



# EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

August 9, 2019

Via Hand-Delivery

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

**Re: Revised Application of Entergy New Orleans, LLC for a Change in Electric and Gas Rates Pursuant to Council Resolutions R-15-194 and R-17-504 and for Related Relief**  
*City Council of New Orleans Docket No. UD-18-07*

Dear Ms. Johnson:

Please find enclosed one original and two copies of the **Reply Brief of the Alliance for Affordable Energy and Sierra Club** in the above-captioned docket.

Thank you for your attention to this matter. Please contact me if you have any questions with regards to this filing.

Sincerely,

Susan Stevens Miller (*pro hac vice*)  
Clean Energy Attorney  
Earthjustice  
1625 Massachusetts Ave., NW, Ste. 702  
Washington, DC 20036  
(202) 667-4500  
smiller@earthjustice.org

Enclosures  
cc: Official Service List

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**BEFORE THE  
COUNCIL OF THE CITY OF NEW ORLEANS**

**REVISED APPLICATION OF )  
ENERGY NEW ORLEANS, LLC )  
FOR A CHANGE IN ELECTRIC AND )  
GAS RATES PURSUANT TO )  
COUNCIL RESOLUTIONS R-15-194 )  
AND R-17-504 AND FOR RELATED )  
RELIEF )**

**DOCKET NO. UD-18-07**

**REPLY BRIEF OF THE  
ALLIANCE FOR AFFORDABLE ENERGY AND SIERRA CLUB**

**AUGUST 9, 2019**

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## I. Introduction

While paying lip service to the need to become a 21<sup>st</sup> century utility, Entergy New Orleans, LLC's ("ENO" or "Company") rate application is in reality a series of road blocks designed primarily, and possibly solely, to ensure that the Company continues to receive excessive revenues well into the future. These excessive profits not only literally come at the expense of New Orleans ratepayers, they also will ultimately harm the very policies and programs the Council of the City of New Orleans ("Council") has adopted to bring this City into the 21<sup>st</sup> century.

ENO's claim that the Company's rate application reflects a \$20 million rate decrease rings hollow when considered in conjunction with the almost doubling of the residential customer fixed charge and the excessive number of proposed riders providing a guaranteed revenue stream for ENO.<sup>1</sup> As many parties to this proceeding have noted, a utility is entitled under the law to a reasonable *opportunity* to recover its revenue requirement—not a guarantee.<sup>2</sup> The absence of any ordinary level of business risk eviscerates ENO's incentive to operate its business effectively and efficiently. ENO's excessively high residential fixed charge and abusive reliance on riders will ensure exact cost recovery regardless of whether the Company operates in an efficient and effective manner. New Orleans ratepayers are entitled to receive reliable services at the least cost. ENO's guaranteed cost recovery removes the Company's incentive to control costs.

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<sup>1</sup> Moreover, ENO is actually misleading much of the public. ENO has stated that the Company-proposed "electric rate structure would result in a typical Legacy ENO residential customer using 1,000 kilowatt-hours per month having a bill of \$124.13, *an increase of \$2.02 per month.*" Post-Hearing Brief of Entergy New Orleans, LLC at 18 (July 26, 2019) ("ENO Initial Brief") (emphasis added).

<sup>2</sup> *S. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm'n*, 594 So.2d 357, 359–60 (La. 1992).

Among other things, the Council should find that ENO, who bears the burden of proof in this proceeding, has failed to establish that: (1) the inordinately high return on equity (“ROE”) it proposes is reasonable; (2) its excessive use of riders is warranted or meets basic ratemaking principles; or (3) its exorbitant increase in the residential fixed charge is necessary or appropriate in light of the regulatory principles that dictate the limited use of this charge.

The Alliance for Affordable Energy (“AAE”) and Sierra Club (collectively, “Public Interest Intervenors”) recommend that the Council: (1) reject ENO’s exorbitant increase in the residential fixed charge, reject the Advisors to the City Council of New Orleans’ (“Advisors”) unsupported proposal to increase the charge to \$10.00, and approve a \$8.13 electric residential customer fixed charge; (2) approve full revenue decoupling based on AAE’s proposal; (3) adopt the Advisors’ recommendation that ENO’s ROE be set at 8.93%; (4) institute an investigation into the adoption of time-of-use (“TOU”) rates and other innovative rate design for ENO’s residential ratepayers; (5) reject ENO’s request to implement the New Orleans Power Station (“NOPS”) rider; (6) reject ENO’s proposed Demand-Side Management Cost Recover Rider and adopt ENO’s Interim Energy Efficiency Cost Recovery Rider as the permanent mechanism for recovery of energy efficiency and demand response program costs, with the amendments recommended by the Public Interest Intervenors; (7) reject ENO’s proposed Distribution Grid Modernization (“DGM”) Rider and Advanced Metering Infrastructure (“AMI”) Charge because these mechanisms of cost recovery are contrary to basic ratemaking principles; (8) reject ENO’s proposed Reliability Incentive Mechanism (“RIM”); (9) adopt a 30-year depreciation life for Union Power Block 1; (10) approve ENO’s Green Power Option with the amendments recommended by the Public Interest Intervenors; (11) reject ENO’s proposed Community Solar Option without prejudice; (12) extend the Market Valued Load Modifying Rider and the Market

Valued Demand Response Rider to all customers; and (13) reject ENO's request to establish a regulatory asset for the Company's incremental rate case expenses.

## **II. Argument**

### ***A. ENO has Failed to Support its Drastic Increase in the Residential Fixed Customer Charge.***

As the Council is aware, ENO bears the burden of proving that the Company's requested changes in rates are warranted and will result in just and reasonable rates for New Orleans ratepayers. With regard to the exorbitant increase in the residential fixed charge, the Council should find that ENO has failed to present evidence justifying this excessive increase. Therefore, the Council should reject any requested increase in this charge.

ENO's justification for this drastic increase is that the near doubling of the residential fixed charge is necessary in order to move its electrical residential customer charge closer to the actual cost of service, and to lessen the subsidies paid by higher usage residential customers to lower usage customers.<sup>3</sup>

With regard to the need to "lessen the subsidies," ENO does not even attempt to prove that these subsidies exist. ENO witness Joshua B. Thomas admitted during cross-examination that the Company had not performed studies or analysis examining whether *any* subsidy actually exists,<sup>4</sup> let alone a determination of what the amount of that theoretical subsidy might be. Specifically, ENO cannot substantiate its claims that: (1) subsidies due to energy efficiency and solar photovoltaic adoption exist; or that (2) that higher usage residential customers are subsidizing lower usage customers. Ratemaking cannot be based on bald assertions and unsubstantiated assumptions.

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<sup>3</sup> ENO Initial Brief at 93.

<sup>4</sup> Hr'g Tr. 6/20/19, 91:5-6.

ENO's "cost of service" argument (*i.e.*, that the fixed charge increase will move the charge closer to the actual cost of service) is similarly flawed. First, as noted by AAE witness Justin R. Barnes, the purpose of a cost of service study is to determine the various expenses the utility is entitled the opportunity to recover. "Embedded cost of service studies are useful for determining the amount of revenue to collect, not how to collect that revenue."<sup>5</sup> Thus, a cost of service study is not an effective *cost allocation* tool and should not be used to determine how costs should be recovered.

More importantly, while ENO states that the customer charge captures items such as the cost of meters, meter reading, and bill preparation,<sup>6</sup> ENO's proposed residential fixed charge goes well beyond these expense items. The Company's excessive fixed charge includes executive and officer compensation, outside consultant services, operation and maintenance costs for overhead and underground distribution lines, and advertising, among other things.<sup>7</sup> As noted in the Initial Brief of the Public Interest Intervenors, ENO's experts do not even know what expenses they have included in the residential fixed charge.<sup>8</sup> ENO's assertion that its excessive fixed charge increase only recovers 74% to 75% of ENO's customer-related costs *must* be rejected by the Council.<sup>9</sup> The fixed charge clearly includes a myriad of expenses which are not "customer-related." Apparently, ENO views this charge as nothing more than a dumping ground for expenses, whether those expenses are customer related charges or not.<sup>10</sup> Using the fixed

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<sup>5</sup> Ex. AAE-3, Direct Testimony of Justin R. Barnes at 8:21–9:2 (Feb. 1, 2019).

<sup>6</sup> ENO Initial Brief at 94.

<sup>7</sup> See Initial Brief of the Alliance for Affordable Energy and Sierra Club at 27–28 (July 26, 2019) ("Public Interest Intervenors Initial Brief").

<sup>8</sup> *Id.* at 27.

<sup>9</sup> ENO Initial Brief at 96.

<sup>10</sup> In his seminal work, *Principles of Public Utility Rates*, Professor James Bonbright warned against misuse of the fixed charge, stating that a cost analyst is sometimes "under impelling

charge in this inappropriate manner removes the Company's incentive to conduct its business in an efficient and cost effective manner. The Council should reject this distortion of the purpose underlying the fixed charge.

Finally, ENO admits that the excessive residential fixed charge will harm low-income customers. According to ENO's own analysis, 60% of ENO's low-income customers are low-usage customers.<sup>11</sup> Thus, these customers will experience a rate increase resulting from the increase in the customer charge. ENO's callus response to this fact is to suggest that these customers find a program that can help them deal with their financial hardship.<sup>12</sup>

In contrast to ENO's excessive doubling of the residential fixed charge, the Advisors propose that the fixed charge be increased to \$10.00. However, the Advisors' only justification for this amount is that costs have increased since the 2008 rate case.<sup>13</sup> While the Advisors recognize that ENO's fixed charge increase is unreasonable, the Advisors own suggested increase violates basic ratemaking principles. Even though some costs *may* have increased since the Company's last rate case, others have undoubtedly decreased.<sup>14</sup> To simply assume that costs have probably risen contradicts the requirement that rate increases be based upon evidence.

Moreover, as noted in the Public Interest Intervenors' Initial Brief, ENO has over-earned for the

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pressure to 'fudge' his cost apportionments by using the category of customer costs as a dumping ground for costs." James C. Bonbright, *Principles of Public Utility Rates*, Columbia University Press, at 349 (1961).

<sup>11</sup> ENO Initial Brief at 97 (stating "40% of ENO's low-income customers are high usage customers").

<sup>12</sup> *Id.* at 97-98.

<sup>13</sup> Initial Brief of the Advisors to the City Council of New Orleans, at 62 (July 26, 2019) ("Advisors Initial Brief").

<sup>14</sup> Public Interest Intervenors note that a severe recession began in 2008 and continued for several years. Thus, it is likely that many of the costs at issue here actually decreased during the time period at issue.



last several years and proposes a base rate decrease in this proceeding. These facts belie any claim that the Company's costs have increased to the point that an increase in the fixed charge is justified.

The Council should reject ENO's request to almost double the residential fixed charge. In the alternative, the Council should adopt the methodology proposed by Mr. Barnes and increase the fixed charge to \$8.13.

***B. The Council Should Create a Work Group to Investigate the Institution of Time-of-Use Rates.***

While ENO professes concern for those ratepayers who are "subsidizing" others (without actually proving that these subsidies even exist), the Company's solution ignores the fact that its system is constructed to serve high-usage customers. Instead of simply attempting to protect its revenues, the Company should institute a solution that places the costs of the system on those who are largely responsible for its design.

The electric distribution system is sized to deliver enough energy to meet the maximum demand placed on the system. As such, the costs of the distribution system are largely based on customer peak demands, which are measured in kilowatts. There is a broad agreement that distribution investment is causally related to peak demand and not the number of customers.<sup>15</sup> Thus, many low-usage customers impose lower demands on the system, and, therefore, should be responsible for a smaller portion of the distribution system costs. Furthermore, many low-usage customers live in multi-family housing or in dense neighborhoods, and, therefore, impose lower distribution costs on the utility system than high-usage customers.

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<sup>15</sup> Frederick Weston, *Charging for Distribution Utility Services: Issues in Rate Design*, Regulatory Assistance Project, at 29–30 (Dec. 2000).

Electricity costs can vary significantly over the course of the day as demand rises and falls, and power plants that are more expensive to operate must come online to meet load. TOU rates are a form of time-varying rates, under which electricity prices vary during the day according to a set schedule that is designed to roughly represent the costs of providing electricity during different hours. A basic TOU rate would have separate rates for peak and off-peak periods, but intermediate periods may also have their own rates. Time-varying rate structures can benefit ratepayers and society in general by improving economic efficiency and equity.

TOU rates can improve economic efficiency by:

1. Encouraging ratepayers to reduce their bills by shifting usage from peak periods to off-peak periods, thereby better aligning the consumption of electricity with the value a customer places on it;
2. Avoiding capacity investments and reducing generation from the most expensive peaking plants; and
3. Providing appropriate price signals for customer investment in distributed energy resources that best match system needs.

TOU rates are an innovative rate structure designed to address the fact that high users are the cost causers on a utility's distribution system. Thus, TOU rates are also capable of improving equity by better allocating the costs of electricity production during peak periods to those causing the costs.

The goal of time varying rates is to incentivize customers to consume energy during times when the cost of generating electricity is cheap, and to offer a disincentive to consume energy when the cost of generating electricity is high. Under TOU rates, at times when both the cost of generating electricity and demand for electricity are low (*i.e.*, in the middle of the night), the rate paid to use electricity is very low. However, at times when both the cost of generation and demand for electricity are high (*i.e.*, the afternoon of a hot summer day), the rate of

electricity is much higher. TOU rates may vary by season, on weekdays versus weekends and holidays, and across multiple periods over the course of an individual day.

TOU rates have the potential to achieve or contribute to a number of goals including:

1. Reducing consumption during high-cost hours to avoid potential future utility system capital investment and/or operating costs to meet peak demand;
2. Encouraging the shift of usage to hours when low-cost clean resources are available for dispatch;
3. Helping consumers reduce electricity bills by shifting usage to low-cost hours; and
4. Assuring more equitable cost allocation across the customer base.

The Council should reject ENO's excessive residential fixed charge and direct ENO, the Advisors, and interested stakeholders to meet and determine the best TOU rate structure and the best way to implement that structure to benefit New Orleans ratepayers. The Council should further direct that any TOU mechanism or other innovative rate design recommended by the participants shall utilize all the benefits that smart meters and other new technologies can provide.

***C. The Council Cannot Accept a Rider Which Allows ENO to Recover the Costs of the Unapproved NOPS.***

ENO has proposed a NOPS rider associated with ENO's construction of a \$210 million gas-fired generating station. This rider expressly states that the justification for recovery of the costs associated with the NOPS is that "the construction of which was approved by the Council of the City of New Orleans in Resolution R-18-65."<sup>16</sup>

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<sup>16</sup> Ex. ENO-41, Revised Direct Testimony of Phillip B. Gilliam, ENO Exhibit PBG-7 at 5 of 22 (Sept. 21, 2018) ("Gilliam Direct").

As the Public Interest Intervenors discussed in their Initial Brief, the Civil District Court for the Parish of Orleans voided the Council's approval of the construction of the NOPS on June 14, 2019.<sup>17</sup>

Remarkably, ENO contends that the adoption of the NOPS rider is an uncontested issue.<sup>18</sup> The Advisors simply ignore this issue in their brief, which only addresses how the NOPS rider should function.<sup>19</sup>

ENO's construction of the NOPS no longer has the approval of the Council. This approval is ENO's sole justification for the adoption of the NOPS rider. Moreover, ENO is not entitled to collect the costs of the NOPS construction from the ratepayers in the absence of a finding by the Council that construction of the project is in the public interest. Therefore, the Council must reject the NOPS rider.

***D. Public Interest Intervenors Support the Advisors Recommendation to Make the Interim Energy Efficiency Cost Recovery Rider Permanent.***

In 2009, the Council established the Energy Smart program to encourage the development of energy efficiency and demand response resources in New Orleans by offering various programs and incentives for customers wishing to implement these measures to reduce their energy use.<sup>20</sup> Throughout the almost nine years of the Energy Smart program, the program has lacked a stable funding source.

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<sup>17</sup> Public Interest Intervenors Initial Brief at 53.

<sup>18</sup> ENO Initial Brief at 170–71. Amazingly, ENO claims the NOPS rider is uncontested despite Crescent City Power Users' Group ("CCPUG") raising an issue concerning the depreciation rate and the Advisors' extensive discussion concerning their disagreement regarding how the NOPS rider should function. *See* Ex. CCPUG-1, Direct Testimony and Exhibits of Lane Kollen at 46:8–11, 46:13–20, 47:1–19, 47:20–48:4 (Feb. 1, 2019) ("Kollen Direct"); Advisors Initial Brief at 42–45. Apparently, ENO has very limited view of the definition of "contested."

<sup>19</sup> Advisors Initial Brief at 42–45.

<sup>20</sup> *See* Resolution No. R-09-136 (Apr. 2, 2009).

As a part of its energy efficiency and demand response proposal, ENO designed the Interim Energy Efficiency Cost Recovery (“EECR”) Rider to recover the Council-approved funding for the Energy Smart program from customers for the period of August 2019 to December 2019. The EECR Rider is designed to serve as an interim universal funding mechanism for offerings approved in Resolution No. R-17-623.<sup>21</sup> The Council approved a similar Interim EECR Rider in Resolution No. R-17-623. However, the mechanism was never implemented because the program was funded by other sources.<sup>22</sup> ENO claims that the Company’s newly proposed Interim EECR Rider uses the allocation factors that the Council approved in Resolution No. R-17-623.<sup>23</sup> However, ENO does not propose to implement the Interim EECR Rider as a line item on customers’ bills.<sup>24</sup>

The Advisors recommend that the proposed Interim EECR Rider be utilized as the permanent mechanism to recover the costs of the Energy Smart program (which have all been expenses and not capital investments) for both Legacy ENO customers and Algiers customers, and that the Demand-Side Management Cost Recovery (“DSMCR”) Rider should be rejected.<sup>25</sup> The Advisors also recommend that prospective Energy Smart program costs beyond 2019 be included in each Formula Rate Plan evaluation.<sup>26</sup> As noted by the Advisors, customers will pay less in total costs by recovering Energy Smart program costs contemporaneously as expenses, rather than by deferring expenses and treating them as a regulatory asset.<sup>27</sup> The Advisors argue

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<sup>21</sup> Ex. ENO-10, Revised Direct Testimony of D. Andrew Owens at 14:10–12 (Sept. 21, 2018) (“Owens Direct”).

<sup>22</sup> Resolution Nos. R-17-623 (Dec. 14, 2017) and R-18-227 (June 21, 2018).

<sup>23</sup> Ex. ENO-10, Owens Direct at 15:1–2.

<sup>24</sup> *Id.* at 15:5–7.

<sup>25</sup> Ex. ADV-3, Direct Testimony of Victor Prep at 68:7-13 (Feb. 1, 2019) (“Prep Direct”).

<sup>26</sup> *Id.* at 68:10–11.

<sup>27</sup> *Id.* at 69:4–7.

that the EECR Rider is a preferable mechanism because the EECR (i) is a permanent funding mechanism, (ii) can track DSM investments and cost recovery through annual filings, (iii) provides stability by ensuring funding will be available, (iv) provides flexibility to incorporate changes to DSM, (v) does not have to appear as a separate line item on customers' bills, and (vi) represents less of a financial burden to ratepayers than the DSMCR methodology.<sup>28</sup>

The Public Interest Intervenors support the Advisors recommendation. The EECR Rider is a more straightforward mechanism and avoids the many issues raised by the proposed DSMCR. These issues include: (1) the inappropriate rate basing of the programs that will simply increase costs with no added benefit to ratepayers or the programs; (2) the use of a Lost Contributions to Fixed Costs ("LCFC") mechanism that will result in a double counting of any alleged utility lost revenues when combined with the decoupling mechanism; and (3) the overly generous energy efficiency performance incentive.

However, two aspects of the EECR Rider need to be clarified. First, while ENO contends that the Interim EECR Rider does not include a mechanism for recovery of LCFC, ENO's position is contradicted by the tariff language. Section III of the Interim EECR Rider expressly states that the rates "shall be based on the program costs of the energy efficiency programs, *associated lost contribution to fixed costs* and performance incentives as approved by the Council."<sup>29</sup> Both the Public Interest Intervenors and the Advisors have demonstrated that including an LCFC in addition to decoupling will result in ENO receiving a double recovery for alleged lost revenues. Mr. Prep proposes to address LCFC by adjusting ENO's proposed FRP to allow for pro forma adjustments to evaluation period billing determinants for the twelve months

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<sup>28</sup> See Advisors Initial Brief at 80.

<sup>29</sup> See Ex. ENO-10, Owens Direct, ENO Exhibit DAO-2 at page 1 of 4 (emphasis added).

subsequent to the FRP evaluation period.<sup>30</sup> The Council should adopt Mr. Prep's proposal and must require that the LCFC language of the EECR Rider be removed prior to adopting the rider as the DSM recovery mechanism.

Second, the proposed Interim EECR Rider does not set forth a specific performance incentive. In its March 1, 2018 Energy Smart Plan Recommendations,<sup>31</sup> the Advisors made the following recommendation with regard to the performance incentive:

The Advisors recommend that the current incentive amounts for achieving 100% of the kWh savings goal should be increased an appropriate amount proportional to kWh savings goals. Specifically, we recommend that the incentive amount per each 1% increment between 95% and 100% be increased by \$150,000, which results in a \$750,000 incentive for achieving 100% of the goal. The proposed \$750,000 ENO incentive relates to a 15 to 20 basis point increase in ENO's ROE.<sup>32</sup>

The Public Interest Intervenors have no objection to this version of the performance incentive. However, the Council should directly state what performance incentive will be used going forward.

***E. ENO's Proposed DGM Rider and AMI Charge Are Contrary to Basic Ratemaking Principles.***

As the Public Interest Intervenors established in their Initial Brief, riders constitute single issue ratemaking and should not be approved to recover a utilities costs except where needed to address volatile and uncontrollable costs.<sup>33</sup> A regulatory body should reject riders that are

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<sup>30</sup> Ex. ADV-5, Surrebuttal and Cross-Answering Testimony of Victor Prep at 29 (Apr. 26, 2019).

<sup>31</sup> See Advisors Recommendations for Council Consideration Pursuant to Resolution R-17-623 Re: Unresolved Issues for Energy Smart Program Years 7–9, Docket No. UD-08-02 (Mar. 1, 2018).

<sup>32</sup> *Id.* at 6–7 (emphasis in original).

<sup>33</sup> The Council should note that the Advisors agree with this standard. Advisors Initial Brief at 64.

simply for the purpose of guaranteed cost recovery. Several of ENO's newly proposed riders fail to meet these requirements. These riders include the DGM Rider and the AMI Charge.

With regard to those grid modernization projects closing after December 31, 2019, and any future grid modernization projects, ENO is proposing that the Council approve Rider DGM as the cost recovery mechanism.<sup>34</sup> As proposed, Rider DGM would consist of a charge based on a percentage of base rates that is incremental to base rates and would recover depreciation and return on grid modernization investments made in the applicable year. The rider would be updated on a quarterly basis to include any new investments made in the preceding three months.<sup>35</sup>

The Rider DGM should be rejected because it constitutes single issue ratemaking. The rider would also guarantee ENO cost recovery. Moreover, the costs associated with these projects are not volatile and uncontrollable. To the contrary, these project costs are predictable and within ENO's control. The Rider DGM is not justified and is contrary to basic ratemaking principles. Therefore, the Council should reject this charge.

Similarly, the AMI charge constitutes single issue ratemaking. ENO proposes that the Company be authorized to include in electric and gas bills an Electric AMI Charge. The charge would change annually, beginning on January 1, 2020. After 2022, the Electric AMI Charge would decline over time based on the schedule set forth in ENO's application.<sup>36</sup>

Once again, the AMI cost are neither volatile nor uncontrollable. ENO essentially controls the pace of AMI deployment and the costs related to this deployment are known and

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<sup>34</sup> ENO Initial Brief at 28, 63–64.

<sup>35</sup> *Id.* at 29.

<sup>36</sup> *Id.* at 20–22.



measurable. The AMI Charge is not justified and is contrary to basic ratemaking principles. Therefore, the Council should reject this charge.

***F. Public Interest Intervenors Support the Advisors Proposed ROE of 8.93%***

ENO proposes an allowed return on equity (“ROE”) of 10.75% (up-to 11.0% for electric). At the outset, the Council should note that this ROE is not significantly lower than ENO’s current ROE and under that rate regime ENO has significantly over-earned for several years. ENO essentially offers two justifications for this generous ROE. First, ENO alleges a need for a “constructive regulatory environment.” Second, ENO cites the Company’s below investment grade credit rating as support for the proposed ROE. The Council should reject both of these justifications.

First, with regard to the “constructive regulatory environment,”<sup>37</sup> ENO apparently believes that a constructive regulatory environment is one which allows them a guaranteed revenue stream and a virtually guaranteed return. Not only does this guaranteed revenue stream violate basic regulatory principles, but also a truly constructive regulatory environment is one that (1) balances the interests of both ENO and the ratepayers; (2) creates a method by which the Council can achieve its policy objectives; and (3) is in the public interest. ENO’s proposal meets none of these criteria.

Second, ENO’s argument that the Company’s below investment grade credit rating justifies an inordinately high ROE is contradicted by ENO’s recent history. Despite currently having an electric ROE of 10.7% to 11.5% and over-earning for the past several years, ENO’s

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<sup>37</sup> According to the Advisors, ENO witness Thomas alone refers to such an environment no less than twenty-nine times in his direct testimony alone. Advisors Initial Brief at 4.

credit rating is still below investment grade. Thus, the below investment grade credit rating must be based on factors other than ENO's ROE or its revenue stream.

Public Interest Intervenors support the ROE proposed by the Advisors. In contrast to the excessive profits that would be generated by ENO's proposed ROE, the Advisors' witnesses have provided an analytically designed methodology which results in a fair return to ENO given the Company's risk factors. As noted by the Advisors, ENO's proposed ROE is not even supported by the Company's own testimony. Mr. Hevert's updated Discounted Cash Flow ("DCF") analyses in his rebuttal testimony produced results ranging from 8.34% to 10.38%, and Mr. Hevert's revised Capital Asset Pricing Model ("CAPM") ROE analyses presented a range of results, from 8.25% to 11.34%.<sup>38</sup>

The Advisors, Crescent City Power Users' Group ("CCPUG"), and Air Products and Chemicals, Inc. ("Air Products") all heavily criticized the 10.75% ROE recommendation made by ENO witness Mr. Hevert.<sup>39</sup> The Public Interest Intervenors recommend that the Council adopt the 8.93% ROE for the reasons stated by the Advisors in their initial brief.<sup>40</sup>

***G. AAE's Suggested Modifications to ENO's Decoupling Proposal Are Timely and Address the Issues Raised in Council Resolution No. R-16-103.***

In Resolution No. R-16-103, the Council approved a decoupling mechanism to be incorporated into rates in order to align ENO's incentives with the desires of its customers for increased energy efficiency and customer-generated electricity. Specifically, the Council

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<sup>38</sup> Ex. ENO-29, Revised Rebuttal Testimony of Robert B. Hevert at 144 (Table 11) (Apr. 22, 2019).

<sup>39</sup> See, e.g., Advisors Initial Brief at 24–35; Initial Post-Hearing Brief of the Crescent City Power Users' Group at 27–44 (July 26, 2019); Air Products and Chemical, Inc.'s Initial Post-Hearing Brief at 11–15 (July 26, 2019). Due to limited resources, the Public Interest Intervenors were unable to sponsor their own ROE witness.

<sup>40</sup> See Advisors Initial Brief at 31–35.

directed ENO to include in this rate proposal a decoupling mechanism and set forth the Council's guidelines for such a mechanism.

AAE witness Pamela G. Morgan recommends four changes to ENO's decoupling proposal:

1. Remove it from the effects of the FRP dead-band;
2. Clarify that it will operate only on revenues ENO receives from energy- and demand-driven bill determinants. The decoupling mechanism will not operate on either (a) revenues from customer charge billing determinants or minimum bill requirements in tariffs; or (b) revenues collected under tariff riders that are subject to full reconciliation;
3. Clarify that the comparison is between the most recent approved revenues and the actual revenues, allocated to rate class/schedules per approved allocation factors, and not to a calculation of required allocated revenues that includes changes in costs during the decoupling period; and
4. Authorize ENO to calculate the difference between actual and authorized through-based revenues for fixed recovery on a monthly basis during any year, applying a Council-set carrying charge rate evenly to balances owed customers and owed ENO.<sup>41</sup>

AAE witness Morgan maintains that decoupling should focus only on revenues, not expense, and that revenue decoupling is always backward looking: a true-up for what actually happened compared to what was expected to happen.<sup>42</sup> AAE witness Morgan argues that any decoupling mechanism should operate separately from any FRP, be backward-looking in reconciliation, remove the need for any LCFC, and ensure that there are no gaps that could penalize ENO for achieving the most energy efficiency it can.<sup>43</sup>

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<sup>41</sup> Ex. AAE-1, Direct Testimony and Exhibits of Pamela G. Morgan at 3:11–23 (Feb. 1, 2019); Ex. AAE-2, Surrebuttal Testimony and Exhibit of Pamela G. Morgan at 2:6–3:7, 9:16–21, 16:16–22 (Apr. 26, 2019) (“Moran Surrebuttal”).

<sup>42</sup> Ex. AAE-2, Morgan Surrebuttal at 4:14–15, 5:8–9.

<sup>43</sup> *Id.* at 8:10–18.

ENO's only response to AAE witness Morgan's thoughtful critique of ENO's decoupling proposal is to claim that AAE's recommendations should be rejected as untimely and AAE is attempting an inappropriate end run around the Council's established process.<sup>44</sup> ENO further asserts that "AAE witness Morgan *admits* that she 'did not participate in any of the proceedings or workshops that led to the Council's Resolution No. R-16-103.'"<sup>45</sup>

ENO's objections are without merit. First, ENO's contention that AAE witness Morgan "admitted" anything is offensive. This statement implies that Ms. Morgan tried to hide her lack of participation or that Ms. Morgan did something wrong by not participating in the previous process. Nothing could be further from the truth.

Moreover, ENO's assertion that AAE's recommendations are untimely is incorrect. ENO filed a decoupling proposal in this proceeding, and parties are entitled to critique that proposal. Ms. Morgan readily discussed the instances where her proposal could be interpreted as differing from Resolution No. R-16-103. ENO's underlying premise, that if a stakeholder has not participated in previous processes they are forever barred from weighing in on an issue, should be rejected by the Council for two reasons.

First, ENO's concept is intended to and would have the effect of excluding stakeholders with limited resources from participating in the Council processes and proceedings. Unlike ENO, AAE does not have access to ratepayer funds and cannot spend unlimited amounts of other people's money on extensive stakeholder processes.<sup>46</sup> The Council should be encouraging broad

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<sup>44</sup> ENO Post-Hearing Brief at 109.

<sup>45</sup> *Id.* (quoting Ex. AAE-2, Morgan Surrebuttal at 3:18–19) (emphasis added).

<sup>46</sup> The Council should note that ENO is seeking to recover \$3.7 million, plus a return, as expenses for this rate case. ENO Initial Brief at 172.

participation in proceedings, and informing stakeholders that participation is an “all or nothing” proposition undermines efforts to hear from a variety of points of view.

Second, the Council undoubtedly wants to adopt the best proposals and mechanisms it can. Thus, for example with decoupling, if a presented proposal represents a mechanism which would improve upon a previous Council determination regarding the method to be used, the Council has every right to consider and adopt the proposed changes to its initial construct. ENO’s attempt to set in stone a process which should continue to evolve must be rejected by the Council.

***H. The Council Should Reject ENO’s Proposed Reliability Incentive Mechanism.***

ENO proposes a Reliability Incentive Mechanism (“RIM”) within its electric FRP. ENO proposes that its electric ROE (which ENO proposes to be 10.75%) would be reduced by 25 basis points (to 10.5%). If ENO’s performance improves, as measured through ENO’s Distribution System Average Interruption Frequency Index (“SAIFI”), it would return to the baseline ROE (10.75%), and thereafter ENO’s SAIFI, based on the Evaluation Period data, would translate into a number of positive or negative basis points (maximum of 25) to be added to the baseline ROE.<sup>47</sup> ENO states that its year-end 2018 SAIFI score is expected to be 1.65.<sup>48</sup> ENO proposes that if its SAIFI improves to 1.24, then the adjustment would be zero; a score of 1.40 or worse would warrant a 25 basis point decrease from 10.75%, and an improvement to 1.05 would warrant a 25 basis point increase from 10.75%.<sup>49</sup>

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<sup>47</sup>Ex. ENO-1, Revised Direct Testimony of Joshua B. Thomas at 24:1–26:2 (Sept. 21, 2018).

<sup>48</sup> *Id.* at 28:5–6.

<sup>49</sup> *Id.* at 28:3–16.

The Advisors,<sup>50</sup> CCPUG,<sup>51</sup> and Air Products<sup>52</sup> all join the Public Interest Intervenors in opposing ENO's proposed RIM. These parties all echo the Public Interest Intervenors' contention that reliable electric service is every utility company's duty: "[I]n return for its monopoly status and . . . the opportunity to earn an almost guaranteed rate of return, the utility's service must be reliable."<sup>53</sup>

ENO offers no rationale regarding why it should be rewarded for its previous failure to provide the reliable electric service which New Orleans ratepayers are entitled to and which these ratepayers already pay significant rates to receive. The Public Interest Intervenors agree with CCPUG: ENO's horrendous reliability performance warrants the adoption of a penalty by the Council, not a reward.<sup>54</sup>

***I. The Council Should Adopt a 30-Year Depreciation Life for Union Power Block 1.***

Depreciation rates are intended to provide recovery of invested capital, cost of removal, and credit for salvage over the expected life of the applicable property.<sup>55</sup> ENO witness Donald J. Clayton determined service life and net salvage estimates as well as developed depreciation rates for all of the Company's gas and electric plant except for intangible plant, asset retirement obligations, and acquisition premiums.<sup>56</sup> The revised depreciation rates recommended by Mr. Clayton resulted in a \$2.5 million increase to ENO's annualized electric depreciation

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<sup>50</sup> Advisors Initial Brief at 110–12.

<sup>51</sup> Ex. CCPUG-3, Direct Testimony and Exhibits of Richard A. Baudino at 50:7–8 (Feb. 1, 2019) (“Baudino Direct”).

<sup>52</sup> Ex. AP-3, Direct Testimony of Maurice Brubaker at 20:14–16 (Feb. 1, 2019).

<sup>53</sup> Ex. CCPUG-3, Baudino Direct at 50:7–17.

<sup>54</sup> CCPUG suggests a 25 basis point reduction penalty for underperformance and no incentive for improved performance. *Id.* at 52:14–18, 53:2–5.

<sup>55</sup> Ex. ENO-35, Revised Direct Testimony of Donald J. Clayton at 5–6.

<sup>56</sup> *Id.* at 3:15–18 & Exhibit DJC-4; Ex. ENO-35A (Revised Depreciation Study).

expense/accrual amounts and a \$137,000 increase to ENO's annualized gas depreciation expense/accrual amounts based on the study's 2016 plant balances.

CCPUG is the only party to sponsor a witness challenging any aspect of Mr. Clayton's depreciation study. In his direct testimony, CCPUG witness Lane Kollen recommended the Council adopt a 40-year depreciable life for Union Power Block 1 ("Union PB1") instead of the more traditional 30-year depreciable life proposed by the Company.<sup>57</sup> Mr. Kollen's only justification for this longer depreciation life appears to be that it "may be economic to operate Union Power Block #1 for more than 40 years."<sup>58</sup>

In response, ENO argues that a 40-year depreciable life for Union PB1 does not match the depreciable lives of similar plants and is unreasonable. According to the Company, ENO proposed the 30-year depreciable life for the Union PB1 based on the useful life determinations design-life specifications of similar plants. ENO also notes that, according to the Electric Power Research Institute, "[t]ypical design lives of fossil-fuel plants are in the range of 25 years or 200,000 operating hours, but many **can be extended** to more than 40 years with **increased investment**. Many individual component parts have significantly shorter design lives."<sup>59</sup>

Public Interest Intervenors support the Company's conclusion that a 30-year depreciable life is appropriate for Union PB1. The expected retirement date for Union PB1 is 2034.<sup>60</sup> ENO proposes to use a depreciation life that correlates to this expected retirement date. One of the goals of setting the depreciation life and having it depreciate at a schedule is so that the

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<sup>57</sup> Ex. CCPUG-1, Kollen Direct at 30:5-6.

<sup>58</sup> Ex. CCPUG-2, Surrebuttal and Cross-Answering Testimony of Lane Kollen at 17-18 (Apr. 26, 2018).

<sup>59</sup> Ex. ENO-48, Rebuttal Testimony of Robert A. Breedlove at 7:2-5 (quoting Exhibit RAB-2 at 3-6) (emphasis in original) (Mar. 22, 2019).

<sup>60</sup> Hr'g Tr. 6/18/19, 142:8-11.

ratepayers who receive electricity from the plant end up paying for at least most of the depreciation rather than having unrecovered investment in later years that is recovered from ratepayers who are no longer benefiting, and may have never benefitted, from the operation of that specific plant.<sup>61</sup> Ratepayers should not have to pay the increased costs of attempting to keep this plant in service beyond its useful life. Similarly, ratepayers should not be burdened with continuing to pay the depreciation costs for a plant which is no longer in service. Thus, the Council should reject CCPUG's proposal.

However, the Public Interest Intervenors believe that the Council should be informed regarding the closure of Union PB1 (or any plant used to serve New Orleans ratepayers). The Council should direct ENO to file bi-yearly informational reports on the pending retirement of Union PB1 and, more importantly, should direct ENO to inform the Council immediately if the plans to retire Union PB1 change such that the plant will not be retired by 2034, or will be retired earlier than that date.

***J. Public Interest Intervenors Support the Extension of the Market Valued Load Modifying Rider and the Market Valued Demand Response Rider to All Customers.***

ENO proposes to extend two of the riders previously in effect in the Algiers territory to all of its customers: the Market Valued Load Modifying Rider ("MVLMR") and the Market Valued Demand Response Rider ("MVDRR").<sup>62</sup> These riders are designed to provide the opportunity for qualified retail customers, or qualified aggregators of retail customers, to act as a load modifying resource or a demand response resource, consistent with Midcontinent Independent System Operator-prescribed standards and requirements.<sup>63</sup>

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<sup>61</sup> *Id.* at 155:15–156:6.

<sup>62</sup> Ex. ENO-55, Revised Application at 30 (Sept. 21, 2018).

<sup>63</sup> Ex. ADV-3, Prep Direct at 64:13–18.



The Public Interest Intervenors support offering the MVLMR and the MVDRR to all customers. However, these programs must be improved to ensure that they are effective. First, the Council should establish a peak capacity reduction goal to incentivize ENO to encourage participation in the programs. Second, as suggested by Advisor witness Victor Prep, in order to encourage potential customers to take part in the program, ENO should be required to provide some support to potential participants, including a cost-estimate so potential customers understand the programs and know what they are getting into.<sup>64</sup>

Finally, the MVLMR should be amended to (a) make it a multi-year commitment so that it is a useful planning resource for ENO, (b) increase the compensation towards long-term avoided costs to recognize the fact that it is a useful planning resource, and (c) allow customers to participate through aggregators of retail customers, similar to the MVDRR.

***K. The Council Must Reject ENO's Request to Establish a Regulatory Asset for the Company's Incremental Rate Case Expenses.***

ENO proposes to defer the rate case expenses as a regulatory asset and amortize the balance over three years with the unamortized balance included in rate base.<sup>65</sup> According to ENO, the deferred expenses would include only incremental rate case expenses associated with certain Entergy Services, Inc. personnel, excluding personnel that routinely work on ENO regulatory matters, and the Company's external attorneys and regulatory consultants. The deferred expenses also would include any Advisors expenses in excess of the amount included in the Period II per books non-fuel operation and maintenance.<sup>66</sup> ENO estimated that its rate case expenses would total approximately \$3.7 million on a total Company basis based on actual

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<sup>64</sup> *Id.* at 64:13–65:9.

<sup>65</sup> Ex. ENO-33, Revised Direct Testimony of Orlando Todd at 28 (Sept. 21, 2018).

<sup>66</sup> *Id.*

incremental rate case expenses incurred in the 2008 ENO Rate Case.<sup>67</sup> The actual costs will be allocated 81% to electric operations and 19% to gas operations.<sup>68</sup>

ENO cannot be permitted to rate base this utility *operating expense* and earn a return on this expense. The rate base should reflect the net *investment* in the public utility on which utilities are allowed an opportunity to earn a fair rate of return. ENO is a public utility and as a public utility, participating in a rate case is a cost of doing business. Rate cases expenses are just that, expenses, these costs are not an investment and, therefore, should not earn a return.

Allowing ENO to earn a return on these expenses means the Company has no incentive to control its costs.<sup>69</sup> Ratepayers are required to cover ENO's rate case expenses and the Advisors rate case expenses. Ratepayers and groups representing those ratepayers also must fund their own participation in any proceeding. Moreover, recovering an expenditure through rate base with return over time is much more costly to ratepayers. To allow ENO to earn a *profit* on its rate case expenses adds an unnecessary cost on top of all the other costs included in rates.

Treating expenses as a regulatory asset violates basic ratemaking principles. ENO cannot be permitted to game the system in this manner.

### **III. Conclusion**

In conclusion, the Public Interest Intervenors ask the Council to adopt the following recommendations:

- Approve a \$8.13 electric residential customer fixed charge.
- Approve full revenue decoupling, based on AAE's proposal.
- Allow ENO a Return on Equity of 8.93% for both electric and gas.

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> For example, ENO entered the appearance of seven attorneys in this rate case hearing.

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- Institute an investigation into the adoption of time-of-use rates and other innovative rate design.
- Reject the proposed New Orleans Power Station Rider for the unapproved gas plant.
- Reject ENO's proposed Demand-Side Management Cost Recovery rider.
- Approve a permanent Energy Efficiency Cost Recovery rider with the amendments recommended by the Public Interest Intervenors.
- Reject ENO's proposed Distributed Grid Modernization rider.
- Reject ENO's proposed Advanced Metering Infrastructure customer charges.
- Reject ENO's proposed Reliability Incentive Mechanism.
- Approve ENO's proposed depreciation rates, as corrected by ENO.
- Approve ENO's proposed Green Power Option with the amendments recommended by the Public Interest Intervenors.
- Reject ENO's proposed Community Solar Option without prejudice.
- Extend the Market Valued Load Modifying Rider and the Market Valued Demand Response Rider to all customers.
- Reject ENO's Request to Establish a Regulatory Asset for the Company's Incremental Rate Case Expenses.

Dated: August 9, 2019

Respectfully submitted,



Susan Stevens Miller (*pro hac vice*)  
Clean Energy Attorney  
Earthjustice  
1625 Massachusetts Ave., NW, Ste. 702  
Washington, DC 20036  
(202) 667-4500  
smiller@earthjustice.org

*Counsel for the Alliance for Affordable Energy and  
Sierra Club*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 9<sup>th</sup> day of August 2019, a copy of the **Reply Brief of the Alliance for Affordable Energy and Sierra Club** has been served on the persons listed below by electronic mail and/or U.S. First-Class mail, postage prepaid:

<p><b>Lora W. Johnson</b>, lwjohnson@nola.gov Clerk of Council City Hall - Room 1E09 1300 Perdido Street New Orleans, LA 70112 (504) 658-1085 - office (504) 658-1140 - fax <i>Service of Discovery not required</i></p> <p><b>Erin Spears</b>, espears@nola.gov <b>Bobbie Mason</b>, bfmason1@nola.gov <b>Connolly Reed</b>, careed@nola.gov City Hall - Room 6E07 1300 Perdido Street New Orleans, LA 70112 (504) 658-1110 - office (504) 658-1117 – fax</p> <p><b>Andrew Tuozzolo</b>, CM Moreno Chief of Staff, avtuozzolo@nola.gov 1300 Perdido St. Rm. 2W40 New Orleans, LA. 70112</p> <p><b>CITY OF NEW ORLEANS</b></p> <p><b>Sunni LeBeouf</b>, sunni.lebeouf@nola.gov <b>Michael J. Laughlin</b>, mjlaughlin@nola.gov <b>Mary Katherine Kaufman</b>, mkkaugman@nola.gov Law Department 1300 Perdido Street City Hall – Suite 5E03 New Orleans, LA 70112</p> <p><b>David Gavliniski</b>, dsgavliniski@nola.gov Council Chief of Staff City Hall – Room 1E06 1300 Perdido Street New Orleans, LA 70112</p>	<p><b>NEW ORLEANS CITY COUNCIL CONSULTANTS</b></p> <p><b>Clinton A. Vince</b>, clinton.vince@dentons.com <b>Presley Reed</b>, presley.reedjr@dentons.com <b>Emma F. Hand</b>, emma.hand@dentons.com 1900 K Street NW Washington, DC 20006 (202) 408-6400 - office (202) 408-6399 - fax</p> <p><b>Basile J. Uddo</b> (504) 583-8604 cell, buddo@earthlink.net <b>J. A. “Jay” Beatmann, Jr.</b> (504) 256-6142 cell, (504) 524-5446 office direct, jay.beatmann@dentons.com c/o DENTONS US LLP 650 Poydras Street Suite 2850 New Orleans, LA 70130</p> <p><b>Victor M. Prep</b>, vprep@ergconsulting.com <b>Joseph W. Rogers</b>, jrogers@ergconsulting.com <b>Byron S. Watson</b>, bwatson@ergconsulting.com Legend Consulting Group 6041 South Syracuse Way, Suite 105 Greenwood Village, CO 80111 (303) 843-0351 - office (303) 843-0529 – fax</p> <p><b>Errol Smith</b>, (504) 284-8733, ersmith@btpas.com Bruno and Tervalon 4298 Elysian Fields Avenue New Orleans, LA 70122 (504) 284-8296 – fax</p>
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**Norman White**, norman.white@nola.gov  
Chief Financial Officer  
Department of Finance  
City Hall – Room 3E06  
1300 Perdido Street  
New Orleans, LA 70112

**ADMINISTRATIVE HEARING  
OFFICER**

**Hon. Jeffrey S. Gulin**,  
judgegulin@gmail.com  
3203 Bridle Ridge Lane  
Lutherville, MD 21093  
(410) 627-5357

**ENTERGY NEW ORLEANS, INC.**

**Brian L. Guillot** (504) 576-2603 office,  
bguill1@entergy.com

**Polly S. Rosemond**, 504-670-3567,  
prosemo@entergy.com

**Derek Mills**, 504-670-3527,  
dmills3@entergy.com

**Keith Woods**, kwood@entergy.com

**Seth Cureington**, 504-670-3602,  
scurein@entergy.com

**Kevin T. Boleware**, 504-670-3673,  
kbolewa@entergy.com

Entergy New Orleans, Inc.  
1600 Perdido Street, L-MAG 505B  
New Orleans, LA 70112

**Timothy Cragin** (504) 576-6523 office,  
tcragin@entergy.com

**Alyssa Maurice-Anderson** (504) 576-6523  
office, amauric@entergy.com

**Harry Barton** (504) 576-2984 office,  
hbarton@entergy.com

Entergy Services, Inc.  
Mail Unit L-ENT-26E  
639 Loyola Avenue  
New Orleans, LA 70113  
(504) 576-5579 – fax

**ALLIANCE FOR AFFORDABLE  
ENERGY**

**Logan Atkinson Burke**,  
logan@all4energy.org

**Sophie Zaken**, regulatory@all4energy.org  
Alliance for Affordable Energy  
4505 S. Claiborne Avenue  
New Orleans, LA 70125

**Susan Steven Miller**,  
smiller@earthjustice.org,  
aluna@earthjustice.org,  
nthorpe@earthjustice.org  
1625 Massachusetts Ave., NW, Ste. 702  
Washington, DC 20036  
202-667-4500

**350 LOUISIANA**

**Renate Heurich**, 504-473-2740,  
350louisiana@gmail.com  
1407 Napoleon Ave, #C  
New Orleans, LA, 70115

**Andy Kowalczyk**,  
a.kowalczyk350no@gmail.com  
1115 Congress St.  
New Orleans, LA 70117

**BUILDING SCIENCE INNOVATORS**

**Myron Katz, PhD**  
302 Walnut Street  
New Orleans, LA 70118  
504-343-1243  
Myron.bernard.katz@gmail.com  
Myron.katz@energyrater.com

**Joe Romano, III** (504) 576-4764,  
jroman1@entergy.com  
**Suzanne Fontan** (504) 576-7497,  
sfontan@entergy.com  
**Therese Perrault** (504-576-6950),  
tperrau@entergy.com  
Entergy Services, Inc.  
Mail Unit L-ENT-4C  
639 Loyola Avenue  
New Orleans, LA 70113  
(504)576-6029 – fax

**SEWERAGE AND WATER BOARD OF  
NEW ORLEANS**

**John H. Chavanne, 225-638-8922,**  
jchav@bellsouth.net  
111 West Main St., Suite 2B  
PO Box 807  
New Roads, LA 70760-8922  
Fax 225-638-8933

**Brian A. Ferrara,** bferrara@swbno.org  
**Yolanda Y. Grinstead,**  
ygrinstead@swbno.org  
Legal Department  
625 St. Joseph St., Rm 201  
New Orleans, LA 70165  
504-585-2154

**SIERRA CLUB**

**Grace Morris,** 973-997-7121  
Grace.Morris@sierraclub.org  
4422 Bienville Ave  
New Orleans, LA 70119

**Dave Stets,** 804-222-4420,  
Dave.Stets@BySolar.net  
2101 Selma St.  
New Orleans, LA 70122

**Julie DesOrmeaux Rosenzweig, 337-577-  
8494,** Julie.Rosenzweig@sierraclub.org  
PO Box 8619  
New Orleans, LA 70182

**AIR PRODUCTS AND CHEMICALS,  
INC.**

**Katherine W. King,**  
katherine.king@keanmiller.com  
**Randy Young,**  
randy.young@keanmiller.com  
400 Convention St., Suite 700  
Baton Rouge, LA 70802  
Or  
P.O. Box 3513 70821-3513

**Carrie R. Tournillon,**  
carrie.tournillon@keanmiller.com  
900 Poydras St., Suite 3600  
New Orleans, LA 70112

**Mark Zimmerman,**  
zimmerman@airproducts.com  
720 I Hamilton Blvd.  
Allentown, PA 18195-1501  
610-481-1288

**Maurice Brubaker,**  
mbrubaker@consultbai.com  
16690 Swigly Ridge Rd., Suite 140  
Chesterfield, MO 63017  
Or  
P.O. Box 412000  
Chesterfield, MO 63141-2000

**CRESCENT CITY POWER USERS'  
GROUP**

**Luke F. Piontek,**  
Lpiontek@roedelparsons.com,  
Jsulzer@roedelparsons.com  
**Christian J. Rhodes**  
**Shelley Ann McGlathery**  
Roedel, Parsons, Koch, Blache,  
Balhoff & McCollister  
1515 Poydras Street, Suite 2330  
New Orleans, LA 70112

**JUSTICE AND BEYOND**

**Rev. Gregory Manning**, 913-940-5713,  
gmanning1973@yahoo.com

**Pat Bryant**, 504-905-4137,  
pat46bryant@yahoo.com

**Happy Johnson**, 504-315-5083,  
hjohnson1081@gmail.com

**Sylvia McKenzie**, sylkysmooth.sm@cox.net  
c/o A Community Voice  
2221 St. Claude Ave.  
New Orleans, LA 7011

**Lane Kollen** (lkollen@jkenn.com)  
**Stephen Baron** (sbaron@jkenn.com)  
**Randy Futral** (rfutral@jkenn.com)  
**Richard Baudino** (rbaudino@jkenn.com)  
**Brian Barber** (brbarber@jkenn.com)  
J. Kennedy & Associates  
570 Colonial Park Dr., Suite 305  
Rosewell, Ga. 30075

Additionally, pursuant to the New Orleans, Louisiana Code of Ordinances, Ch. 158, Art. III, Div. 1, § 158-236, the following persons have been served with copies of the aforementioned document, in triplicate, via U.S. first-class mail, postage prepaid:

**Councilwoman Helena Moreno**

City Hall, Room 2W40  
1300 Perdido Street  
New Orleans, LA 70112  
morenocouncil@nola.gov

**Councilman Joseph I. Giarrusso**

City Hall, Room 2W80  
1300 Perdido Street  
New Orleans, LA 70112  
Joseph.Giarrusso@nola.gov

**Councilwoman Kristin Gisleson Palmer**

City Hall, Room 2W70  
1300 Perdido Street  
New Orleans, LA 70112  
Kristin.Palmer@nola.gov

**Councilwoman Cyndi Nguyen**

City Hall, Room 2W60  
1300 Perdido Street  
New Orleans, LA 70112  
Cyndi.Nguyen@nola.gov

**Mayor LaToya Cantrell**

The Mayor's Office  
City Hall, 2nd Floor  
1300 Perdido Street  
New Orleans, LA 70112

**Lora W. Johnson, lwjohnson@nola.gov**

Clerk of Council  
City Hall - Room 1E09  
1300 Perdido Street  
New Orleans, LA 70112  
(504) 658-1085 - office  
(504) 658-1140 - fax

**Councilman Jason Rogers Williams**

City Hall, Room 2W50  
1300 Perdido Street  
New Orleans, LA 70112  
jasonwilliams@nola.gov

**Councilman Jay H. Banks**

City Hall, Room 2W10  
1300 Perdido Street  
New Orleans, LA 70112  
Jay.banks@nola.gov

**Councilman Jared C. Brossett**

City Hall, Room 2W20  
1300 Perdido Street  
New Orleans, LA 70112  
councildistrictd@nola.gov

**Reketti Peters**

City Hall, Council Research Division  
1300 Perdido Street  
New Orleans, LA 70112  
rapeters@nola.gov

**Sunni LeBeouf, sunni.lebeouf@nola.gov**

City Attorney

**Michael J. Laughlin, mjlaughlin@nola.gov**

**Mary Katherine Kaufman,**

mkkaugman@nola.gov  
Law Department  
1300 Perdido Street  
City Hall – Suite 5E03  
New Orleans, LA 70112

**Norman White, norman.white@nola.gov**

Chief Financial Officer  
Department of Finance  
City Hall – Room 3E06  
1300 Perdido Street  
New Orleans, LA 70112



**David Gavlin**ski, [dsgavlinski@nola.gov](mailto:dsgavlinski@nola.gov)  
Council Chief of Staff, Council Utilities  
Regulatory Office  
City Hall – Room 1E06  
1300 Perdido Street  
New Orleans, LA 70112

Washington, D.C., this 9<sup>th</sup> day of August, 2019.



Susan Stevens Miller  
Clean Energy Attorney, Earthjustice