid in February, 1986. Under the NOPSI proposal, the estimated residential rates, when compared to those in effect after NOPSI's last base rate increase, March, 1984, would increase by 2% in the first year and by a total of 11.6% in the second year of its proposal. This equates to an annual rate of increase of 3.7% over that period. On a total

company basis, the first year's increase will be approximately 8.3% and the second year's increase will be approximately 8.7% when compared to the 1985 annualized rate levels. Subsequent increases will be approximately 6% per year.

Fourth, NOPSI will be allowed to retain for three and one-half years the proceeds resulting from the settlement of litigation with a third party for the exclusive purpose of financing the deferrals incident to the phase-in plan. Such proceeds are to be paid to its electric customers at the end of that period in a manner to be determined by the Council. NOPSI's settlement proposal is not contingent upon settlement of the aforementioned litigation, which, in any event, will be subject to the approval of all authorities having jurisdiction.

Fifth, NOPSI will provide assistance in six areas designed to enhance the economic well being of the City and its residents.

Sixth, NOPSI will withdraw its application for a $5.3 million increase in its electric rates relating to non-Grand Gulf cost issues and will not request a non-Grand Gulf related increase to take effect prior to January 1, 1988. All of these provisions are set forth in detail later in this Resolution.

Were this settlement accepted, the evidence shows that NOPSI's electric rates for residential customers, at least for the next twenty-one months, can be expected to be lower than those of other utilities in Louisiana, lower than those of other MSU operating companies, and lower than what is charged in all but four of the 25 largest cities in the country.

The City's evidence indicates that the phase-in schedule ordered hereunder will prevent unacceptable "rate shock" to NOPSI's ratepayers. The Company's evidence shows that, were the settlement rates approved, the increase in rates since NOPSI's base rates were last changed, March 1984, would be less than 12% by the end of the second year of the proposal. This would equate to significantly less than 6% per year over that period. The City's evidence indicates that preventing annual increases in electric rates from exceeding the 6% to 7% range would diminish the risk of rate shock. The City's evidence also showed that a 6% rate increase limitation would necessitate a phase-in of approximately 13 years.

Discussion

As discussed above, the decision we adopt today is dictated, in large part, by circumstances beyond the City's control. Federal courts have clearly expressed their view that local regulatory bodies such as the Council do not have authority to alter or interfere with the FERC's allocation of Grand Gulf costs, even in the exercise by such local regulatory bodies of their traditional function to regulate local retail rates. Although we deeply resent such federal interference with our ability to fulfill our role as local regulator, we cannot ignore the substantial threat that a Council decision issued in the absence of settlement would be reversed on judicial review.

In Resolution No. R-85-526, adopted September 5, 1985, we stressed that a decision on the issue of emergency interim relief must balance the interests of NOPSI and its ratepayers. We now repeat that goal and stress that further rate relief also must balance the interests of NOPSI and its ratepayers. The increase in rates must be affordable and must not lead to the deterioration of the City's economic base. The increase must not place an undue burden on the less fortunate of our community.

On the basis of our review of the record and responses to data requests, we conclude that NOPSI's proposed offer of settlement (with certain modifications and as conditioned herein) meets the goal of balancing these competing interests, given the difficult circumstances we face. In reaching this decision, we also are mindful of the settlements reached by other MSU operating companies with their respective regulatory agencies. The Mississippi Public Service Commission adopted an order regarding Mississippi Power & Light Company (MP&L) that calls for no stockholder participation but adopts a significant phase-in. The Arkansas Public Service Commission settlement with Arkansas Power & Light Company (AP&L) called for AP&L's stockholder to bear approximately 8% of its nuclear cost. The Louisiana Power & Light Company (LP&L) settlement with the Louisiana Public Service Commission called for LP&L's stockholder to bear approximately 11% of its nuclear cost. Both the AP&L and the LP&L settlements also contained phase-in provisions. None of the settlements or orders are directly comparable to another, yet when analyzed, the settlement with NOPSI, that we believe is appropriate, is at least as favorable to ratepayers as the LP&L settlement.

Additionally, this settlement is subject to conditions, accepted by NOPSI and the Council, whereby NOPSI and the City retain all their respective legal rights including but not limited to rights regarding municipalization of NOPSI, the investigation of NOPSI's prudence regarding Grand Gulf, and the abrogation litigation regarding NOPSI's contract with MSE.

Therefore, we find as follows:

BE IT RESOLVED that NOPSI, with respect to its application for rate relief filed May 17, 1985, as supplemented thereafter, is allowed to increase its electric rates and charges to its customers under the jurisdiction of the Council, subject to the following terms and conditions:

1. For bills rendered on and after April 9, 1986, NOPSI shall be allowed to increase its base rates by $60 million on an annual basis, but shall cease charging the 10% surcharge authorized by Council Resolution R-86-92.

2. Contemporaneous with this increase, NOPSI shall reduce its Fuel Cost Adjustment Factor to that rate which is consistent with the provisions as set forth in its tariffs. It is estimated that such reduction will produce at least a $34 million savings in the first year to the electric customers.

3. For bills rendered on and after April 9, 1987, NOPSI shall be allowed to increase its base rates by an additional $29.4 million on an annual basis.

4. For bills rendered on and after April 9th of each of the following years, NOPSI shall be allowed, incident to this settlement, to increase its base rates on an annual basis by the following additional amounts:

1988	$22.1 million
1989	$23.4 million
1990	$24.8 million

5. For bills rendered on and after April 9th of years subsequent to 1990, NOPSI shall be entitled to increase its base electric rates by 6% of $439 million compounded annually until:

a) Grand Gulf costs are being fully recovered

on a current basis, and b) The amounts previously deferred have been fully recovered.

6. In the event that Generally Accepted Accounting Principles establish a maximum phase-in period that is shorter than that established by the other provisions of this settlement, the rate increases in year 5 and succeeding years (i.e., from April 9, 1990 through the end of the phase-in period) shall be adjusted such that the duration of the phase-in plan is consistent with such Generally Accepted Accounting Principles.

7. The pre-tax carrying charge rate applicable to the deferred balance shall be 21.0% in the first year, 14.7% in the second year and shall remain at 14.7% until changed by the City Council after notice and hearing.

8. The carrying charges shall be based on the average deferred Grand Gulf 1 costs where such costs are reduced by the amount of funds, net of related expenses, received by NOPSI via the settlement of litigation with a third party for so long as NOPSI retains the use of such funds.

9. The amount of Grand Gulf 1 non-fuel costs recovered currently shall be in the first year $55.0 million, in the second year $72.0 million and in the third and subsequent years equal to A minus B, where:

   A = $72.0 million plus the cumulative rate increases experienced to date computed consistent with Paragraphs 4 and 5 above, and

   B = The total carrying charges computed consistent with Paragraph 7 above for that year less $19.7 million.

10. To the extent that the amount of funds, net of related expenses, received via the settlement of litigation with a third party differs from that contemplated in NOPSI's February 5, 1986 offer of settlement, NOPSI shall be allowed to defer the impact of that difference, plus or minus, on carrying costs. Such deferrals are to be

recovered consistent with the other provisions of this settlement.

11. NOPSI shall remove from base rates the city street use franchise tax of $7.4 million and add a city street use franchise tax rider whereby charges applicable under all tariffs shall be divided by one minus the City street use franchise tax rate, in effect from time to time, to determine the amount due.

12. Until determined otherwise by the Council, all increases incident to this settlement are to be reflected in rates on a uniform basis in proportion to each rate's contribution to the total base electric revenues.

The rate relief as set forth herein is subject to the conditions stated in paragraphs 13 to 22, each of which NOPSI has agreed to and each of which shall be binding on NOPSI upon acceptance of such rate relief:

13. NOPSI will permanently absorb the Grand Gulf 1 non-fuel related costs incurred from July 1, 1985 to the date when the amount of such absorbed non-fuel Grand Gulf costs totals $49.0 million with the residual amount of the unrecovered cost from July 1, 1985, through April 8, 1986, to be deferred and recovered pursuant to the terms of paragraph 5 above (at February 28, 1986, the actual amount of unrecovered costs, including carrying costs, was $104.8 million). In addition, NOPSI will permanently absorb the $2.2 million of emergency interim relief authorized under Resolution R-86-92, provided that such revenues are not also used to offset Grand Gulf costs not otherwise recovered. In total, NOPSI will permanently absorb $51.2 million of unrecovered Grand Gulf 1 costs.

14. NOPSI will withdraw its pending application for a $5.3 million increase in rates relating to non-Grand Gulf 1 related costs.

15. NOPSI will not request any non-Grand Gulf electric rate

increase to take effect prior to January 1, 1988.

16. NOPSI will work with the Council to enhance the economic development of the City of New Orleans by committing two full-time employees and expending an amount of not less than $250,000 each year toward this development effort on projects that have been jointly approved by NOPSI and the Council.

17. NOPSI will work with the Council to develop and offer incentive electric rates to large industrial and commercial customers that commit to locating in or expanding their existing facilities in the City of New Orleans.

18. NOPSI agrees that an Industrial Incentive Rate, the terms of which are outlined in Exhibit A to this Resolution, will be filed on or before May 9, 1986. However, nothing contained herein shall be construed to limit the Council's powers of supervision, regulation and control to set rates for industrial customers.

19. NOPSI will work jointly with the Council to use their respective best efforts, both separately and working together, to convince Middle South Utilities and all of its subsidiaries and facilities headquartered or located in New Orleans to remain in New Orleans.

20. NOPSI will make itself available to the Sewerage and Water Board with regard to efforts by S&WB to improve its bill collections and related matters.

21. NOPSI will match dollar for dollar all contributions to the Helping Hand Programs made by its customers through 1990.

22. NOPSI will finance the replacement of existing mercury vapor street lighting with high pressure sodium vapor to the extent the City so requests, subject to a 22 year lease/purchase contract by the City.

The following additional terms and conditions, which are agreed to and accepted by both NOPSI and the Council, shall

apply to the rate relief as set forth herein:

23. The Council will approve all financing applications properly filed which are necessary to allow NOPSI to finance the deferrals incident to this above-described phase-in, subject to the provisions in paragraph 32. NOPSI agrees that it will use its best efforts to arrange financing so as to minimize the carrying costs on the deferred amounts.

24. THIS SETTLEMENT IS WITH RESPECT TO THE TREATMENT OF GRAND GULF 1 AND HAS NO EFFECT ON THE POTENTIAL RECOVERY OF COSTS ASSOCIATED WITH GRAND GULF NO. 2.

25. THE CITY IS NOT REQUIRED TO WITHDRAW OR AMEND ITS ABROGATION SUIT, AND THIS SETTLEMENT AND RESOLUTION SHALL NOT BE CONSIDERED EVIDENCE OF AN APPROVAL BY THE COUNCIL OF THE AGREEMENTS PURSUANT TO WHICH NOPSI COMMITED TO PURCHASE GRAND GULF POWER AND INDEMNIFY GRAND GULF DEBT.

26. THE COUNCIL IS NOT REQUIRED TO CEASE ITS INQUIRY INTO THE PRUDENCE OF NOPSI'S INVOLVEMENT IN GRAND GULF OR TO REFRAIN FROM ISSUING ORDERS WITH RESPECT THERETO, UNLESS SO ORDERED BY A COURT OF COMPETENT JURISDICTION.

27. NOPSI AND THE COUNCIL ACKNOWLEDGE THAT THE ALLOCATION OF GRAND GULF 1 TO NOPSI REFLECTED IN THIS SETTLEMENT REPRESENTS THE ALLOCATION TO NOPSI BY THE FEDERAL ENERGY REGULATORY COMMISSION (FERC) IN OPINION NOS. 234 and 234A. BY VIRTUE OF ENTERING INTO THIS SETTLEMENT, NOPSI AND THE COUNCIL DO NOT GIVE UP ANY RIGHT TO SEEK REHEARING OR JUDICIAL REVIEW OF, OR TO PURSUE ON REMAND

OR FURTHER APPEAL, THE ISSUE OF THE APPROPRIATE ALLOCATION OF GRAND GULF 1 TO NOPSI IN CONNECTION WITH OPINION NOS. 234 and 234A. IN THE EVENT THE ALLOCATION TO NOPSI ESTABLISHED IN OPINION NOS. 234 AND 234A IS SUBSEQUENTLY MODIFIED BY THE FERC OR BY A COURT OF COMPETENT JURISDICTION, THE INCREASES ESTABLISHED IN THIS SETTLEMENT SHALL BE ADJUSTED TO REFLECT SUCH MODIFICATION. SUCH MODIFICATION SHALL BE PROSPECTIVE UNLESS OTHERWISE PROVIDED BY ORDER OF THE FERC OR REVIEWING COURT.

28. THE COUNCIL AGREES (BARRING CHANGES IN THE FEDERAL TAX LAWS) NOT TO ORDER ANY DECREASE IN BASE RATES FOR NON-GRAND GULF COSTS TO TAKE EFFECT PRIOR TO JANUARY 1, 1988. SHOULD THE COUNCIL REQUEST THAT NOPSI MAKE A FILING IN SUPPORT OF THE BASE RATES, NOPSI AGREES TO MAKE SUCH FILING WITHIN 150 DAYS OF THE COUNCIL'S REQUEST.

29. NOPSI shall be allowed to retain for three and one-half years the proceeds resulting from the settlement of litigation with a third party, prior to refunding same to its electric customers in a manner to be determined by the Council.

30. NOPSI agrees it will not "cannibalize", dismantle, disassemble or otherwise dispose of any existing generating stations without prior approval of the Council.

31. NOPSI shall maintain sufficient records such that, on a monthly basis, it can prepare a report showing separately the Grand Gulf 1 non-fuel costs, the total Grand Gulf 1 non-fuel cost recovery, the carrying charges incident to the deferral of Grand Gulf 1 costs and the current recovery of Grand Gulf 1 costs. This

report is to be furnished within 45 days of the end of each calendar quarter.

32. Both the Council and NOPSI recognize that, notwithstanding the other provisions of this Resolution, the City contends that it has the legal right to purchase and acquire, at the City's option, all of the property and assets owned by NOPSI, without obligation to continue a deferral schedule, and without remuneration or other compensation for any or all of NOPSI's obligation incident to Grand Gulf, except for the deferrals of Grand Gulf 1 costs that have accumulated pursuant to this settlement prior to the City providing official notice to NOPSI of its intent to municipalize. The Council recognizes that NOPSI does not agree with all of these contentions. Nothing in this settlement and Resolution is intended by either the Council or NOPSI to affect the rights of either the City or NOPSI that existed prior to the adoption of this settlement and Resolution, except as hereinafter agreed to in this Paragraph 32.

    Further, in the interest of achieving this settlement regarding issues raised by NOPSI's permanent application for rate relief, NOPSI and the City agree as follows:

    In the event that the City provides official notice of intent to municipalize, nothing in this settlement is to affect the legal rights of either the City or NOPSI as they exist today, except that NOPSI agrees that neither the City nor the ratepayers will be liable for Grand Gulf 1 cost deferrals accruing after March 1, 1991 or the date of said official notice, whichever is later, if said municipalization is finalized without the City being required to assume NOPSI's Grand Gulf 1 obligations.

33. NOPSI agrees that if any other MSU operating company (other than Mississippi Power and Light) enters a

settlement agreement or amends an existing settlement agreement whereby the other operating company agrees to absorb a greater portion of its allocation of Grand Gulf costs than that it has agreed to absorb as of the date of this settlement and Resolution, then the permanent absorption of NOPSI's Grand Gulf costs set forth in paragraph 13 of this Resolution will be increased to reflect a percentage increase (relative to NOPSI's current absorption) equal to the percentage increase in the other company's absorption.

BE IT FURTHER RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That it is the intent of the Council of the City of New Orleans in the exercise of its powers of supervision, regulation, and control of electric and gas utilities in the City of New Orleans, that Ordinance No. 6822 C.C.S., as amended, and Ordinance Nos. 7068 C.C.S. and 7069 C.C.S., as amended, particularly but not limited to the terms and conditions thereof, are hereby ordered to continue in effect as a regulatory order of this Council.

This offer of settlement is made to NOPSI this date and will remain open for its acceptance in writing until 4:30 P.M., March 30, 1986. Unless accepted in writing by NOPSI, the rate relief otherwise afforded by this settlement and Resolution shall be of no further effect.

If accepted, NOPSI will provide to the Council, within 10 days of the date of this Resolution, a set of rate schedules that implement the rate relief granted.

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

YEAS: Boissiere, Giarrusso, Singleton, Wagner, Williams - 5

NAYS: 0

ABSENT: Barthelemy; Early - 2

AND THE RESOLUTION WAS ADOPTED.

CRS 86-262R

jlj

THE FOREGOING IS CERTIFIED TO BE A TRUE AND CORRECT COPY.
Emma Williams
Acting CLERK OF COUNCIL
CITY OF NEW ORLEANS

EXHIBIT A

INDUSTRIAL INCENTIVE RATE - TERMS & CONDITIONS

I. ELIGIBILITY

A. New Customers

The rate would be offered to a new manufacturing customer who:

1. Employs a minimum of 500 full time people on site.
2. Has a minimum load of 5,000 kilowatts.
3. Maintains a load factor of no less than 65% (a two shift operation).

B. Existing Customers

1. Increases employees by a minimum of 500 full time people on site over the peak level of such employees during the period 1983-1986.
2. Increases peak load by a minimum of 5,000 kilowatts over the peak demand that occurred during the 1983-1986 period.

II. AVAILABILITY

The rate is available for new or existing manufacturing customers who meet the eligibility criteria prior to April 1, 1994 and the rate is available for a non-renewable five year period.

III. RATE

A. The rate will be 2.95 cents per kilowatt/hour for the year ending March 31, 1987.

B. The rate for subsequent years will increase by the rate of increase in the Consumer Price Index (CPI) in the preceeding calendar year.

C. Standard facilities charge of 1.67% per month based on NOPSI's out of pocket additional investment in equipment dedicated to the eligible customer.

IV. NO PROFIT OR LOSS TO NOPSI ON THIS RATE

To ensure that NOPSI earns no profit or loss under this rate it will be necessary to add a provision to the existing fuel adjustment charge calculation. Any differential between the revenues derived from this rate and the cost of fuel plus Reserve Equalization and Transmission payments incurred by NOPSI in servicing this load would be credited toward NOPSI's fuel adjustment charge.

BACKGROUND DOCUMENT

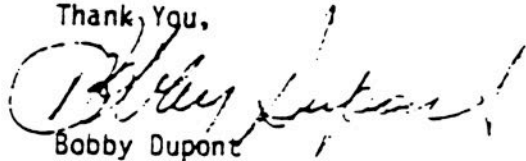
1985 Task Force Report

TASK FORCE ON MUNICIPALIZATION AND ALTERNATIVES

Dear Councilman Giarrusso,

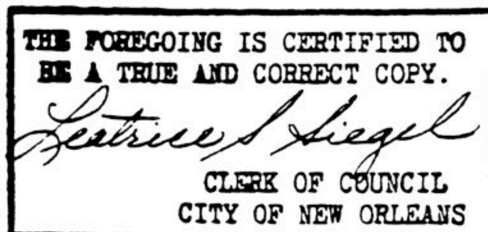
As chairman of the Task Force on Municipalization and Alternatives, I would like to appear before the City Council on Thursday, January 17, 1985 to submit a report that will amend and add to our original report submitted in 1984.

Thank You,

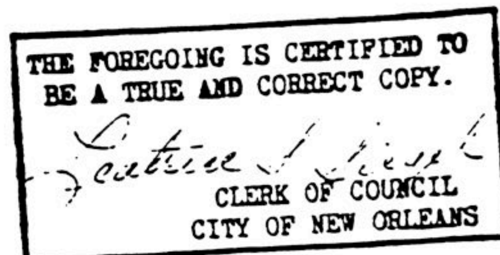


Bobby Dupont

cc Lee Siegel



THE FOREGOING IS CERTIFIED TO BE A TRUE AND CORRECT COPY.
CLERK OF COUNCIL
CITY OF NEW ORLEANS



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CLERK OF COUNCIL
CITY OF NEW ORLEANS

TASK FORCE ON MUNICIPALIZATION AND ALTERNATIVES

Report to the City Council
January 17, 1985

The Task Force concludes that the City Council must act to exercise its rights and options to purchase the assets held by NOPSI and LP&L in the City of New Orleans. The City Council must then replace the current operating companies with a public power authority for the City of New Orleans.

These are the only actions which place control of the future of electric rates in the hands of the city's elected officials and citizens. The Council must avoid to the fullest extent possible any situation in which the ratepayers of New Orleans are dependent upon the actions of the Louisiana Public Service Commission, the rulings of the Federal Energy Regulatory Commission, or the ability of NOPSI and LP&L to uphold the city's interests within a multi-state holding company.

Any delay in initiating the recommended actions may eliminate the relief to the ratepayers sought through municipalization.

I. LPSC RATE HEARINGS

Conclusion:

The Task Force concludes that the City Council cannot expect relief for New Orleans ratepayers to result from current proceedings before the LPSC.

Discussion:

Rate requests filed by NOPSI and LP&L will be acted upon in less than three months. The companies have asked for the right to automatically adjust rates to customers in order to pay for Grand Gulf. Developments to date before the commission do not indicate that NOPSI and LP&L customers can avoid Grand Gulf costs through LPSC action.

1. The possibility of relief to ratepayers through questioning of the prudency of the Grand Gulf investment may soon be closed off forever. The issue of prudency was not raised during the FERC hearings; nor has it been raised during the rate hearings before the LPSC. At this point, FERC testimony is essentially closed and the prudency issue may no longer be raised before that body. After the LPSC rules on the pending rate applications (something it must do within three months), the prudency issue may be closed entirely.

An attorney for the LPSC has indicated that it is up to the city to develop the evidence for this prudency investgiation. The decision to shift regulatory power over NOPSI to the LPSC was based in part on the promise that the LPSC would have investigatory resources superior to those of the city. Now the council is told that it must still bear the burdens of regulatory investigation.

2. Commission hearings have been ill-attended; only Commissioner Schwegmann has regularly attended the current rate proceedings.

3. Should the LPSC allow Grand Gulf costs to be passed on to Louisiana customers, subsequent efforts to challenge costs will be seriously compromised. Similarly, a City challenge to the Grand Gulf contract will be more difficult after commercial operation takes place.

4. The LPSC must rule on rates within three months. In the absence of a FERC ruling, and regardless of the good intentions of the commission, NOPSI and LP&L in Algiers will collect rates according to the initial (i.e., the 29.8 and 38 percent) allocations. <u>Money collected from the ratepayers under these rates may not be recoverable.</u> The Task Force was unanimous in its conclusion that the 29.8 percent figure is unacceptable; yet without prompt Council action we will be forced to accept that percentage. The LPSC will be powerless to prevent this result.

II. FERC PROCEEDINGS

<u>Conclusion</u>:

The Task Force concludes that prospective FERC actions may not offer short- nor long-term relief to New Orleans ratepayers. There is every prospect of additional delay at FERC. Should the city seek to municipalize at the end of the FERC process, N.O. ratepayers will have already endured much of the burden of Grand Gulf I.

<u>Discussion</u>:

Proceedings before FERC have been recently complicated by the action of Middle South Utilities. The position of the city has been materially damaged by the action of the four operating companies and the subsidiaries of Middle South.

1. The utility companies have suggested a settlement of the allocation case which would leave NOPSI and LP&L with significantly higher percentages of Grand Gulf I costs. In spite of prior assurances to the city, NOPSI and LP&L are asking FERC to place a burden on city ratepayers in excess of Judge Liebman's initial recommendation. The increased percentages would remain a burden to the city for the life of the plant.

2. According to the latest MSU plan, its stockholders would absorb some of the costs of Grand Gulf. However, savings from this action, whem compared to Judge Liebman's initial decision, would be passed on to the customers of Mississippi and Arkansas--not the the customers of Louisiana.

3. The companies have similarly abandoned the city's and the LPSC's position regarding cost equalization among MSU operating companies. NOPSI has had and is projected to have the highest rates within the system. The recently filed position of the utility companys makes rate relief from FERC less likely.

4. The actions of the companies will result in further delay in the FERC proceedings. Pending final FERC decisions, the city's ratepayers will bear an enormous proportion (nearly 1/3) of Grand Gulf costs. (The total burden for Louisiana residents is close to seventy percent.) Anything that delays a FERC decision is contrary to the interests of the city.

III. POTENTIAL MUNICIPALIZATION SAVINGS

Conclusion:

The Task Force concludes that events since the submission of the Task Force report of June, 1984 indicate significant savings over the next ten years would be realized by municipalization.

Discussion:

In June, 1984 the Task Force submitted a report to the City Council that was the result of over a year of investigation and study. Events of the last seven months have materially affected the conclusions and recommendations of that report, particularly the economic analysis which projected savings to the city in the event of municipalization.

The Task Force Report of June, 1984 identified potential ten year savings of $400 million to the city and its ratepayers as a suggested "threshold" amount sufficient to recommend municipalization. The evidence is clear that the indicated amount has been exceeded. Specifically:

1. The cost of Grand Gulf I has increased since data was submitted to the Task Force. Regardless of the ultimate percentages assigned to NOPSI and LP&L, any increase in Grand Gulf cost makes municipalization more attractive.

2. The future of Grand Gulf II is very much in doubt. Cancellation of that unit will result in yet more court and commission battles over the division of the costs associated with the partial construction of the plant.

3. The economic analysis associated with the Task Force report of June, 1984 made certain assumptions about the future price of natural gas and other fossil fuels. The market for natural gas that now exists is significantly less expensive than the consultant's projections. Decreases in natural gas prices are expecially beneficial for a projected municipal operation since it would lower the per kilowatt cost of electricity generated by gas-fired generating units in comparison to nuclear units.

4. The Task Force analysis assumed NOPSI would receive a seventeen percent share (and LP&L a fourteen percent share) of Grand Gulf I. Should FERC adopt the latest Midddle South offer of settlement, the percentages assigned to NOPSI and LP&L would increase--and so would the charges passed on to the ratepayers.

IV. CONCLUSION

The Task Force met January 9, 1984 and unanimously passed a resolution to recommend the following actions to the City Council. (Two members of the Task Force abstained.) These are not actions that can be further studied, nor can these actions be put off in the hope that some agency of the federal government, state commission, court, or any other group will come to the rescue of New Orleans ratepayers. The responsibility for what must be done now rests in the hands of the members of the City Council.

The Task Force recommends:

1. that the City of New Orleans establish an independent public power authority to plan for and to ultimately provide services under the provisions of Louisiana Revised Statute 33:4161 and particularly under the provisions of Section 4172 thereof;

2. that the City Council give notice of its intention to undertake to purchase the assets of New Orleans Public Service and a pro rata portion of the assets of LP&L for the purpose of continuing to provide electric service to the City of New Orleans and its citizens;

3. that said authority finance the purchase of said assets through the issuance of revenue bonds, that is, bonds secured by the revenues of said authority independent of the full faith and credit of and the taxing authority of the City of New Orleans;

4. And finally, that the City of New Orleans take all legal actions, including the return of regulatory authority to the City Council, as necessary and proper to enforce the rights and further the purposes of these recommendations.

<u>BACKGROUND DOCUMENT</u>

Moody's Municipal Credit Report:
New Orleans, Louisiana

Moody's Municipal Credit Report

New Orleans, Louisiana — September 30, 1986

New Issue — **General Obligation/Special Tax**

sale: $135,090,000 General Obligation Bonds, Series 1986

date: Sold September 26

Moody's rating: Baa (revised from A)

opinion: The severity of economic dislocation as an aftermath of the oil price drop has compounded the city's own financial difficulties and weakens credit position. Revenue inflexibility necessitates dramatic budgetary adjustments and even with the potential for some revenue enhancement only marginal financial flexibility seems likely.

key facts:

Median:	3.1%
Debt Burden:	6.1%
Payout, Ten Years:	68.8%
General Fund Balance as % of	
Revenues, FY 1985:	1.4%
FY 1984:	5.5%
General Fund Operating Deficit ($000)	
FY 1983:	$2,745
FY 1984:	$1,357
FY 1985:	$14,510
% Below Poverty Level, 1980:	26.4%
Unemployment Rate, 5/86:	10.6%

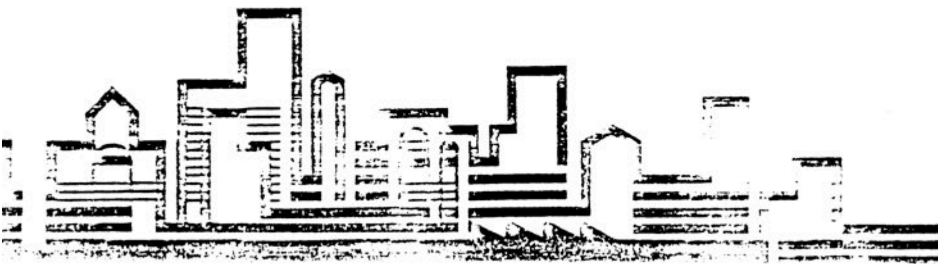
analysis

The City of New Orleans has long been characterized as having varied credit characteristics. Its debt position and regional economic importance have tended to negate weaknesses associated with financial operations and a very poor populace. Now, however, the weakening in Louisiana's state-wide economy has compounded New Orleans' own financial difficulties and serve to weaken its credit standing.

Past financial performance has been characterized by interim measures that failed to provide long-term stability. The pattern of consistent General Fund operating deficits persists, contributing to an 80% reduction in year-end General Fund balance between fiscal 1982 and 1985. Sharp declines in sales tax receipts, the major revenue component, as well as reductions in state and federal revenues have more recently exacerbated financial strain.

Revenue inflexibility has resulted in severe budgetary pressure in the current fiscal year with attendant personnel and service reduction. The city will soon seek voter approval of a $195 property service charge. Even with passage of this revenue enhancement, only marginal financial flexibility seems likely. Voters are also being asked to provide significant millage increases for schools and other special purposes.

New Orleans debt responsibilities, while still within the moderate range, have been nonetheless increasing. Voters will be asked to approve an additional $60 million bond authorization on November 4. Both the burden on the tax base and the budgetary impact of debt service costs on the already weak financial position contribute to lessened debt security.



New Orleans, Louisiana

Given the city's weakened credit position, the ratings on the following associated debt obligations have also been revised from **A** to **Baa**: paving certificates, 0.4 mill Audubon Park bonds, 2 mill sewer, water and drainage bonds, 3 mill drainage system bonds, 6 mill drainage bonds, and uninsured 9 mill drainage bonds.

d ails of bond sc e:

Legal Name of Issuer: City of New Orleans, Louisiana.

Security: G.O., ULT.

Date of Bonds: September 1, 1986.

Denomination: $5,000 or integral multiples.

Annual Maturities 12/1 ($ 000)

Year	Amount	Year	Amount
1986	$2,640	1995	$ 9,295
1987	$1,535	1996	9,975
1988	1,605	1997	10,710
1989	1,690	1998	11,500
1990	1,780	1999	12,345
1991	1,880	2000	13,255
1992	1,990	2001	14,235
1993	4,095	2004 [1]	29,830
1994	6,730		

[1] Term.

Average Life of Issue: 12.128 years.

Interest Payable: Semiannually beginning December 1, 1986.

Call Features: Beginning December 1, 1996 at premium to be determined; also provision for mandatory Sinking Fund on term bonds.

Registrar/Paying Agent: Chase Manhattan Bank, N.A., New York.

Delivery: October 23, 1986.

Bond Counsel: Foley Judell Beck Bewley Martin & Hicks, New Orleans; and Chaffe McCall Phillips Toler & Sarpy, New Orleans.

Advisors: Fiscal Services Inc., New Orleans.

Auditor: Peat Marwick, Mitchell & Co., New Orleans (FY 1985).

Managing Underwriter: Goldman, Sachs & Co., New York.

d tails of last c mparable sale:

Date of Sale: July 17, 1985.

Amount: $58,000,000.

Purchaser: Howard, Weil, Labouisse, Fredricks, Inc.

Net Interest Cost: 7.9296%

Moody's Index: [1] 8.75%

[1] For **A** rated issues, as of July 19, 1985.

rating history:

1970:	**A1**
1977:	**A**
September 1986:	**Baa**

analyst: J. Incorvaia

Moody's Investors Service, Inc. has used due care and caution in the preparation of this publication. The information herein has been obtained from sources believed to be accurate and r ible, but because of the possibility of human and mechanical error, its accuracy or completeness is not guaranteed. Moody's ratings are opinions, not recommendations to buy or sell, a their accuracy is not guaranteed. A rating should be weighed solely as one factor in an investment decision, and you should make your own study and evaluation of any issuer whose s urities or debt obligations you consider buying or selling. Most issuers of corporate bonds, municipal bonds and notes, preferred stock, and commercial paper which are rated by Moody's Investors Service, Inc. have, prior to receiving the rating, agreed to pay a fee to Moody's for the appraisal and rating services. The fee ranges from $1,000 to $55,000.

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New Orleans, Louisiana

debt factors: Debt levels above median figures following recent borrowing activity of city and underlying entities. Payout of general obligation debt is average. Included in direct debt below are $16.25 million of contingent liabilities which have been incurred because of financial difficulties of Louisiana World Exposition Inc., the operator of the fair. Of this amount, $15 million plus interest is owed the state. Additional $60 million in general obligation bonds to be voted on November 4.

Debt Statement as of 6/30/86 ($ 000)

	Amount	%	
Bonded debt outstanding:			
General obligation			$306,333
Limited tax bonds			77,320
Paving certificates			338
Revenue			171,161
Current offering (9/26/86)			135,090
Gross bonded debt:			$690,242
World Exposition Liability			1,250
Line of credit			15,000
Unfunded debt: short-term note, due 10/15/86			10,000
Gross direct debt			$716,492
Less:			
Short-term obligation			10,000
Revenue bonds			171,161
Bonds refunded			105,380
Direct net debt			$429,951
Overlapping Debt:			
Orleans Parish School Board	$120,971	100	120,971
Orleans Levee District	[1] 105,415	100	105,415
Overall net debt			$656,337

[1] Includes $101.1 million variable rate demand bonds sold in August 1986.

For additional information, please refer to Moody's 1986 Municipal and Government Manual, page 2091.

Security: G.O., ULT.

Use of Proceeds: Refund the following public improvement bonds: $34.8 million Series 1982 maturing 1993-2002; $37,530,000 Series 1983 maturing 1994-2003; and $33,050,000 Series 1984 maturing 1995-2004.

Structure: Average rate of retirement.

Debt History/Trend: Annual issuer in recent years; this pattern likely to continue.

Borrowing Restrictions: Not more than $500 million general obligation bonds outstanding at one time. Limited tax bond restrictions: (1) drainage, $18 million each for 6 mill and 5.92 mill tax bonds, $12 million for 3.94 mill tax bonds and $68 million for 9 mill tax bonds; (2) $50 million for the downtown development district bonds; and (3) Audubon Park Commission must meet bonds test.

CIP/Future Borrowing: City hopes to continue pattern of annual borrowing for ambitious capital program. However, program will require voter approval. No bonds authorized. Current economic and fiscal pressures have slowed capital program funding. November referendum for $60 million general obligation bond issue.

Short-term Borrowing: City currently has $10 million short-term loan outstanding for cash flow purposes. City contemplating issuing $20 million tax anticipation certificates due March 1, 1987, in part to repay $10 million short-term.

New Orleans, Louisiana

Selected Debt Service

Year	[1] ($ 000)
1987	[2] $ 48,430
1990	48,110
1993	46,648
1996	32,345
1999	22,742
2001	21,765
2003	12,651
2005	5,077
Overall Total:	$625,636

[1] Assumed insured interest rate on current issue.
[2] Peak debt service.

Debt Ratios

[1] Net Debt	Per Capita	[1] Median	% F.V.	[1] Median (%)
Direct	$769	$451	4.0	1.6
Overall	1,174	767	6.1	3.1

[1] Cities with population 500,000 and over.

Rate of Retirement [1]

Principal Amount Due	Amount ($ 000)	% of Total
In 5 years	$116,883	36.5
In 10 years	263,509	66.8

[1] Excludes paving certificates and contingent liabilities; includes general obligation and limited tax bonds. Repayment beginning 1987.

Administrative Factors:

Home-rule charter, with a mayor-council form of government. The mayor, elected for a four-year term, is limited to two consecutive terms. The council, the legislative body of city government, is comprised of five councilmen elected from districts and two elected at-large, all for four-year terms.

Police, fire, and sanitation are main municipal services. Multiple boards, commissions, and authorities with varying levels of independence deliver various other services.

Board of Liquidation, City Debt: Board is composed of nine members, consisting of the mayor, two councilmen, and six self-perpetuating members. Board is fully responsible for all city debt, annually sets millages sufficient to cover debt service for that year, approves issuance, and receives and invests property taxes for debt service on a daily basis.

Public Employees: As of May 31, 1986 about 7,919 (not reflecting subsequent layoffs).

Pension: Substantial pension liabilities. Six systems, five administered by the city and one by the state. The actuarial present value of accumulated plan benefits of the old fire system exceeds net assets available from plan benefits by $109.7 million as of December 31, 1985. The city continues to fund these plans on a "pay-as-you-go" basis. The new fire and police systems are funded on an actuarially sound basis and have no unfunded liabilities. However, in March 1983, the city and trustees of the existing police pension plans agreed to transfer all members, active and retired, to the State Municipal Police Employees' Retirement Systems (MPERS), with substantially all benefits to be paid by MPERS. The city's obligation under this agreement totals $102,837,889; $3,309,894 is to be paid in cash and $99,527,995 to be paid over 30 years at 7% annual interest. The city's regular employee plan and sewerage and water board system have unfunded liabilities of $24.0 million and $16.6 million, respectively, as of December 31, 1985, being amortized over a 30-year period. City contributions to all retirement systems from all funds totaled $23.4 million in 1985.

Litigation: The fiscal 1985 audit was qualified, as were other recent audit reports due to outstanding litigation the city faces. About $20 million of potential liabilities are not reflected in the financial statements.

New Orleans, Louisiana

property valuation and tax data:

Moderate tax base growth in recent years, reassessment completed in 1983. Reassessment recently completed for 1987 is expected to increase taxable values about 11%. Tax collections on average are poor. Over 25% of total 1986 values are tax exempt.

New Orleans

FY	[1] Net A.V.(000)	Equalization Rate (%)	Estimated Full Value (000)	% Change	[2] Tax Rate/ $1000 A.V.	Levy (000)[3]	% Current Collected
1981	$ 901,636	12.2	$6,790,869	-	$55.39	$ 85,988	93.7
1982	957,304	12.3	7,665,567	12.9	56.79	100,091	92.8
1983	1,102,696	12.2	8,940,747	16.6	65.79	115,176	92.1
1984	1,155,840	12.05	9,366,812	4.8	65.79	120,947	94.1
1985	1,185,276	11.99	9,885,858	5.5	72.59	134,409	90.3
1986	1,278,905	11.98	10,672,326	7.9	77.29	149,457	NA

[1] Includes real and personal property and motor vehicles; excluding exemptions.
[2] City millage rate for general, debt, and other limited purposes.
[3] Average of real and personal property tax collections.

Average Annual Growth F.V. 1981-86:	9.4%
1986 Est. Net Full Value per Capita:	$19,088
Year-end Current Delinquency:	
1984:	10.3%
1985:	7.3%

Tax Base Composition (1986)-Net	Total A.V. %
Real property	64.1
Personal property	21.5
Public service	14.3

Property Tax Base: Real and personal property.

Exemptions: $7,500 homestead exemption.

Assessing Agent: Seven assessment districts, each with elected assessor.

Reassessment Procedures: Every four years.

Basis of Assessment: Ten percent land and residential improvements, 15% electric cooperatives, 25% public service properties, 15% other.

Collecting Agent: City Bureau of Treasury.

Taxes Due: January 1.

Penalties: 1 1/4% per month.

Rate and Levy Limitations: Different millage limits for different purposes set by the legislative auditor for the State of Louisiana, which change periodically in conjunction with changes in property revaluation laws governing assessment rates and homestead exemptions, and other factors affecting millage levels. The city has generally levied at the maximum rate allowable for operating purposes.

Largest Taxpayers	Business	1986 A.V. ($ 000)
South Central Bell	Telephone utility	$82.43[illegible]
New Orleans Public Service	Electric and gas utility	57.92[illegible]
Whitney National Bank of New Orleans	Bank	23.35[illegible]
First National Bank of Commerce	Bank	18.91[illegible]
Canal Place 2000	Office real estate	13.86[illegible]
American Telephone and Telegraph	Telephone utility	11.4[illegible]

New Orleans, Louisiana

economic factors:

City is a major seaport, and important trade and service center with an established tourist industry, and a regional transportation hub and public utilities center. Tourism and conventions are an important part of the city's economic base. The World Exposition had not been as successful as projected, with about seven million visitors instead of the 11 million anticipated. Losses in population and wholesale and retail trade relative to surrounding SMSA characterized decades through 1980. Minor gain in population since 1980. Total employment has shown some growth following the recessionary decline. Sharp declines in employment at major oil related companies have been reported over the last year. Percent below poverty level is high.

Location: Southeastern Louisiana near Gulf of Mexico.

Population: New Orleans

Year	Population	Land Area	Density (Per Sq. Mile)	% Change City	% Change State	% Change U.S.
1950	570,445	199.40	2,860	15.34	13.52	14.50
1960	627,525	205.00	3,061	10.00	21.37	18.50
1970	593,471	197.10	3,011	-5.42	11.90	13.32
1980	557,515	197.10	2,828	-6.05	15.39	11.43
1984 est.	559,101	199.40	2,804	0.28	6.10	-

Source: U.S. Census Bureau.

Population and Housing Characteristics: New Orleans

	City 1970	City 1980	Norms [2] 1980	U. S. 1980
Population:				
Median age	28.3	28.7	30.5	30.0
% school age	25.8	20.8	19.2	20.9
% working age	54.9	59.5	60.9	60.7
% 65 and over	10.6	11.7	12.8	11.3
No. persons/household	3.1	2.6	2.6	2.75
Income:				
Median family income	$7,443	$15,045	$17,136	$19,908
% below poverty level	26.2	26.4	18.1	12.5
Per capita income	$2,705	$6,547	$6,775	$7,313
Housing:				
% owner occupied	38.3	39.7	55.6	64.4
% built before 1939	-	37.5	19.9	26.1
% built since last census	14.2	12.3	21.7	25.9
Owner occupied median value	$21,157	$50,600	$38,902	$47,300
Median gross rent	$88	$210	$211	$243
Occupied housing units	191,363	[1] 206,435		

Source: U.S. Census Bureau.

[1] 1970-80 % change: 7.9%.

[2] Norms are for all cities with populations greater than 20,000 in the Southeast Region.

New Orleans, Louisiana

Labor Market Characteristics: New Orleans City/Orleans Parish

Year	Civilian Labor Force	Total Employment	% Unemployed City	% Unemployed State	% Unemployed U.S.
1976 [1]	229,602	211,225	8.0	6.8	7.7
1977 [1]	234,707	216,189	7.9	7.0	7.1
1978 [1]	233,745	217,807	6.8	7.0	6.1
1979 [1]	239,692	224,147	6.5	6.7	5.8
1980 [1]	235,832	221,367	6.1	6.7	7.1
1981 [1]	243,641	223,546	8.2	8.4	7.6
1982 [1]	242,145	219,890	9.2	10.3	9.7
1983 [1]	244,172	220,354	9.8	11.8	9.6
1984 [1]	254,705	232,318	8.8	10.0	7.5
1985 [1]	258,706	230,047	11.1	11.5	7.2
5/85	260,581	230,717	11.5	11.4	7.0
5/86	250,186	223,772	10.6	13.0	7.0

Source: Department of Labor, Bureau of Labor Statistics.

[1] Data not consistent with preceding years due to changes in the benchmarking process.

Largest Employers

	Employees July 1986		Employees July 1986
State of Louisiana	15,000	Tulane Univeristy	4,575
U.S. Government	12,720	Schwegmann Giant Supermarkets	4,000
City of New Orleans	[1] 10,020	The Shell Companies	2,000
Orleans Parish School Board	9,000	Southern Baptist Hospital	1,780
South Central Bell	8,000	Touro Infirmary	1,650

[1] As of May 31, 1986; includes summer employees and excludes subsequent layoffs.

financial factors:

Successive operating deficits in General Fund in each of the last six fiscal years ending 1985. Revenue structure lacks diversity with use of property tax constrained by statutory limitations. Dependence on potentially cyclical sales tax and intergovernmental revenues which were reduced in fiscal 1985, is a negative factor. Liquidity position is tight.

Operating Funds Financial Performance (fiscal years ended 12/31 $ 000) [1]

	1983	1984	1985	% Change 1983/84	% Change 1984/85
Property taxes	$41,978	$42,979	$54,855	2.4	27.6
Sales taxes	119,121	[3] 136,515	104,716	14.6	-23.3
Utilities taxes	8,505	8,868	8,475	4.3	-4.4
All other local revenue	68,430	78,398	87,607	14.6	11.7
Federal sources	46,238	36,731	29,384	-20.6	-20.0
State sources	40,424	42,761	40,355	5.8	-5.6
Other	571	757	1,341	32.6	77.1
Total revenue	$325,267	$347,009	$326,733	8.3	-6.2
Operating expenditures	302,829	321,455	303,414	6.1	-5.6
Debt service	22,103	28,125	34,266	27.2	21.8
Other	1,023	631	662	-38.3	4.9
Total expenditures	$325,955	$350,211	$338,342	7.4	-3.4
Operating deficit [2]	2,745	1,357	14,510	-50.6	969.[illegible]

[1] General and Debt Service Funds

[2] General Fund only

[3] Increased collections due in part to Louisiana World Exposition

New Orleans, Louisiana

1985 Sources of Revenue	%	1985 Items of Expenditure	%
Sales taxes	32.0	Public safety	32.0
Other local sources	26.8	General government	24.3
Property taxes	16.8	Public works	19.3
States sources	12.3	Debt service	10.1
Federal sources	9.0	Culture and recreation	4.8
		Health and welfare	3.8

General Fund Financial Position ($ 000)

				% Change	
	1983	1984	1985	1983/84	1984/85
Cash and investments	6,142	$ 7,108	$ 8,944	-15.7	25.8
Operating loans	0	0	0	-	-
Other current liabilities	37,385	40,838	[1] 39,713	9.2	-2.7
Year-end cash surplus (deficit)	$(31,243)	$(33,730)	($30,769)	8.0	-
Receivables	$41,980	$41,465	$31,789	-1.2	-23.3
Fund balance	$20,926	$19,287	$4,777	-7.8	-75.2

[1] Includes $14,747,628 advanced to city by the Lousiana Public Facilities Authority under an advance refunding agreement.

General Fund ($ 000)

	Original Budget FY 1986	Amended Budget FY 1986
Revenues	$357,150	$281,143
Expenditures	354,105	281,634
Operating surplus (deficit)	3,045	(491)

<u>BACKGROUND DOCUMENT</u>

Treasury Department Letter to Suffolk County, New York

DEPARTMENT OF THE TREASURY
WASHINGTON

"FOI COPY"

ASSISTANT SECRETARY

July 28, 1986

Dear Mr. Cohalen:

The pending issuance of $7.3 billion in bonds by the County of Suffolk, New York (County) to finance a possible takeover of the Long Island Lighting Co. (LILCO) raises a number of concerns that we are bringing to your attention. Our concerns are based primarily upon the fact that the bond proceeds will be invested so as to ensure that the County will not suffer any material financial detriment, and indeed could reap a considerable windfall, if the bond proceeds are not used to accomplish their stated purpose.

As you know, interest on obligations of a state or its political subdivisions generally is exempt from Federal income taxation under section 103 of the Internal Revenue Code. This exemption, however, does not apply to arbitrage bonds. The determination whether an obligation is an arbitrage bond depends on the issuer's reasonable expectations as of the date of issuance regarding both the amount and use of the bond proceeds. Reasonable expectations as to future events may be established by a certification in the bond indenture or related documents to the extent permitted under IRS regulations. The regulations, however, do not protect a certification made in bad faith. This point was clearly enunciated in Revenue Ruling 85-182.

Some of the circumstances surrounding the County's proposed bond issue raise a substantial question whether the County in good faith may certify that it reasonably expects that the requirements for an initial temporary period will be satisfied. These circumstances include the following:

- -- The fact that the State of New York just recently enacted legislation to accomplish a State takeover of LILCO.
- -- The difficulty that is likely to be encountered in successfully consummating a hostile takeover attempt of this kind prior to the redemption date. (We are informed that LILCO will resist the takeover vigorously.)

-- The fact that bonds are being issued at the outset not only in an amount sufficient to acquire the stock of LILCO, but also in an amount sufficient to refinance all of LILCO's outstanding debt.

-- The apparent rush to issue these bonds before the earlier of September 1, 1986, or the date of enactment of pending tax reform legislation, the date to which the Chairmen of the Congressional tax-writing committees and the Secretary of the Treasury have endorsed a postponement of the arbitrage rebate requirement.

-- The fact that the bonds are structured in such a way as to ensure that the County will not suffer any material financial detriment if the bond proceeds are not used to finance the takeover. This structure increases the likelihood that the takeover will not be feasible and will not be consummated.

Should you proceed with the offering, we will direct the Internal Revenue Service to conduct an in-depth audit of the matter and to proceed as necessary, depending on the results of the audit. Please inform potential purchasers of the bonds of the concerns expressed by the Department of the Treasury in this letter.

Sincerely,

J. Roger Mentz
Assistant Secretary
(Tax Policy)

Peter F. Cohalen
Suffolk County Executive
H. Lee Dennison Bldg.
Veterans Memorial Highway
Hauppauge, New York 11788