

**BEFORE THE
NEW ORLEANS CITY COUNCIL**

IN RE: REVISED APPLICATION OF ENO)	
FOR A CHANGE IN ELECTRIC AND GAS)	DOCKET NO. UD-18-07
RATE IN THE CITY OF NEW ORLEANS)	August 9, 2019
PURSUANT TO COUNCIL RESOLUTIONS)	
R-15-194 AND R-17-504 AND FOR RELATED)	
RELIEF)	

**AIR PRODUCTS AND CHEMICALS, INC.'S
POST-HEARING REPLY BRIEF**

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Air Products and Chemicals, Inc. (“Air Products”) respectfully submits this Post-Hearing Reply Brief in the referenced proceeding, to respond to positions asserted in initial briefs of Entergy New Orleans, LLC (“ENO”) and Advisors to the Council of the City of New Orleans (“Advisors”). Further, Air Products re-urges its recommendations to the Council that were summarized in its Initial Post-Hearing Brief and are supported by the evidence in the record in this proceeding.

I. Air Products Key Findings and Recommendations

Key findings and recommendations of Air Products that Air Products urges the Council to adopt in this proceeding include:

- The trend in authorized ROEs for electric utilities has declined over the last several years and has remained below 10.0% more recently.¹
- ENO witness Mr. Robert Hevert’s recommendation for a cost of equity within the range of 10.25% to 11.25%, with a midpoint estimate of 10.75%, are overstated and do not represent an accurate estimate of the current market cost of equity for

¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 2:17-19 (February 1, 2019).

the Company, and would be much higher than a fair and balanced ROE for ratemaking purposes.²

- Based on the results of several cost of equity estimation methods performed on publicly traded electric utility companies with comparable risk to ENO, the Council should award ENO a return on common equity of 9.35%, which is the midpoint of his recommended range of 9.0% and 9.7%.³
- A 9.35% ROE will fairly compensate ENO for its current market cost of common equity while mitigating the claimed revenue deficiency in the proceeding, by fairly balancing the interests of investors and ratepayers.⁴
- Based on the more in-depth and unbiased review of ROEs awarded to vertically integrated electric utilities provided in Mr. Walters' Schedule CCW-19, Mr. Hevert's recommended ROE range of 10.25% to 11.25% and his mid-point 10.75% point estimate are out of touch with the industry and his conclusions are misleading.⁵
- Once issues with Mr. Hevert's assumptions for his ROE calculations are corrected, his studies would show that Mr. Walters' 9.35% recommended ROE for ENO is reasonable.⁶
- For the same reasons detailed in Mr. Walters' Direct Testimony, Mr. Hevert's updated DCF, CAPM, and Risk Premium analyses in his Rebuttal Testimony produce excessive estimates for the required ROE and should be rejected.⁷
- The methodologies employed by ENO in the development of its electric class cost of service study are appropriate. This includes use of the 12 coincident peak ("12 CP") method for the allocation of generation-related fixed costs and purchased power agreements ("PPA").⁸
- Air Products is served at the transmission voltage level (does not require the distribution system) and its load is mostly interruptible. This makes the cost to

² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:12-17 (February 1, 2019).

³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:4-8 (February 1, 2019).

⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:8-11 (February 1, 2019).

⁵ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, page 4:9-12 and Schedule CCW-19 (April 26, 2019).

⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:16-20 and Table 9 (February 1, 2019).

⁷ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, page 21:3-7 (April 26, 2019).

⁸ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:14-17 (February 1, 2019).

serve Air Products substantially less than the cost to serve any other class of customers.⁹

- The approach taken by ENO to allocate its claimed revenue requirement among customer classes is a step in the right direction of recognizing cost of service, but still leaves Air Products paying about \$2.5 million per year more than it should according to ENO's own cost of service study.¹⁰
- To the extent that ENO does not receive the full amount of revenues that it seeks, the difference between the amount sought by ENO and the amount determined appropriate by the Council should be apportioned only to those customer classes that are being charged rates above cost of service as shown on Schedule MEB-3. This would not cause the rates of any class to be higher than what ENO has proposed, and would reduce the burden on those customer classes who would be paying rates above cost of service.¹¹
- Additional decreases in ENO revenue requirements from the level proposed by ENO, as recommended by the Advisors and Crescent City Power Users Group ("CCPUG"), should be spread among customer classes that would be above their COS at ENO's proposed rates, consistent with Schedules MEB-8, MEB-9 and MEB-10.¹²
- ENO's proposal to realign certain fixed costs associated with a number of generation facilities and PPAs from the Fuel Adjustment Clause ("FAC") and PPCACR to base rates should be approved.¹³
- The cost recovery mechanism in the proposed PPCACR should be accepted.¹⁴
- ENO's proposed RIM should be rejected, and if it is not rejected, its application should be limited to customers who take service at the distribution level, and the handful of customers (including Air Products) who take service at the transmission level should not be included in any RIM adjustments.¹⁵

⁹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:18-21 (February 1, 2019).

¹⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:22-26 (February 1, 2019).

¹¹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:1-8 (February 1, 2019).

¹² Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:18-25 (April 26, 2019).

¹³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:9-11 (February 1, 2019).

¹⁴ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:12-13 (February 1, 2019).

¹⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:14-18 (February 1, 2019).

- ENO’s proposal to recover costs associated with NOPS, as contained in the proposed FRP, should be accepted.¹⁶
- ENO’s proposal to reset rates to the EPCOE should be rejected. Instead, if the earned return on equity (“EROE”) is above the upper bandwidth, the rates should be adjusted so as to bring the ROE 60% of the way toward the upper bandwidth. Similarly, if the EROE is below the lower bandwidth, the rates should be adjusted so as to move the ROE 60% of the way toward the lower bandwidth.¹⁷
- ENO’s proposed language change to the “Continuity of Service” provision in its Service Regulations should be rejected and that the current language be retained.¹⁸
- Advisors witness Mr. Prep attributes phantom costs to the interruptible service supplied to Air Products, and as a result materially over-allocates costs responsibility to Air Products. He fails to appreciate that ENO does not have to build or buy capacity to serve interruptible load. ENO’s approach of including 15% of the interruptible load in the class cost of service study for the allocation of generation-related capacity costs appropriately recognizes generation cost responsibility associated with that capacity.¹⁹
- Advisors witness Mr. Prep’s class cost of service study mixes concepts of cost of service and rate mitigation. Mr. Prep’s assignment of widely ranging rates of return to various kinds of customers is completely arbitrary and not a proper measure of cost of service. In a cost of service study, all classes should be assigned the system average rate of return, and revenue deficiencies or surpluses calculated from that cost of service study. Rate mitigation is a separate matter, and should remain a separate step in the process of determining interclass revenue allocation.²⁰
- The proposal of the Advisors to include in cost of service studies and in FRP reviews the costs and revenues associated with cost recovery riders should be rejected. Riders like the Fuel Adjustment Clause (“FAC”) that are designed to track and collect revenues separate and apart from base rates should not be included either in class cost of service studies or in FRP reviews. Such riders are designed to reflect certain specific costs, and have their own internal true-up or

¹⁶ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:19-20 (February 1, 2019). Note: The Direct Testimony of Mr. Brubaker was filed prior to the Orleans City Parish decision to void the Council’s orders approving NOPS.

¹⁷ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:21-26 (February 1, 2019).

¹⁸ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:27-29 (February 1, 2019).

¹⁹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:4-10 (April 26, 2019).

²⁰ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:11-17 (April 26, 2019).

reconciliation mechanisms. Including these costs and revenues in cost of service studies or in FRPs distracts from the purpose of the FRPs, which essentially is to provide for adequate recovery of those cost collected through base rates rather than through separate riders.²¹

- The Advisors' recommendation to update all of the inputs to class cost of service studies, including demand and energy allocation factors that allocate cost among customer classes during the course of annual FRP reviews is inconsistent with the general concept of FRPs, which are designed to provide an abbreviated and streamlined review of base rate cost recovery. The Advisors' recommendation would essentially convert the FRP process into "mini" rate cases every year which would make the process unnecessarily complex, expensive, contentious and inefficient. FRPs typically have formulas which specify how any rate adjustments are to be accomplished, and apply adjustment as a uniform percentage of base rate revenues, whether there are increases, or decreases.²²
- To the extent that the Council allows Lost Contribution to Fixed Cost ("LCFC") to be included in any cost recovery mechanism, it should be collected through the Energy Efficiency Cost Recovery ("EECR") or the Demand Side Management Cost Recovery ("DSMCR") mechanisms. To do otherwise would risk having customers who are not responsible for the LCFC pay for it. Inclusion of LCFC in a EECR or DSMCR (assuming LCFC is authorized by the Council) is appropriate because the beneficiaries of utility-sponsored energy efficiency efforts are those customers and classes of which those customers are a member.²³
- The structure of ENO's and other parties' decoupling mechanisms poses a substantial risk of a highly disruptive change in revenues for customers in classes that have only a few customers (Master-Metered Nonresidential, High Voltage and Large Interruptible Service) because the mechanism essentially would guarantee fixed cost recovery from those classes regardless of the level of purchases by customers in those classes. A modest change in the level of business operations, and hence the amount of power required from ENO, could cause a very disruptive increase to those customers.
- Either customer classes with only a few customers should not be included in any decoupling mechanism, or there should be a maximum change of 10% in the average charge per kWh between rate cases to customers in those classes.²⁴

²¹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:18-27 (April 26, 2019).

²² Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:28-37 (April 26, 2019).

²³ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:38 – 3:6 (April 26, 2019).

²⁴ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:7-17 (April 26, 2019).

The above findings and recommendations have been discussed thoroughly in Air Products' Initial Post-Hearing Brief, which it incorporates by referenced.

II. Air Products Reply to ENO

While Air Products agrees with many of ENO's recommendations relating to its cost of service ("COS") study and allocation of its class COS to customer rate classes, Air Products disagrees with ENO's return on equity ("ROE") analysis, its recommended ROE of 10.75%, and its proposal for use of a Reliability Incentive Mechanism ("RIM") to increase or decrease its ROE depending on reliability performance with respect to its distribution system. In addition, Air Products disagrees with ENO that any additional decreases in its revenue requirement should not be allocated to those classes paying above COS. While Air Products and other parties may not have recommended that the Council follow "strict" class COS, Air Products has put forth evidence supporting the benefits of cost causation and the need to move towards cost causation.²⁵

A. ENO Requested ROE is Unreasonable

While ENO briefs the Council on the importance of setting just and reasonable rates that include an "appropriate" and not "unreasonably low" ROE, ENO has not demonstrated that Air Products' witness Mr. Christopher Walters' recommended 9.35% ROE is not appropriate or is unreasonably low. While ENO often lumps Mr. Walters' recommendation in with "other intervenors," ENO does not specifically refute the reasonableness of Mr. Walters' ROE analysis that produced the recommended 9.35% ROE. In fact, the only real criticism of Mr. Walters' analysis by ENO is that (i) he set the low end of his recommended range (*i.e.*, 9.00%) by

²⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 12:7 – 15:6 (February 1, 2019).

reference to his DCF model results²⁶ and (ii) 9.35% is not supported by ROEs authorized by other vertically-integrated utilities.²⁷ Neither criticism has merit.

First, Mr. Walters did not recommend the low end of his ROE range for his recommended ROE. Moreover, his ROE range was informed by more than his DCF model results.²⁸ Mr. Walters used several cost of equity estimation methods performed on a proxy group of publicly traded electric utility companies with comparable risk to ENO, including (1) a constant growth Discounted Cash Flow (“DCF”) model using the consensus of analysts growth rate projections, (2) a constant growth rate DCF model using sustainable growth rate estimates, (3) a multi-stage DCF model, (4) a Risk Premium model, and (5) a Capital Asset Pricing Model (“CAPM”).²⁹ Based on Mr. Walters’ extensive analysis, he estimated that ENO’s current market cost of equity is in the range of 9.0% and 9.7%, with a mid-point estimate of 9.35%.³⁰

Even according to ENO’s own brief, the recent FERC ruling relied upon by ENO in its Initial Brief did not determine that the DCF model should not be used or its model results completely disregarded.³¹ [And in fact, the FERC order did not find that the DCF methodology should not be used.³²] Moreover, the FERC order addressed FERC’s proposed framework for determining whether an existing ROE remains just and reasonable, and does not impose any

²⁶ ENO Initial Post-Hearing Brief, page 42 (July 26, 2019).

²⁷ ENO Initial Post-Hearing Brief, page 46 (July 26, 2019).

²⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:16-20 and Table 9 (February 1, 2019).

²⁹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 3:4-6 and 17:3-10 (February 1, 2019).

³⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:6-8 (February 1, 2019).

³¹ ENO Initial Post-Hearing Brief, pages 38 and 42-43 (July 26, 2019).

³² Docket No. EL11-66-001, et al., Order Directing Briefs, 165 FERC ¶ 61,030 (October 16, 2018) at para 3, citing to FERC Opinion No. 531, 147 FERC ¶ 61,234 at PP 8, 32-41.

requirement on the Council to use such framework to establish a new target ROE for ENO in this proceeding.³³

While Mr. Walters' ROE analysis included three different DCF models, his analysis also included Risk Premium and CAPM models, and his recommended ROE of 9.35% is informed by all of his ROE analyses.³⁴ Mr. Walters' recommendation did not rely solely on his DCF analysis in isolation, as was of issue in the FERC Order. In fact, as Mr. Walters testified, the upper-end of his recommended range (9.70%) is based on the results of his Risk Premium analysis. Because Mr. Walters' recommended ROE of 9.35% was the midpoint of his range 9.0% to 9.7%, he effectively accorded 50% weighting to his Risk Premium results. Further, as the regulator of ENO's provision of electric service within the City of New Orleans, the Council is within its discretion to consider all of the analysis put forth by the Advisors and Intervenors, regardless of the framework put forth by FERC.³⁵

Second, in an attempt to focus the Council on ROEs of vertically integrated utilities, ENO states that the 9.35% ROE recommended by Mr. Walters is not supported by authorized ROEs for other vertically integrated utilities.³⁶ ENO further states that Mr. Walters' recommended ROE of 9.35% is 44 basis points below the average, as well as lower than all but eight authorized ROEs for vertically integrated utilities since 2014.³⁷ ENO erroneously fails to acknowledge the testimony and analysis offered by Mr. Walters, and as a result misleads the Council. Mr. Walters did not overlook authorized ROEs for vertically integrated utilities as ENO asserts in its Post-Hearing Brief. For example, as Mr. Walters testified, when looking only

³³ *Id.*

³⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:16-20 and Table 9 (February 1, 2019).

³⁵ Home Rule Charter of the City of New Orleans, §§ 3-101 and 3-130.

³⁶ ENO Initial Post-Hearing Brief at 46 (July 26, 2019).

³⁷ ENO Initial Post-Hearing Brief at 46 (July 26, 2019).

at ROEs of vertically integrated utilities, Mr. Hevert's recommended 10.75% ROE for ENO is higher than all but one of 110 ROE decision since 2014.³⁸ Further, only nine of the 110 ROE decisions for vertically integrated utilities since 2014 have fallen within Mr. Hevert's ROE range of 10.25% to 11.25%, and none of those nine decisions occurred in 2018 or 2019.³⁹ This compares to the 52 decisions that fall within the recommended range offered by Mr. Walters, of which 13 of the 52 observations have occurred since 2018.⁴⁰ Further, Mr. Hevert's recommended ROE is higher than all but one ROE decision during the period since 2014.⁴¹ Contrary to Mr. Hevert's recommendation relative to other vertically integrated utilities, Mr. Walters' recommended range and ROE is much more in line and consistent with authorized ROEs that have been awarded to vertically integrated utilities.

Further, as Mr. Walters testified, observable evidence on trends for electric and gas utilities show that authorized returns have declined over the last ten years.⁴² ROEs for electric and gas utilities have been reasonably stable well below 10.0% for about the last six years.⁴³ The most frequent distribution of ROEs is less than 9.7%, with many below 9.5%.⁴⁴ Importantly, during this period of declining cost of capital, there has been significant improvement realized in the electric utility industry's overall credit quality and the ability of regulated utilities to access

³⁸ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, pages 3:21-22 and Schedule CCW-19 (April 26, 2019).

³⁹ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, pages 3:21-4:2 and Schedule CCW-19 (April 26, 2019).

⁴⁰ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, pages 4:3-4 and Schedule CCW-19 (April 26, 2019).

⁴¹ Schedule CCW-19, Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, pages 3:12 – 4:11 and Figure 1 (April 26, 2019).

⁴² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 4:4- 10 and Figure 1 (February 1, 2019).

⁴³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 4:4- 10 and Figure 1 (February 1, 2019).

⁴⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 5:6-8 and Table 1 (February 1, 2019).

significant amounts of capital to support record amounts of capital investments over at least the last ten years.⁴⁵ Thus, there is nothing specific to the ROEs of vertically integrated utilities that warrants ignoring either (i) the trend in the industry and/or (ii) ROE analysis specific to ENO's investment risk and proposed capital structure - - both of which supports a 9.35% ROE for ENO.⁴⁶

ENO claims that its witness Mr. Hevert is the only ROE witness in the proceeding to follow FERC's guidance and use all four models - - DCF, CAPM, Bond Yield plus Risk Premium approach, and Expected Earnings. However, this assertion is misleading for several reasons. First, ENO's assertion that it adhered to FERC guidance on measuring a fair ROE is irrelevant as the Council is a separate regulatory body from FERC, and is not required to measure ENO's ROE using the four models listed as FERC does. Even if the Council was required to measure a fair and reasonable ROE as FERC has proposed, ENO's assertion is inaccurate as Mr. Hevert did not adhere to FERC guidance as he did not perform or rely on FERC's two-step DCF model.⁴⁷ Finally, putting the FERC's guidance aside, Mr. Hevert's analysis under each of the models is flawed, skewing his ROE results to a higher than appropriate and an unreasonable recommended ROE of 10.75%. Mr. Walters exposes the flaws in Mr. Hevert's analysis in his Direct Testimony and Surrebuttal Testimony admitted in evidence in this proceeding.⁴⁸

⁴⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 6:1 – 7:12 and Figure 2 (February 1, 2019).

⁴⁶ Importantly, Mr. Walters' analysis and recommendation for a 9.35% ROE for ENO took into consideration ENO's specific investment risk and proposed capital structure. In fact, with two exceptions, Mr. Walters relied on the same proxy group used by Mr. Hevert in his ROE analysis. Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, at pages 17:11-19:13 (February 1, 2019).

⁴⁷ Docket No. EL11-66-001, et al., Order Directing Briefs, 165 FERC ¶ 61,030 (October 16, 2018) at para 4.

⁴⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 53-83 (generally) (February 1, 2019); Hearing Exhibit AP-2, Surrebuttal Testimony and Schedules of Christopher Walters, Air Products witness, pages 2-22 (April 26, 2019).

Mr. Walters' findings with respect to errors in Mr. Hevert's analysis that result in his grossly overstated ROE recommendation was briefed by Air Products in its Initial Brief and are summarized below:

- Mr. Hevert's constant growth DCF results based on the high growth rates are unsustainable and therefore unreasonable.⁴⁹ But for Mr. Hevert's relying heavily on the highest growth rate estimates to support an unreasonably high ROE, Mr. Hevert's constant growth DCF mean results generally support a ROE no higher than 9.3% when considering the average of his growth rate estimates.⁵⁰
- Mr. Hevert's multi-stage DCF analyses are impacted by various assumptions and inputs made by Mr. Hevert that make it unreliable and result in manipulated dividend payout ratios and cash flow projections, inflating the dividend payouts and DCF results.⁵¹ When the assumptions are corrected, his multi-stage DCF estimates would produce ROEs in the range of 8.36% to 8.7% (with an ROE of 8.54% on average).⁵² Mr. Hevert's multi-stage DCF is based on:⁵³
 - an unrealistic long-term GDP growth estimate that is not aligned with market participants' outlooks;
 - a manipulated dividend payout ratio adjustment; and
 - a terminal stock price that is produced by an unjustified price-to-earnings ("P/E") ratio assumption.
- Mr. Hevert's CAPM is based on inflated market risk premiums that once corrected would support an ROE no higher than 8.7%.⁵⁴ ⁵⁵ Mr. Hevert used market risk premiums that were overstated for at least two reasons. First, he did not measure the market risk premium in relationship to the projected risk-free

⁴⁹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:2-14 (February 1, 2019).

⁵⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 54:3-6 (February 1, 2019).

⁵¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 55:8-17 (February 1, 2019).55:8-17

⁵² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 61:18-19 and Table 11 (February 1, 2019).

⁵³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:2-14 (February 1, 2019).

⁵⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:2-14 (February 1, 2019).Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 66:8-14 (February 1, 2019).

⁵⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 66:8-14 (February 1, 2019).

rate, causing a mismatch in the market risk premium estimates and his CAPM returns.⁵⁶ Second, Mr. Hevert's market risk premiums also consist of growth rates of approximately 13.73% and 14.00%, which are far too high to be a rational outlook for sustainable long-term market growth.⁵⁷ As Mr. Walters testified, the growth rates used by Mr. Hevert in his CAPM analysis are more than two times the growth rate of the U.S. GDP long-term growth outlook of 4.20%.⁵⁸ As a result, Mr. Hevert's DCF returns used within his CAPM analysis are inflated. Moreover, Mr. Hevert made an error in his estimate of market risk premium used in his CAPM analysis.⁵⁹

- Mr. Hevert's Bond Yield Plus Risk Premium studies are based on inflated utility equity risk premiums and are also unreasonable.⁶⁰ Mr. Hevert contends that there is a simplistic inverse relationship between equity risk premiums and interest rates.⁶¹ However, as Mr. Walters testified, this contention is not supported by academic research.⁶² Further, Mr. Hevert's analysis ignores the differentials in investment risk differentials, and his use of a long-term projected bond yield of 4.30% is not reflective of market participants' outlook for ENO's cost of capital during the period rates determined in this proceeding will be in effect.⁶³ Correcting the flaws in Mr. Hevert's Bond Yield Plus Risk Premium

⁵⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 62:11 – 63:7 (February 1, 2019).

⁵⁷ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 64:2-3 (February 1, 2019).

⁵⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 64:4-5 (February 1, 2019).

⁵⁹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 65:11 – 66:7 (February 1, 2019) (internal citations omitted). As Mr. Walters testified:

Mr. Hevert measures the market risk premium based on his DCF return on the market less his current risk-free rate estimate of 3.11%. He then relies on the market risk premiums of 12.62% and 12.99% as risk premium estimates used in his CAPM study on his Exhibit RBH-6. The error in his calculation is that the market risk premium that corresponds with a risk-free rate of 3.11% should not be the same as the market risk premium that corresponds with a risk-free rate of 3.48% as he uses on his Exhibit RBH-6. Rather, the market risk premium that corresponds with a risk-free rate of 3.48% should be the difference between his market return estimate of 15.73% and 3.48%, or 12.25%, and his market return estimate of 16.10% less his 3.48% risk-free rate, or 12.62%. In other words, Columns 3 and 4 of lines 'Near-Term Projected 30-Year Treasury' of Mr. Hevert's Exhibit RBH-5 are overstated. Overstating the market risk premium in his CAPM study where he uses a projected Treasury bond yield produces a flawed and erroneous result that overstates a fair CAPM return estimate for ENO in this proceeding. *Id.* (internal citations omitted).

⁶⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:2-14 (February 1, 2019).

⁶¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 67:6-9 (February 1, 2019).

⁶² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 67:8-9 (February 1, 2019).

⁶³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 68:9-10 and 70:3-5 (February 1, 2019).

produces risk premium results of 9.21% to 9.58%, which are comparable to the results of Mr. Walters' ROE analyses.⁶⁴

Thus, as discussed at length in Air Products' Initial Post-Hearing Brief and again herein, and as supported by Mr. Walters' testimony, Mr. Hevert's recommended 10.75% ROE is excessive.⁶⁵ Further, ENO has failed to demonstrate flaws specific to the ROE analysis of Air Products witness Mr. Walters to support the Council determining that Mr. Waters' recommended 9.35% ROE is not appropriate or is unreasonably low.

B. Adoption of RIM is Not in Public Interest

ENO is proposing a new mechanism for its FRP that would allow ENO's Evaluation Period Cost of Equity ("EPCOE") to be adjusted +/- 25 basis points based on certain measurements of distribution system reliability.⁶⁶ As previously discussed, ENO is proposing an authorized ROE of 10.75%, which under the proposed RIM mechanism could be adjusted up to 11.00% or down to 10.75%.⁶⁷ While ENO claims in its Initial Brief that the RIM is a "reasonable way to address reliability," no party to this proceeding (other than ENO) supports the adoption of the RIM.⁶⁸

In its Initial Post-Hearing Brief, ENO claims that reliable service is ENO's "goal" but that providing reliable service comes at a cost.⁶⁹ However, ENO's providing reliable service is

⁶⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 71:1-7 (February 1, 2019).

⁶⁵ Air Products and Chemicals, Inc. Initial Post-Hearing Brief at 11-20 (July 26, 2019).

⁶⁶ Hearing Exhibit ENO-1, Revised Direct Testimony of Joshua Thomas, page 23:17-22 (September 2018).

⁶⁷ Hearing Exhibit ENO-1, Revised Direct Testimony of Joshua Thomas, page 25:15 – 26:2 (September 2018).

⁶⁸ The Advisors, Air Products, CCPUG, the Alliance for Affordable Energy and Sierra Club have each requested that the Council reject the RIM. BSI did not address the RIM in its Initial Post-Hearing Brief. *See* Alliance and Sierra Club Initial Post-Hearing Brief at 46-48 (July 26, 2019); *see* Advisors Initial Post-Hearing Brief at 109-112 (July 26, 2019); *see* CCPUG's Initial Post-Hearing Brief at 17 and 70-71 (July 26, 2019); and *see* Air Products Initial Post Hearing Brief at 35-36 (July 26, 2019).

⁶⁹ ENO Initial Post-Hearing Brief at 54 (July 26, 2009).

more than a “goal,” it is ENO’s obligation.⁷⁰ Moreover, the “cost” is already being paid by ENO’s captive customers. As Mr. Brubaker testified, through ENO’s proposed Distribution Grid Modernization Rider, ENO would already be charging customers for the cost of upgrading its distribution grid, which would in turn be expected to improve reliability - - thus, customers (not Entergy shareholders) would have already paid for the improved reliability of ENO’s distribution system.⁷¹

Thus, Air Products respectfully requests that the Council reject the proposed RIM. However, as more fully discussed in Air Products’ Initial Brief,⁷² to the extent the Council finds it appropriate to approve a form of RIM adjustment, Air Products submits that it should not apply to customers who take service at transmission level, as such customers are not benefitted from improvements in reliability on the distribution system.⁷³

III. Air Products Reply to Advisors

Air Products has significant concerns with certain COS methodologies and rate design approaches that have been proposed over the course of this proceeding due to the risks these proposals create in how ENO’s revenue requirement will be updated and allocated to the LIS class over the term of a formula rate plan (“FRP”), such that costs allocated to Air Products may move even further away from COS over the FRP term.⁷⁴

⁷⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 20:16-19 – 21:3 (February 1, 2019).

⁷¹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 21:9-11 (February 1, 2019).

⁷² Air Products and Chemicals, Inc. Initial Post-Hearing Brief at 36 (July 26, 2019).

⁷³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 22:3-4 (February 1, 2019);

⁷⁴ See, generally, Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness (February 1, 2019) and Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness (April 26, 2019).

Air Products respectfully disagrees with the following positions of the Advisors as briefed in the Advisors Initial Post-Hearing Brief:

- Demand cost allocation to interruptible load;
- Use of total revenues (base rate revenues and exact recovery rider revenues, *e.g.* fuel revenues) in the class COS Study and for FRP evaluations;
- Assignment of widely ranging rates of return to each rate class; and
- Decoupling and annual updates to external allocation factors.

A. Allocation of Demand Costs to Interruptible Load

The Advisors note in their Initial Brief that they have used a different basis for developing the allocation of demand costs to interruptible load, which was incorporated in the Advisors' recommendations regarding customer class revenue requirement.⁷⁵ However, the Advisors do not cite to any evidence or provide any other discussion in support of its cost allocation to interruptible load, and testimony of the Advisors on this issue is "off the mark." As ENO stated in its Initial Post-Hearing Brief:⁷⁶

First, the number of actual interruptions imposed on the customer is not relevant to the allocation of costs to interruptible customers, since ENO can plan its acquisition of generation resources to avoid the cost of serving the customer at the peak regardless of the actual interruption of the customer.²⁹⁸ Moreover, Mr. Prep's focus on attempting to determine the market value of interruptible service is off the mark in this context. ENO is not trying to acquire interruptible capacity or determine a fair market price for such an acquisition. ENO's objective is instead to determine what portion of its embedded production investment and fixed production costs should fairly and reasonably be allocated to an interruptible customer. Basic principles of cost causation support excluding interruptible customers from cost allocations based on contribution to peak demand, when these customers do not contribute to that demand.²⁹⁹

⁷⁵ Advisors Initial Post-Hearing Brief, page 52 (July 26, 2019).

⁷⁶ ENO Initial Post-Hearing Brief at 87 (July 26, 2019), citing to ENO witness Ms. Talkington Rebuttal Testimony (Exhibit ENO-46, pages 9-10).

Air Products agrees with ENO's above explanation. Further, Air Products has fully demonstrated in its Initial Post-Hearing Brief that the Advisors' change in the allocation of demand costs to interruptible load is not reasonable. Because ENO does not have to install capacity and/or enter into firm purchase power arrangements to properly plan to serve interruptible load, ENO does not include 100% of interruptible load in its load and capacity statements used in Integrated Resource Planning and capacity expansion studies.⁷⁷ ENO only arranges capacity to serve 12% of interruptible load (based on interruptible customers' demand responsibility for reserves) and ENO includes 15% of the interruptible load in determining demand allocation factors for generation costs for use in its class COS Study - - which is slightly more than an interruptible customers' generation cost responsibility.⁷⁸

Thus, ENO's allocation of demand cost to interruptible customers is consistent with cost-causation, reasonable and should be maintained. Air Products further incorporates by reference the argument and evidence set forth in its Initial Post-Hearing Brief on this issue.⁷⁹

B. Use of Rider Revenues in Total COS Studies and FRP Evaluations

In its Initial Post-Hearing Brief, the Advisors claim that ENO failed to comply with Council Resolution R-17-504 in preparing its class COS Study, as ENO's class COS Study only reflects base rate revenues and costs and does not include revenues and costs recoverable through riders.⁸⁰ The Advisors also disagree with ENO's proposal to include only base rate revenues and expenses in its FRP evaluation, claiming that "evaluating total utility revenue requirements is

⁷⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 5:1-10 (April 26, 2019).

⁷⁸ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 5:11-18 (April 26, 2019).

⁷⁹ Air Products and Chemicals, Inc. Initial Post-Hearing Brief, pages 21-25 (July 26, 2019).

⁸⁰ Advisors Initial Post-Hearing Brief, page 16 (July 26, 2019).

consistent with the Advisors approach establishing a fully allocated cost of service.”⁸¹ However, the Advisors fail to demonstrate why its approach is reasonable, or why the Council should be tied to its Resolution R-17-504 that was issued without the benefit of the robust class COS discussion put forth in evidence in this proceeding. Conversely, the evidence in the record discussed in the initial briefs of ENO and Air Product support the exclusion of exact recovery rider revenue (e.g., fuel revenues) that would skew the allocation of base rate revenues among rate classes.

As ENO explains in its Initial Post-Hearing Brief:⁸²

The Council should reject the Advisors’ proposal that the Total Cost of Service Approach be required in the Electric FRP. No evidence has been offered to show that any other retail regulator in the country requires the utilities that it regulates to include rider revenues and costs recovered through those riders when setting base rates.³⁴⁹ Such approach would include revenues and costs, such as Fuel Adjustment Clause revenues and FAC-recoverable expenses, that are irrelevant to the base rate adjustment that the Electric FRP determines.³⁵⁰ ENO demonstrated that the Total Cost of Service Approach does not change the level of ENO’s base revenue requirement to be recovered in base rates,³⁵¹ and at hearing, ENO witness Mr. Klucher explained that the Total Cost of Service Approach would not give the Council a better understanding of ENO’s financial performance because the approach would not have any effect on the calculation of ENO earnings, if done correctly.³⁵² *Furthermore, he explained that the Total Cost of Service Approach could have the effect of shifting cost responsibility among the rate classes, although ENO’s base revenue requirement from a Total Company perspective would be unaffected.*³⁵³ In summary, the Total Cost of Service Approach adds no value to the Electric FRP and the Council’s regulation of ENO, and the Council should reject it in favor of the approach (*i.e.*, exclusion of rider revenues and costs recoverable through them) previously used by the Council for many, many years.

ENO’s explanation is consistent with testimony of Air Products’ witness Mr. Maurice Brubaker, with respect to the Advisors’ proposal to include rider revenues in FRP evaluations:

⁸¹ Advisors Initial Post-Hearing Brief, pages 104-15 (July 26, 2019).

⁸² ENO Initial Post-Hearing Brief, pages 102-103 (July 26, 2019), citing to hearing testimony of Advisors witness Mr. Prep (Tr. 6/20/19, pages 184-186) and Rejoinder Testimony and hearing testimony of ENO witness Mr. Klucher (Exhibit ENO-43 at 4-5 and Tr. 6/17/19, pages 204-205 and Tr. 6/18/19, pages 19-21) (emphasis added.)

Revenues and expenses associated with revenue requirement items that have mechanisms designed to track, reconcile and true-up costs and revenues and that operate independently of base rates, such as the FAC the Mid-Continent Independent System Operator (“MISO”) rider, the EECR rider, DSMCR rider and Advanced Metering Infrastructure (“AMI”) rider should not be included in FRP reviews, but rather should be excluded so that the focus can be on base rate revenues that may or may not be producing excessive or insufficient revenues.

Mr. Brubaker further testified that it is important to exclude rider revenues and expenses from FRP evaluations to avoid distorting the allocation of any increase or decrease in revenue changes pursuant to the FRP evaluation.⁸³ As an example, Mr. Brubaker discussed the FAC:⁸⁴

*The FAC is a perfect example. It is designed to be self-contained and has its own internal adjustment mechanism to ensure that revenues equal expenses. It is well known that fuel cost is a much larger percentage of the total cost of serving industrial customers (especially large interruptible customers) than is true on average or for other customer classes. **If FAC revenues are included in the base used to adjust revenues after an FRP review has been conducted, then revenues that recover cost that have made no contribution to the under- or over-recovery will be part of the factor used to apportion any revenue changes, which will produce a distorted result.***

Thus, whether with respect to class COS or FRP evaluations, the same issue is created by including rider revenues in calculating the allocation of ENO’s base rate revenue requirement to customer rate classes - - such “total revenue” approach will skew the result.

Air Products submits that the Advisors own brief supports this conclusion. The Advisors include ENO’s Summary of Electric Rate Relief Request (“Table 1”) to argue that by eliminating revenues from riders in developing COS, the “most complete picture of ENO’s financial health” is not presented.⁸⁵ However, the point of the class COS Study is to assign the utility’s costs

⁸³ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 11:1-9 (April 26, 2019).

⁸⁴ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 11:11-18 (April 26, 2019) (emphasis added).

⁸⁵ Advisors Initial Post-Hearing Brief, pages 20-21 (July 26, 2019).

(ENO's revenue requirement) to customer classes - - not to determine the "most complete picture of ENO's financial health."⁸⁶ Since exact recovery riders are to be self-contained and have their own internal adjustment mechanism to ensure that revenues equal expenses, as Mr. Brubaker testified regarding the FAC (cited above), rider revenues are not relevant to the base rate revenue allocation that is developed from the class COS Study and should be removed prior to determining class COS. Similarly, exact recovery rider revenues would have no bearing on the over/under earning of ENO in the FRP evaluation, but would affect rate class cost responsibility when it comes to allocation of any required revenue changes to customer classes.

As the Advisors point out, the rider revenue accounts for more than 50% of the total electric revenues;⁸⁷ thus, as Mr. Brubaker and Mr. Klucher have testified (cited above), including such non-base rate revenues in determining class cost responsibility for ENO's base rate revenue requirement will produce results skewed by the cost responsibility associated with the non-base rate revenue requirements recovered exactly from customers through the riders.

Air Products further respectfully disagrees with the Advisors reliance on Resolution R-17-504 as the basis to use the Advisors' proposed "total revenue" approach. As discussed in Air Products' Initial Post-Hearing Brief, such resolution was not part of a docketed proceeding.⁸⁸ While the resolution reflects the positions of Mr. Prep on COS methodologies, the Council's decision to adopt such methodologies in the resolution was not informed by the process undertaken in this rate proceeding to develop an extensive evidentiary record.⁸⁹ Air Products urges the Council to rely on the evidence presented in this proceeding in support of including

⁸⁶ See, e.g., the Advisors' explanation of the purpose of a class COS study in its Initial Post-Hearing Brief, page 16 (July 26, 2019): "The purpose of a class cost of service study is to fully allocate the test year jurisdictional electric plan investment, other rate base items, revenues and expenses, to each customer class or rate schedule so that a reasonable measure of cost responsibility can be determined for purposes of developing cost-based rates."

⁸⁷ Advisors Initial Post-Hearing Brief at 22 (July 26, 2019).

⁸⁸ Resolution R-17-504 at 1. [Resolution R-17-504 was marked as Hearing Exhibit CCPUG-8.]

⁸⁹ Hearing Transcripts, Prep, pages 211:10-25, 212:19-23, and 216:23 – 218:6 (June 20, 2019).

only base rate revenues in the class COS study and FRP evaluations, consistent with the approach used by ENO and approved by the Council historically.

C. Assignment of Widely Ranging Rates of Return to Each Rate Class

In support of its proposed use of widely ranging rates of return for customer classes (from 1.60% for residential customers to 21.31% for Municipal Building Class and including an 18.50% ROR assigned to the LIS class),⁹⁰ the Advisors indicate in its Initial Post-Hearing Brief:⁹¹

The Advisors' position is to develop proposed customer class revenue requirements using the class cost of service analysis to *evaluate* how each change to customer class revenue relates to changes in the customer class rates of return. The Advisors believe that the Council should be provided specific information to consider the impacts on relative rates of return among the customer classes in determining the changes to the present revenue of each customer class. The cost of service is the established total revenue for each customer class. When class allocations are finalized for all other components of the cost of service except returns, the class cost of service model provides the specific information related to discrete changes in present class revenues and rates of return.

Air Products submits that the Advisors' above statement is an indirect way of saying that customer class revenue requirements dictated the Advisors' proposed changes in customer class rates of return, resulting in the widely ranging rates of return among the customer class proposed by the Advisors. However, the Advisors have never disclosed what "specific information" the class COS model provides to support the Advisors' proposed changes. Rather, when faced with argument that the Advisors' assignment of different rates of return to customer classes can't be

⁹⁰ Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony and Exhibits of Victor Prep, Exhibit VP-20 (April 26, 2019).

⁹¹ Advisors Initial Post-Hearing Brief, pages 53-54 (July 26, 2019).

duplicated in annual FRP evaluations, the Advisors confirmed the lack of any objective basis for its proposed assignments of return:⁹²

However, duplication of the results in the FRPs is not an objective.⁵³¹ Rather the Advisors' approach would apply cost allocation methodologies consistently based on the instant proceeding, and ***any changes to the customer class rates of return would be entirely at the discretion of the Council.***⁵³²

The Advisors proposal to leave the assignment of rates of return to customer classes “entirely to the discretion of the Council,” without any objective standard on which the Council can rely to exercise its discretion, creates a risk for future arbitrary changes in assignment of rates of return to the customer classes, and makes the Advisors other proposals regarding annual updates to allocation factors and decoupling (discussed below) also problematic.

While the Council certainly has the authority to determine ENO's rates and rate design, the Council's use of its authority cannot be arbitrary or capricious or not based on evidence in the record,⁹³ and a utility's rate design must not create undue discrimination.⁹⁴ The Advisors proposal for widely ranging rates of return assigned to the difference rate classes, and for future changes to such assignments of returns to be “entirely at the discretion of the Council” without any objective standard to apply creates issues with both legal standards and should be rejected.

As Air Products witness Mr. Brubaker testified, Mr. Prep's proposed assignment of widely ranging rates of return by customer class appears to be completely arbitrary and end-results oriented, designed to achieve a particular outcome of class revenue allocation: “There can be no justification for rates of return ranging from 1.60% for the residential class to 21.31%

⁹² Advisors Initial Post-Hearing Brief, page 119 (July 26, 2019), citing to Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony and Exhibits of Victor Prep, Advisors witness, at 27:17-28:2.

⁹³ *Gulf States Utilities co. v. Louisiana Public Service Comm'n*, 578 So.2d 71, 84 (La. 1991), *cert. denied*, 502 U.S. 1004, 112 S. Ct. 637, 116 L/Ed.2d 655 (1991) (*relying upon CTS Enterprises Inc. v. Louisiana Public Service Comm'n*, 540 So.2d 275 (La. 1989), *Louisiana Power & Light v. Louisiana Public Service Comm'n*, 523 So.2d 850 (La. 1988), and *Central Louisiana Elec. Co., Inc. v. Louisiana Public Service Comm'n*, 437 So.2d 278 (La. 1983)).

⁹⁴ *State ex. Rel. Gust v. Council of City of New Orleans*, 309 So.2d 290,294-95 (La. 1975).

for the Municipal Building class and all of the various other rates of return assigned to the other classes, including 18.50% for the LIS class.”⁹⁵ Further, as Mr. Prep acknowledged at the Hearing on the Merits, while the residential class makes up about 55% of ENO’s rate base, Mr. Prep’s proposal would result in the residential class revenue requirement including a return component of only about 10% of ENO’s rate base.⁹⁶ Thus, Mr. Prep’s proposal is not only arbitrary and would unnecessarily create uncertainty and risk to customers as to what their cost responsibility will be going forward, but also is unreasonable, inequitable and unduly discriminatory to customers.

As fully briefed in its Initial Post-Hearing Brief, Air Products urges the Council to reject the Advisors proposed assignment of divergent rates of return by customer class and instead include for each class the system average rate of return requirement. As Mr. Brubaker explained in testimony, class COS includes system average rates of return being earned on the rate base of each customer class.⁹⁷ Moderating rate increases when moving toward cost of service should be a step that is completely separate from calculating the class cost of service.⁹⁸

D. Decoupling and Annual Updates to External Allocation Factors

In its Initial Post-Hearing Brief, the Advisors note Air Products’ opposition to the Advisors’ proposal that external allocation factors be updated in annual FRP evaluations, as part of the Advisors’ proposed changes to ENO’s proposed decoupling adjustment. The Advisors later conclude that by annually updating external allocation factors and billing determinants

⁹⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 8:11-15 (April 26, 2019).

⁹⁶ Hearing Transcript, Prep, page 190/7-13 and 193/7-18 (June 20, 2019), discussing Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony and Exhibits of Victor Prep, Exhibit VP-20 (April 26, 2019).

⁹⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 9:11-13 (April 26, 2019).

⁹⁸ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 9:7-11 and 19-20 (April 26, 2019).

within each FRP, the updates will accommodate any shifts in customers within classes with only a few customers, arguing that Air Products concern of unintended consequences from decoupling adjustments on rate classes with few customers is without merit.⁹⁹ While the Advisors' brief suggests that the Advisors agree decoupling could have unintended consequences on rate classes with few customers, Air Products respectfully disagrees with the Advisors' conclusion that the proposals to update external allocation factors and billing determinants annually would solve the problem.

First, risks associated with the Advisors' proposal to assign widely ranging rates of return to customer classes, and for changes to such assignments to be "entirely within the Council's discretion" eliminates the potential for updated allocation factors and billing determinants to prevent significant changes in rates for customers in rate classes with only a few customers as a result of decoupling. As ENO has explained, the varied required rates of return proposed by the Advisors for each rate class override the Advisors' external allocation factors.¹⁰⁰

Second, the annual updates would still result in a mini rate case every year that the FRP is in place, which would make the process unnecessarily complex, expensive, contentious and inefficient.¹⁰¹ As Mr. Brubaker testified, FRPs typically have formulas which specify how any rate adjustments are to be accomplished and typically are applied as a uniform increase or decrease of class base rate revenues.¹⁰² Air Products requests the Council maintain this typical and historical approach to ENO's FRP in any new FRP approved in this proceeding.

⁹⁹ Advisors Initial Post-Hearing Brief, page 115 (July 26, 2019).

¹⁰⁰ ENO Initial Post-Hearing Brief, page 3 (July 26, 2019), citing Hearing Exhibit ENO-42, Rebuttal Testimony of Matthew Klucher, pages 19-20.

¹⁰¹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 2:33-38 and 15:8-10 (April 26, 2019).

¹⁰² Hearing Exhibit AP-3, Direct Testimony and Schedules of Maurice Brubaker, Air Products witness, page 12:9-11 (February 1, 2019).

Air Products has significant concerns with the proposed decoupling adjustment that cannot be alleviated through time consuming and contentious annual updates to external factors and billing determinants - - particularly given the discretion the Council would have to control the end result through assignment of arbitrary rates of return. As Mr. Brubaker testified, the decoupling adjustment creates significant risk for customers in rate classes with only a few customers, such as Air Products' rate class LIS.¹⁰³ This is because for rate classes with only one or a few customers, relatively small changes in required revenue contributions of the class can have significant impact on the rates of the customers in the class, which could affect the customers' demand ratchets.¹⁰⁴ Conversely, for customers that are part of larger classes with hundreds of millions of dollars in total revenue, the impact would be considerably dilute and would not likely disrupt the customers rates overall since the percentage change in total class revenue would be quite small.¹⁰⁵

Air Products respectfully requests that external allocation factors not be updated annually in FRP evaluations. Rather, Air Products requests that one of the two recommendations of Mr. Brubaker be adopted to protect customers in rate classes with only a few customers from unintended consequences from the proposed decoupling adjustment. The first recommendation of Mr. Brubaker is to exclude from the decoupling mechanism those classes with only a few customers (*e.g.*, Master Metered Non-Residential, High Voltage and Large Interruptible

¹⁰³ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 16:11 – 17:5 (April 26, 2019).

¹⁰⁴ For example, the Mastered-Metered Non-Residential class has one customer, the High Voltage class has two customers and the Large Interruptible Service Class has one customer. See Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 16:4-5 (April 26, 2019).

¹⁰⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 16:15-18 (April 26, 2019).

Service).¹⁰⁶ As Mr. Brubaker points out, the revenues of these customers noted above amount to less than 3% of total base rate revenues, so this exclusion would not materially impact the operation of a decoupling mechanism.¹⁰⁷ However, in the alternative, should the Council not want to exempt any customer rate classes from the decoupling mechanism, Mr. Brubaker recommended to cap the percentage change in average revenue per kWh between rate cases that result from the application of the decoupling mechanism to 10% for individual customers in rate classes Master Metered Non-Residential, High Voltage and Large Interruptible Service, which would greatly reduce the potential for highly disruptive changes in these classes rates.¹⁰⁸

IV. Conclusion

Based on extensive evidence in the record, including testimony put forth by four witnesses across three parties, Air Products opposes ENO's proposed mid-point ROE of 10.75%. The evidence supports the Council authorizing ENO to earn an ROE of 9.35% or less and to deny ENO's requested RIM.

Further, Air Products respectfully requests the Council reject: the Advisors' proposed inequitable treatment of interruptible load that overstates cost responsibility to Air Products; the Advisors' proposed arbitrary and unreasonable assignment of rates of return by customer classes; and the Advisors' proposed annual updates to external factors that would eliminate the efficiency that an FRP is intended to provide between rate cases, creating unnecessary risk that rates could shift further away from cost of service outside of a full rate proceeding.

¹⁰⁶ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 17:22 – 18:1 (April 26, 2019).

¹⁰⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 18:1-3 (April 26, 2019).

¹⁰⁸ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 18:11-20 (April 26, 2019).

Air Products requests that the Council either exclude from the decoupling mechanism those classes with only a few customers (including Master Metered Non-Residential, High Voltage and Large Interruptible LIS), or in the alternative, cap the percentage change in average revenue per kWh between rate cases that result from the application of the decoupling mechanism to 10% for individual customers in the named rate classes Service.

In addition, as addressed in Air Products Initial Post-Hearing Brief, to the extent the Council finds that a larger revenue decrease than proposed by ENO should be implemented, the additional decrease should be allocated to the customer classes above cost of service at the rates proposed by ENO in this proceeding.

Further, Air Products requests Council approval of its unopposed recommendations relating to ENO's Service Regulations and resetting of ENO's EPCOE. Specifically, Air Products requests that ENO's proposed change to the "Continuity of Service" provision in ENO's Service Regulations should be rejected,¹⁰⁹ and ENO's proposed full rate reset to its Evaluation Period Cost of Equity ("EPCOE") when ENO earns outside of the bandwidth be rejected and ENO instead be allowed to adjust revenues only 60% of the way towards the upper or lower end of the bandwidth.¹¹⁰

WHEREFORE, for the foregoing reasons, Air Products respectfully requests the Council adopt its recommendations as set forth herein and as fully supported by the evidentiary record in this proceeding.

¹⁰⁹ The Advisors support Air Products request on this issue. Advisors Initial Post-Hearing Brief, page 144 (July 26, 2019).

¹¹⁰ Air Products recommendation on this issue is uncontested in evidence.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the Official Service List via electronic mail.

New Orleans, Louisiana this 9th day August, 2019.



Carrie R. Tournillon