BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS

REVISED APPLICATION OF ENTERGY	)	
NEW ORLEANS, LLC FOR A CHANGE	)	
IN ELECTRIC AND GAS RATES	)	**DOCKET NO. UD-18-07**
PURSUANT TO COUNCIL RESOLUTIONS	)	
R-15-194 AND R-17-504 AND	)	
FOR RELATED RELIEF	)	

REPLY POST-HEARING BRIEF OF THE CRESCENT CITY POWER USERS GROUP

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INTRODUCTION

NOW COMES Crescent City Power Users' Group ("CCPUG"), through undersigned counsel, which respectfully submits its Reply Post-Hearing Brief ("Reply Brief"), pursuant to the Order of Hearing Officer Gulin dated July 12, 2019. As mentioned in its Initial Post-Hearing Brief, CCPUG is comprised of several large commercial and governmental customers taking service from Entergy New Orleans, LLC ("ENO"), including the City of New Orleans ("City"), the Sewerage and Water Board of New Orleans ("S&WB"), New Orleans Cold Storage & Warehouse Co., Ltd. ("NOCS"), LCMC Health, and Tulane University Hospital & Clinic ("Tulane"). Crescent City Power Users' Group intervened in this proceeding to analyze and address issues raised in the 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 on September 21, 2018 ("Revised Application").

CCPUG has analyzed the Initial Post-Hearing Briefs filed by the other parties to this proceeding, and responds specifically to ENO and the Advisors in this Reply Brief. The bad news continues in ENO's Initial Post-Hearing Brief ("ENO's Brief") where it maintains its proposals to over-earn by (1) requesting an unreasonably high return on equity, (2) recommending unnecessary rate riders that will harm customers, and will afford ENO an opportunity to inflate earnings, and (3) minimizing the amount of rate reduction for certain groups of customers. In short, nothing in ENO's Brief changes CCPUG's positions in this matter. CCPUG persists in its request for the Council to seize this once-in-a-generation opportunity to lower rates for all customer classes while at the same time reducing the crippling and unjustified subsidies imposed on the commercial classes of customers. To maximize this rare opportunity and establish just and reasonable rates for all of ENO's customers going forward, the Council should adopt CCPUG's recommendations in

this proceeding, and (a) order an overall rate decrease of $51.736 million (electric and gas rates), (b) set ENO's Return on Equity ("ROE") at 9.35% for electric and gas operations, (c) order ENO to remove all projected 2019 costs and related expenses from its test years for Period I and Period II, (d) likewise order ENO to utilize only historic test years (earnings review periods) in its electric Formula Rate Plan ("E-FRP") Rider and gas Formula Rate Plan ("G-FRP") Rider rather than allowing ENO to include projected costs and collect those costs from customers before the investment related to those costs ever provides service to such customers, (e) reduce the unjustified, arbitrary, and capricious subsidies on commercial customers inherent in ENO's proposed rates by ordering the allocation among customer classes in rate design of the capacity costs associated with the Entergy Arkansas, Inc. Wholesale Base Load Purchased Power Agreement ("EAI WBL PPA") and River Bend 30% PPA on an equal percentage increase basis, rather than an energy basis, (f) direct ENO to employ a 40-year service life and a 0% net salvage value for Union Power Station, Power Block 1 ("UPS") for depreciation purposes, as well as a 50-year service life for New Orleans Power Station ("NOPS") revenue requirement purposes, and (g) reject ENO's proposed DGM, GIRP, PPCACR and RIM riders as unnecessary, inappropriate examples of single-issue ratemaking, and unjustifiably resulting in continuous rate increases without any mechanism to consider offsets that may otherwise reduce rates.

CCPUG appreciates the ability to contribute to the process in this important regulatory proceeding and respectfully submits its Reply Brief for the Council's consideration.

ARGUMENT

A. The Overall Revenue (Rate) Decrease Should be Roughly $51.7 Million

ENO admits that, under its proposed rates, residential ratepayers would experience rate *increases*, despite the overall electric revenue (rate) decrease of approximately $20.3 million,[1] and a decrease in its overall gas revenues (rates) of roughly $0.142 million,[2] for a total overall rate reduction of just over $20.4 million. ENO states,

> ENO's 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, and a typical Legacy Algiers residential customer with the same usage per month having a bill of $107.93, an increase of $3.65. ENO's proposed gas rate structure would result in a typical ENO residential customer using one hundred cubic feet of gas per month having a bill of $79.02, a decrease of $3.09 per month.[3]

The Council's Advisors recommend an overall reduction in rates of roughly $33 million in electric revenue and $3.8 million in gas revenue for a total overall recommended reduction of $36.8 million.[4] Through the application of well-accepted ratemaking principles, CCPUG's consultants determined that an overall rate decrease of over $51 million (for electric and gas operations, combined) is well-documented, reasonable, and appropriate under the circumstances.[5] Further, under CCPUG's recommendations, all customers – including residential customers – will experience rate ***decreases***.

[1] ENO's Revised Application, at ¶ 17, stating that ENO is proposing a reduction in its electric revenue requirement of approximately $20.3 million.
[2] *Id.*, at ¶ 18, explaining that ENO is proposing a reduction in its gas revenue requirement of approximately $0.142 million.
[3] ENO's Brief, at 18. (Footnote omitted).
[4] Exh. ADV-3 (Direct Testimony of Victor Prep ("Prep Direct Testimony") (Advisors)), at 2:10-11 and 6:1-4.
[5] *See* Exh. CCPUG-2 (Surrebuttal and Cross-Answering Testimony and Exhibits of Lane Kollen ("Kollen Surrebuttal Testimony") (CCPUG)), at 6:1, Table entitled, "Entergy New Orleans, LLC, Summary of CCPUG Revenue Requirement Recommendations – Surrebuttal and Cross-Answering Update, Docket No. UD-18-07, Period II test year Ended December 31, 2018, $ Millions".

CCPUG recommends much larger decreases in overall rates than does ENO – *i.e.,* a reduction of $46.707 million in overall electric rates – as compared to ENO's recommended reduction of $20.30 million – and a reduction of $5.029 million in overall gas rates – as opposed to ENO's proposed reduction of $0.142 million.[6] CCPUG recommends a total (electric and gas) overall rate reduction of $51.736 million[7] as opposed to ENO's total reduction of just over $20.4 million.

For the reasons set forth below, CCPUG's recommended reductions to overall rates in addition to those suggested by ENO should be adopted by the Council in order to set ENO's rates at an appropriate level, while providing ENO the opportunity to earn a reasonable rate of return. CCPUG's recommendations also address an issue barely touched upon by other parties to this proceeding – ongoing and significant subsidies being forced upon customers in the commercial classes which require them to pay far more than the cost ENO incurs to serve them, all in order to provide rate relief to the residential class of customers. As stated in its opening statement at the hearing on the merits, CCPUG does ***not*** propose to eliminate the subsidies paid by the commercial classes of customers in favor of the residential class; rather, it proposes to reduce those subsidies which directly harm the bottom lines of the members of the commercial classes. It also bears repeating that this particular case provides the Council with a rare opportunity to reduce those subsidies while still maintaining a rate *decrease* for residential customers. CCPUG encourages the Council to take advantage of this once-in-a-generation opportunity to reduce the crippling subsidies on the commercial classes of customers.

[6] *See* Exh. CCPUG-2 (Kollen Surrebuttal Testimony) (CCPUG), at 6:1, Table.
[7] *See id*.

B. Appropriate Cost Allocation Methodology must be Employed to Reduce Cross-Subsidization

The Advisors maintain in their testimony and assert in their brief that their allocation of the revenue requirements among customer classes in this proceeding "recognized the disparity among the customer class rates of return and the impacts of changes to each customer class total present revenue."[8] But, as CCPUG pointed out and as discussed more thoroughly below, the Advisors' recommended class rates of return are exceedingly skewed in favor of residential customers, without supporting proof.

Cost-causation principles should drive the allocation.[9] "The allocation process for electric and gas apportions or distributes costs to the various customer groups, that is, rate classes, through the use of an 'allocation factor.' Generally, costs are allocated on the basis of a demand, energy, or customer relationship."[10] Fixed costs (like investment in generating units or fixed costs associated with a long-term Purchase Power Agreement ("PPA")) do not fluctuate with the amount of electricity produced and, therefore, are typically allocated on a demand basis.[11]

The cost-causation principle provides that a customer or group of customers should bear financial responsibility for the costs that they cause the utility to incur to provide them with service.[12] The cost-causation principle drives the "allocation" of costs among the various customer classes in the Cost of Service Study. While ENO correctly allocated the costs necessary to provide

[8] Advisors' Initial Post-Hearing Brief ("Advisors' Brief"), at 54.
[9] Exh. ENO-45 (Revised Direct Testimony of Myra L. Talkington ("Talkington Revised Direct Testimony") (ENO)), at 5:21 – 6:1.
[10] Exh. ENO-41 (Revised Direct Testimony of Phillip B. Gillam, adopted by Matthew S. Klucher ("Gillam / Klucher Revised Direct Testimony") (ENO)), at 24:6-9.
[11] TR, June 18, 2019, (Cross Examination of Myra Talkington), at 48:6-12: "The demand-based cost is also referred to as a fixed cost. It's typically – Examples of demand-based costs are production facilities, capacity costs, transmission plants. Usually the typical plant type fixed costs are usually allocated – are demand costs and allocated using a demand basis."
[12] Exh. CCPUG-5 (Direct Testimony of Stephen J. Baron ("Baron Direct Testimony") (CCPUG)), at 11:5-9.

service among the various customer classes in its Cost of Service Study, it strayed from that allocation with regard to certain costs when designing its rates in this proceeding without any valid justification.

While CCPUG understands that the class revenue requirements need not necessarily mirror the results of the Cost of Service Study,[13] the resulting allocation from the Advisors' recommended methodology exacerbates a long-standing egregious subsidization mismatch that materially disadvantages the large customer classes. In order to seize upon this once-in-a-generation opportunity in a rate decrease case to reduce these crippling subsidies, the Council should reject the Advisors' class revenue requirements and adopt those proposed by CCPUG. As mentioned in the Initial Post-Hearing Brief, CCPUG's recommendations – if adopted by the Council – will reduce the subsidization forced upon the larger, commercial classes while providing rate decreases to ***all*** customers.

One consequence of violating the cost-causation principle and/or the used and useful principle is cross-subsidization. "Cross-subsidization occurs when one set of customers pays in excess of cost and another pays less than cost of service."[14] In other words, cross-subsidization occurs when one customer or group of customers is forced to pay more than the cost the utility incurs to provide them with service. While there will likely always be some level of cross-subsidization among customer classes, an unreasonable level of cross-subsidization serves as nothing more than an unjustified tax on the subsidizing class of customers. ENO concedes that – under current rates – the customers in the commercial and industrial classes are paying approximately *$45 million per year* in costs that are the responsibility of the residential customers,

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[13] Exh. CCPUG-5 (Baron Direct Testimony) (CCPUG)), at 11:7-9, stating that rates need not be set exactly at cost of service, but that rates based upon cost of service is the goal towards which rate design should be aimed.
[14] *Id.*, at 13:2-4.

and – under ENO's proposed rates – the commercial and industrial customers will *continue* paying approximately *$35 million per year* in costs that are the responsibility of the residential customers. There is no justification for imposing these massive subsidies on commercial customers.

The Advisors recognize the need to reduce cross-subsidization as much as reasonably possible. They state in their Brief,

> There is often some degree of cross-subsidization that occurs because of the inability to create a perfect match, and there is often some level of cross-subsidization that can be justified for public policy purposes, but generally speaking, **this is to be *avoided as much as reasonably possible***, because **it does run a risk of colliding with the prohibition on undue discrimination in rates.** This principle also generally prohibits utility rates from being used to recover anything other than the prudently incurred costs of providing service to customers and a reasonable rate of return on the utility's investment.[15]

The Advisors further state that,

> A utility's rate structure must be non-discriminatory. The prohibition on unreasonable discrimination requires that if a utility charges different rates to different customers, there must be a rational basis for the difference. A rational basis is often demonstrated through the principle of cost causation – two classes of customers receive different rates either because they are receiving different types of service or because the two classes of customers impose different costs on the utility to provide the same service.[16]

CCPUG agrees with the foregoing statements by the Advisors. However, while the Advisors appear to agree with CCPUG concerning the need to reduce subsidies and avoid unreasonable discrimination in rates, their recommendations will maintain the cross-subsidization inherent in ENO's rate design to the detriment of its commercial customers. To illustrate this, consider the Advisors' varying revenue requirements for each class of customers.[17] Under the Advisors' proposal, the required rate of return for the Residential Class is 1.60%, but the required

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[15] Advisors' Brief, at 13. (Emphasis and bolding added).

[16] *Id*., at 12-13. (Footnotes omitted).

[17] *See* Exh. ADV-5 (Prep Surrebuttal Testimony), at Exh. VP-20, which shows the Advisors' proposed total electric revenue requirement along with the varying required rates of return for each rate class on Line 3.

rate of return for the Large Electric High Load Factor Class is 15.79%.[18] As Mr. Baron explained, the Advisors' methodology results in an ROE for the Large Electric High Load Factor Class that is *nearly twice* the retail average ROE of 8.48% and *almost 10 times higher* than the Residential Class' ROE of 1.60%.[19] Mr. Prep testified at the hearing that he employed no algorithm[20] or standard[21] in developing his varying required rates of return for each rate class. Mr. Baron notes that the Advisors' rates of return for the various rate classes were "judgmental" and that, if the Advisors' recommendation on electric and gas revenue decrease allocations is approved, "large and inequitable rate class subsidies would continue to be paid by Commercial and Industrial customers to the residential class for both electric and gas customers."[22]

The subsidization that will continue under ENO's proposed rate design – as shown by CCPUG – is *not* founded on a rational basis (like the Advisors acknowledge it must be); does *not* follow cost-causation (as the Advisors suggest it should); and is patently arbitrary. The Council should adopt CCPUG's recommendations for reducing (though not eliminating) the cross-subsidization lurking in ENO's rate design. Only then could ENO's rates be considered just and reasonable and not unduly discriminatory.

C. The Appropriate Return on Equity for ENO is 9.35%

ENO defends its request for an excessively high ROE by claiming it is necessary to fuel its "large, aggressive capital program."[23] ENO notes that it will invest in several significant capital

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[18] Exh. CCPUG-6 (Surrebuttal and Cross-Answering Testimony of Stephen J. Baron ("Baron Surrebuttal Testimony") (CCPUG)), at 3:14-21.
[19] Exh. CCPUG-6 (Baron Surrebuttal Testimony) (CCPUG)), at 3:18-21. The retail average of 8.48% includes income taxes.
[20] TR, June 20, 2019 (Cross-examination of Victor Prep), at 196:24 – 197:6.
[21] *Id*., at 197:21 – 198:6.
[22] Exh. CCPUG-6 (Baron Surrebuttal Testimony) (CCPUG)), at 2:2-7.
[23] ENO's Brief, at 3-4.

programs in the coming years, including the AMI program and the NOPS plant.[24] ENO's claims fall flat.

The sizeable capital investments ENO is planning will swell ENO's rate base, upon which it earns a return, which actually augers in favor of a lower ROE. In other words, a 9.35% ROE (the ROE recommended by CCPUG) on a $1 billion rate base will produce much lower total returns than a 9.35% ROE on a $3 billion rate base. The fact that ENO's rate base is poised to greatly increase will drive investor returns higher, even at CCPUG's recommended 9.35% ROE.

Further, ENO has a very large degree of control over the size and timing of its "large, aggressive capital program". ENO uses its Initial Post-Hearing Brief to threaten the Council. It dangles its ability to "transform the delivery of electric service with new technology consistent with the expectations and policies established by this Council" as well as its capacity to "meet the Council's objectives to transform ENO's operations to deliver new and better service to customers" in front of the Council as leverage for approval of its unreasonably high ROE request.[25]

The evidence paints a different picture. The record of this proceeding shows that ENO deliberately cut spending on its distribution grid reliability and its performance – not surprisingly – suffered. Compare two tables from the Direct Testimony of ENO witness, Melonie Stewart,[26] set forth below:

[24] *Id.*, at 2-3.
[25] ENO's Brief, at 3-4.
[26] *See* Exh. ENO-6 (Revised Direct Testimony of Melonie P. Stewart ("Stewart Revised Direct Testimony") (ENO)), at 30:15 and Figure 5, and 27:3 and Figure 4, respectively.

Figure 5
Routine Reliability Spending 2013-2017 and Planned 2018-2019[14]
(Capital and O&M)
($000s)

2013	2014	2015	2016	2017	2018E	2019E
$3,727	$2,989	$2,699	$3,363	$7,330	$14,410	$15,447

Figure 4

	ENO'S SAIDI AND SAIFI METRICS (2013-2017)				
	2013	**2014**	**2015**	**2016**	**2017**
SAIDI (minutes)	92	121.3	128	167.9	179.8
SAIFI (occurrences)	1.04	1.209	1.234	1.61	1.584

As can be seen from Ms. Stewart's tables, when distribution system reliability spending decreased in the years 2013 through 2016, the reliability metrics worsened.[27] Now, instead of making amends for these past sins, ENO goads the Council by heavily insinuating that its performance will not improve, nor will it "modernize" its distribution system, without the highest ROE awarded anywhere in the United States in the last 18 months and the second-to-highest in the last five years. ENO is a monopoly. ENO has no competition. ENO has a guaranteed opportunity to earn a reasonable return. The flip side of this uniquely advantageous status is that ENO is ***obligated*** to provide reliable service at the lowest reasonable cost. ENO has failed that duty. Instead of committing to this Council that it is hell-bent to correct its reliability shortcomings, ENO instead issues thinly-veiled threats to only improve reliability and modernize the system if

[27] Higher SAIFI and SAIDI figures represent more frequent outages of longer duration.

the Council awards an egregiously high profit margin in the form of a 10.75% ROE ***and*** approves an array of needless, 100% recovery riders to further supplement that excessive profit margin.[28] ENO overplays its hand. The Council should not be swayed by these disturbing tactics.

Similarly, the Council should not be fooled by ENO's euphemistic references to its need for a "constructive regulatory environment."[29] ENO parrots the phrase "constructive regulatory environment" no less than 15 times in its brief, as though repeating it over and over again will somehow render it synonymous with a shockingly high ROE and unnecessary 100% recovery riders. This is nothing more than code-speak for the off-the-charts profit margin ENO has requested. In truth, a reasonable ROE is all ENO is entitled to. And in fact, it is all investors are seeking.[30] ENO's singling-out of SCANA (which has a subsidiary with a 10.75% ROE) as a comparator since it, too, has a split credit rating belies its own ROE analyses.[31] As ENO acknowledges – but fails to explain – that SCANA abandoned the construction of a nuclear generating unit.[32] This is no small distinction. South Carolina Electric & Gas Company (SCANA's subsidiary) abandoned the construction of a nuclear unit and agreed to write off $1.962 billion in related project costs.[33] This type of financial loss would crush most electric utilities. ENO faces no such financial crisis. Further, ENO neglects to mention in its brief that its own witness, Robert

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[28] *See* ENO's Brief, at 4, where it states that if the Council doesn't approve its ROE, "then that transformation will be hindered and may not meet cost and pace expectations," and "the Council should approach this issue with an eye to the future of the City of New Orleans and its residents and ensure a healthy utility by setting just and reasonable rates that include an appropriate ROE, while also mitigating regulatory lag to allow ENO a reasonable opportunity to earn that allowed return."

[29] *See e.g.,* ENO's Brief, at 6.

[30] *See* Exh. CCPUG-4 (Surrebuttal Testimony and Exhibits of Richard A. Baudino ("Baudino Surrebuttal Testimony") (CCPUG)), at 7:11-19 where Mr. Baudino explains that Mr. Hevert's ***own*** DCF and Bloomberg CAPM analyses support an investor-required ROE much lower than the 10.75% Mr. Hevert recommends for ENO and are much closer to Mr. Baudino's recommended 9.35% ROE.

[31] *See e.g.,* ENO's Brief, at 3, 6, and 39.

[32] *See id*., at 3; *see also* Exh. ENO-31 (Rejoinder Testimony of Robert B. Hevert on Behalf of Entergy New Orleans, LLC) ("Hevert Rejoinder Testimony") (ENO), at 2:14-21.

[33] *Ruling on Petitions for Rehearing or Reconsideration*, Order No. 2019-122 (February 12, 2019), 2019 WL 652551 (S.C.P.S.C.), at *3.

Hevert, ***excluded*** SCANA from the proxy group he created to establish ENO's ROE, because SCANA was acquired by Dominion Energy, Inc. on January 1, 2019 and is no longer a publicly traded company.[34] The Council should reject Mr. Hevert's reliance on the 2018 ROE award for SCANA's subsidiary simply due to the fact that he excluded that ROE award from his proxy group in this matter. Further still, ENO conveniently omits the fact that the South Carolina Public Service Commission established that the appropriate ROE for the unrecovered balance in the regulatory asset account for the abandoned nuclear project was 9.90%.[35] The point of ENO's focus on SCANA (and PG&E Corp. which, with its subsidiary, Pacific Gas & Electric, has a below investment-grade credit rating because it has filed bankruptcy as a result of the mounting liabilities related to the recent California wildfires),[36] of course, is to scare the Council into believing that its situation is similar to these two utilities in dire straits because it possesses a split credit rating. The facts, however, show that the split credit ratings for SCANA and PG&E are incidental to the larger financial morass in which each of them are mired.

ENO claims, "The undisputed evidence shows that capital markets will look to Moody's opinion of ENO's credit risk in making investment decisions."[37] The undisputed evidence also establishes that capital markets will likewise look to S&P's credit rating for ENO, which is *two notches above* investment grade.[38] ENO attempts to train the Council's eye only on the negative credit rating while ignoring the positive rating. The Council should decline ENO's offer and should analyze all of the pertinent facts – the good news and the bad news. The Council should then

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[34] *See* Exh. ENO-31(Hevert Rejoinder Testimony) (ENO), at 3, fn. 4.
[35] *Id*., at 3, fn. 3.
[36] *See* ENO's Brief, at 3; *see also* Exh. ENO-31 (Hevert Rejoinder Testimony) (ENO), at 2:14-21.
[37] ENO's Brief, at 40.
[38] *See id*., at 3.

balance ENO's customers' and shareholders' interests by setting a just and reasonable ROE; not an ROE that richly rewards only ENO's shareholders.

The point here, however, is that ENO has offered absolutely no proof that its split credit rating is hampering its ability to access reasonably-priced capital. ENO also chose to not provide evidence that its split credit rating is otherwise harming its customers. All that ENO witness, Mr. Hevert, could say is that ENO's split credit rating counsels in favor of looking towards the higher end of the ROE range. While this may make some sense (even CCPUG's consultant, Richard Baudino, found the upper end of his ROE range to be appropriate due to ENO's split credit rating), the important thing is to establish a proper and reasonable ROE range in the first place. Nearly the entire top three quarters of Mr. Hevert's range of 10.25% to 11.25% is higher than all of his reported ROEs in the entire country the last five years[39] and materially higher than most of the results of his own ROE analyses for ENO in this proceeding. Picking the top of the range to address ENO's split credit rating is fine, if the ROE range is appropriate. The evidence shows that ENO's range is unrealistically high, and it should be rejected.

The overwhelming sum of the evidence in this proceeding reveals that the proper ROE for ENO is in the range established by Mr. Baudino: 8.70% to 9.35%.[40] Mr. Baudino employed two versions of a Constant Growth DCF analysis and discussed these in his Direct Testimony: "Method 1" Constant Growth DCF analysis (using average growth rates), which produced an ROE range from **8.71% to 9.36%**, and "Method 2" (using the median growth rates), which produced an ROE

[39] Exh. ENO-29 (Revised Rebuttal Testimony of Robert B. Hevert on Behalf of Entergy New Orleans, LLC,) ("Hevert Revised Rebuttal Testimony") (ENO), at 6:3, Chart 2: "Vertically Integrated Authorized ROEs (2014 – 2019)", showing that over the last five years, only two ROE awards were at or near 10.50% and only one exceeded that level; *see also*, Hearing Transcript, 6/19/2019 (Cross Examination of Hevert) at 25:8026:4.

[40] Exh. CCPUG-3 (Direct Testimony and Exhibits of Richard A. Baudino ("Baudino Direct Testimony") (CCPUG)), at 30:2-5 and Table 3.

range from **8.52% to 9.36%.**[41] His updated analysis produced an overall range of ROEs from **8.16% to 9.07%.**[42] Despite these lower, update results, Mr. Baudino maintained his recommendation for ENO's ROE of 9.35%. Air Products and Chemicals, Inc.'s witness, Christopher Walters, used methodologies similar to those employed by Mr. Baudino and arrived at an identical 9.35% ROE recommendation for ENO.[43] The Advisors' witness, Byron Watson, utilized methodologies similar to Mr. Baudino and Mr. Walters and determined after their analyses that an 8.93% ROE is appropriate for ENO.[44] Consequently, the ROE conclusions by Air Products, the Advisors and CCPUG all fall within Mr. Baudino's range of 8.70% to 9.35%. ENO trumpets a recent Federal Energy Regulatory Commission ("FERC") decision which held that multiple methods should be utilized when setting a utility's wholesale ROE. This is much ado about nothing. First, the Council is not bound by any FERC decision regarding the appropriate ROE for ENO as a retail electric and gas utility. Second, each witness testifying regarding ROE relied on multiple methods. ENO's efforts to claim that all of the witnesses other than Mr. Hevert relied solely on the DCF methodology stretch credulity. Ultimately, however, a single ROE must be selected out of a range of reasonableness. The range Mr. Baudino established was developed through the use of long-accepted Discounted Cash Flow ("DCF") studies, as well as a Capital Asset Pricing Model ("CAPM") methodology, while employing reasonable and well-supported assumptions.[45] Mr. Hevert testified that "[I]t is both prudent and appropriate to use multiple methods to mitigate the effects of assumptions and inputs associated with any single approach."[46] That is exactly what CCPUG's consultant, Mr. Baudino, did.

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[41] Exh. CCPUG-3 (Baudino Direct Testimony) (CCPUG), at 23:5-8.
[42] Exh. CCPUG-4 (Baudino Surrebuttal Testimony) (CCPUG), at 12:10-13 and Surrebuttal Table 3.
[43] Exh. AP-1 (Direct Testimony & Schedules of Christopher Walters) (Air Products), at 3:4-8.
[44] Exh. ADV-6 (Direct Testimony of Bryon Watson) ("Watson Direct Testimony") (Advisors), at 2:7-9.
[45] Exh. CCPUG-3 (Baudino Direct Testimony) (CCPUG), at 3:3-12.
[46] Exh. ENO-26 (Revised Direct Testimony of Robert B. Hevert ("Hevert Revised Direct Testimony") (ENO)), at 16:5-7.

As discussed in detail in CCPUG's Initial Post-Hearing Brief, while Mr. Hevert used multiple methods (including the DCF model and the Capital Asset Pricing Model ("CAPM")), he then simply cherry-picked the ***second highest range*** of ROE results produced by only *one* set of assumptions in *one* methodology, while ignoring all of the results of his other analyses which produced significantly lower ranges.[47] Therefore, if there is an ROE analysis in this proceeding that runs counter to the reasoning of the recent FERC decision, it is Mr. Hevert's. The evidence firmly reveals Mr. Hevert's conclusion of a 10.75% ROE stands apart as an unsupported outlier.

One of the key reasons that Mr. Baudino's range is lower than Mr. Hevert's is the difference in their views of the market as a whole and interest rates in particular. As Mr. Baudino explained in his Surrebuttal Testimony, and contrary to Mr. Hevert's position, interest rates are expected to decline.[48] In fact, it is common knowledge that the Federal Reserve, on July 31, 2019, followed through and reduced a key interest rate figure for the first time in 10 years.[49] The Federal Reserve also dropped its target rate to a range of 2.0% to 2.25%.[50] Mr. Baudino notes in his Surrebuttal Testimony that, in its press release dated March 20, 2019, the Federal Reserve had decided to maintain its target range for the federal funds rate at 2.25% to 2.50% for the time being.[51] These reductions by the Federal Reserve will make it easier, not harder, for ENO to access capital, especially when compared to the economic conditions that prevailed when ENO filed its Revised

[47] Exh. CCPUG-3 (Baudino Direct Testimony) (CCPUG), at 33:3-23.
[48] *See* Exh. CCPUG-4 (Baudino Surrebuttal Testimony), at 9:6-8, noting that, since Mr. Baudino filed his Direct Testimony, "there has been a significant shift in the approach of the Federal Reserve to its policy of increasing the federal funds rate." *See also, id*., at 10:1-24, at which Mr. Baudino quotes various economists and analysts stating, among other things, that "The Fed's rate hiking cycle is over," and that the "Next move will be a rate cut."
[49] *See e.g.,* the New York Times article published July 31, 2019, available at: https://www.nytimes.com/2019/07/31/business/economy/federal-reserve-interest-rate-cut.html.
[50] *Id*.
[51] Exh. CCPUG-4 (Baudino Surrebuttal Testimony), at 9:6-19, quoting the Federal Reserve's March 20, 2019 press release.

Application in this matter. The Federal Reserve's easing of the federal funds rate is yet another factor weighing against an unreasonably high ROE such as that proposed by ENO.

ENO acknowledges that ROEs awarded by other regulators to electric and gas utilities are "important and relevant points of reference" that should be considered by the Council.[52] CCPUG agrees with that statement. If adopted, ENO's requested ROE would represent the **highest** ROE allowed by a regulator in the entire United States over the last 18 months.[53] Likewise, it far exceeds the average ROE awarded by regulators across the country in the last five years.[54] In fact, according to ENO's data, its requested ROE of 10.75% is **higher than all but *one* ROE** granted by *any* regulator in the entire United States to an electric and gas utility **over the last five years**.[55] In fact, Mr. Hevert's ROE recommendation of 10.75% is **literally *off of his own chart*** of awarded ROEs across the country from 2014 through the third quarter of 2018.[56] Even more striking, according to that same chart (Chart 1) in Mr. Hevert's Revised Rebuttal Testimony, the *highest* awarded ROE during that four-year time period was 10.20%, which is **55 basis points *below*** his recommended ROE in this case.[57] The evidence in the record of this proceeding simply does not support awarding ENO the excessively high ROE it seeks.

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[52] ENO's Brief, at 37.
[53] *See* Exh. CCPUG-4 (Baudino Surrebuttal Testimony) (CCPUG)), at 6:1, Surrebuttal Table 2, entitled, "2018 – 2019 Allowed ROEs, Rebuttal Exhibit (RBH-19)", listing the authorized ROEs across the country – as selected by Mr. Hevert – from January 2018 through February 2019 and revealing that the highest such ROE was 10.00%.
[54] Exh. ENO-29 (Hevert Revised Rebuttal Testimony) (ENO), at 5, fn 6: "The average authorized ROE for vertically integrated electric utilities (excluding limited issue riders) from January 1, 2014 to February 28, 2019 is 9.79 percent."
[55] *See id*., at 6:3, Chart 2: "Vertically Integrated Authorized ROEs (2014 – 2019)"; Hearing Transcript, 6/19/2019 (Cross Examination of Hevert) at 25:8026:4.
[56] *See* Exh. ENO-29 (Hevert Revised Rebuttal Testimony) (ENO), at 5:3, Chart 1: "Authorized ROEs vs. DCF Estimates" showing the highest ROE awarded during the pertinent time period was 10.50%; TR, 6/19/2019 (Cross Examination of Hevert), at 17:5-8. *See also* Exh. CCPUG-4 (Baudino Surrebuttal Testimony) (CCPUG), at 4:17 – 5:6, noting that "Mr. Hevert's [recommended] 10.75% ROE is, quite literally, off the chart given that the top ROE on his Chart 1 is 10.50%."
[57] Exh. ENO-29 (Hevert Revised Rebuttal Testimony) (ENO), at 5:3, Chart 1.

The Council should adopt CCPUG's recommended ROE for ENO of 9.35%, which would save ENO's customers **$5.558 million** on the electric rates and **$0.885 million** on the gas rates.[58]

D. ENO's Energy-Based Allocation of the EAI WBL and River Bend 30% PPAs Results in Undue Discrimination against Large Customer Classes

As discussed in CCPUG's Initial Post-Hearing Brief, ENO pays certain non-fuel, fixed "capacity costs" in connection with Purchase Power Agreements ("PPAs") through which it purchases electricity on a long-term basis. Two of those contracts are the Entergy Arkansas, Inc. Wholesale Base Load PPA ("EAI WBL PPA") and the River Bend 30% PPA. ENO proposes to treat the non-fuel, capacity costs related to the EAI WBL and River Bend 30% PPAs *differently* than it proposes to treat capacity costs associated with other PPAs, which are *identical* in nature. ENO is realigning capacity costs associated with several PPAs, including, but not limited to the EAI WBL and River Bend 30% PPAs, from riders, such as the Fuel Adjustment Clause ("FAC") Rider and Purchased Power Capacity Acquisition Cost Recovery ("PPCACR") Rider to base rates. ENO also proposes to realign PPA capacity costs associated with the Ninemile 6 PPA and other similar costs from riders into its base rates *but* recommends that these costs be recovered through an ***equal percentage base rate increase*** to all customer classes.[59] This is a reasonable and well-accepted method to allocate and recover such fixed, non-fuel capacity costs, and ENO acknowledges that it is consistent with prior Council rate making decisions.[60] ENO allocates and recovers many other fixed costs on an equal percentage basis from each rate class; however, it abandons this established methodology with respect to the EAI WBL and River Bend 30% PPA

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[58] *See* Exh. CCPUG-2 (Surrebuttal and Cross-Answering Testimony and Exhibits of Lane Kollen ("Kollen Surrebuttal Testimony") (CCPUG)), at 6:1, Table entitled, "Entergy New Orleans, LLC, Summary of CCPUG Revenue Requirement Recommendations – Surrebuttal and Cross-Answering Update, Docket No. UD-18-07, Period II test year Ended December 31, 2018, $ Millions".

[59] ENO proposes an overall, net revenue decrease in this case that is comprised of a *base revenue* ***increase*** of approximately $135 million and a *net rider* ***decrease*** of approximately $155 million.

[60] Exh. ENO-41 (Talkington Revised Direct Testimony) (ENO), at 23:11-12: "[I]t has been the Council's practice to adjust base rates by applying an equal percentage change to all classes."

capacity costs. ENO proposes to continue to recover (although such recovery will occur through the base rates) the EAI WBL and River Bend 30% PPA capacity costs on an ***energy basis***, as opposed to an equal percentage basis.

ENO argues in its brief that the relative benefits of the EAI WBL and River Bend 30% PPAs support its proposal to continue the energy-based allocation of these costs to its customer classes in its rate design.[61] It likewise claims that the energy-based allocation of these fixed, non-variable costs is needed "to address disparate customer class rate impacts and maintain the Council-approved methodology (in place since their inception in 2003)."[62] But, as CCPUG illustrated in its Initial Post-Hearing Brief, the benefits of these particular PPAs are shared virtually equally among the residential and large commercial classes. The large commercial classes pay nearly the same in total electric revenues as do the residential customers. ENO thus creates a difference without a distinction.

Further, ENO witness, Joshua Thomas, agreed that rates should reflect the underlying costs of the utility in providing service.[63] Mr. Thomas further agreed that rates should be **just and reasonable**;[64] rates should ***not*** be **unduly discriminatory between customers**;[65] and, in designing rates, customers should pay their **'fair share' of common costs**.[66] Mr. Thomas further confirmed that, in preparing fully allocated Cost of Service Study in this case, ENO classified fixed costs of various Purchase Power Agreements (PPAs) – including the Grand Gulf, Ninemile 6, EAI WBL and the River Bend 30% PPAs – **as demand-related** (*i.e., not* energy-related).[67] Mr. Thomas

[61] ENO's Brief, at 82.
[62] *Id*., at 81.
[63] TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 43:23 – 44:4. *See also* Exh. CCPUG-5 (Baron Direct Testimony) (CCPUG), at 12:9-10.
[64] TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 44:9-11.
[65] *Id*., at 44:12-15.
[66] TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 44:16 – 45:7.
[67] *Id*., at 46:7-15. *See also* Exh. CCPUG-5 (Baron Direct Testimony) (CCPUG), at 13:18-23.

acknowledged that, when ENO filed its original application in this case, it allocated the capacity costs associated with the EAI WBL and River Bend 30% PPAs in its rate design so that they would be recovered in base rates *on an equal percentage basis* from all rate classes.[68]

All of the foregoing testimony runs directly contrary to ENO proposal to single out the fixed capacity costs associated with the EAI WBL and River Bend 30% PPAs to allocate on an energy (kWh) basis in its recommended base revenue increases to each rate class. The nonfuel costs related to the EAI WBL and the River Bend 30% PPAs amount to ***$62.71 million per year***, so the effect on customers of the recovery mechanism for these costs is significant.[69] The pertinent capacity costs were allocated in ENO's Cost of Service Study (and in its original application) on a demand basis, following cost-causation principles. The switch to allocating these costs on an energy basis ignores cost-causation principles. Ms. Talkington testified that rate design should, to the extent possible, take into consideration cost causation.[70]

Mr. Thomas conceded under cross-examination that ***all*** customer classes – not just the large customer classes – benefit from the low cost EAI WBL and River Bend 30% PPAs.[71] Indeed, as Mr. Thomas admitted, that is why ENO entered those PPAs in the first place.[72] In any event, as Mr. Baron recognizes, the economics of these two PPAs has changed due to significant declines

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[68] TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 46:16 – 47:10.
[69] Exh. CCPUG-5 (Baron Direct Testimony) (CCPUG), at 18:21-27, at which Mr. Baron explains that, of the total $135 million base rate increase, ENO proposes to allocate $72.5 million to each customer class on a uniform percentage basis of 24.75%, but to allocate the remaining $62.71 million ("which represents the fixed production demand costs associated with the WBL and River Bend PPAs") on the basis of kWh energy sales.
[70] Exh. ENO-45 (Talkington Revised Direct Testimony) (ENO), at 22:3-5.
[71] TR, June 20, 2019 (Cross Examination of Joshua Thomas), at 56:23 – 57:3.
[72] TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 57:4-8.

in natural gas prices.[73] The benefits provided by these PPAs have been reduced due to the decline in gas prices and they are not likely to rebound in the foreseeable future.

Being that this is a rate decrease case, rate shock related to the EAI WBL and River Bend 30% PPAs is a non-issue. Especially under CCPUG's recommendations, all rate classes will experience rate decreases – even with the EAI WBL and River Bend 30% PPAs' fixed costs being allocated on an equal percentage basis to all rate classes.[74] ENO simply fails to show how the energy-based allocation is consistent with cost-causation principles it says it follows; necessary for just and reasonable rates; or results in non-discriminatory rates. ENO also neglects to explain how allocating the Ninemile 6 PPA's and the Algiers Transaction PPA's fixed capacity costs on an equal percentage basis among all rate classes, but allocating fixed capacity costs associated with the EAI WBL and River Bend 30% PPAs, which are *identical in nature* to those associated with the Ninemile 6 and Algiers Transaction PPAs, on an energy basis is anything but arbitrary and capricious. Should the Council adopt ENO's proposed energy-based allocation of the fixed capacity costs associated with the EAI WBL and River Bend 30% PPAs on an energy basis, such decision would be subject to reversal on appeal as being unsupported by the evidence, arbitrary and capricious.

E. ENO's Capital Structure must Include Short-Term Debt to be Considered Reasonable

The Advisors assert ENO's proposed capital structure and debt/equity ratio are unreasonable and that the Council should, therefore, employ a hypothetical capital structure with

[73] Exh. CCPUG-5 (Baron Direct Testimony) (CCPUG), at 23:7-21, and 24:1 Table 5 showing that the EAI WBL PPA is 90% more expensive than the MISO LMPs and the River Bend 30% PPA is 46% more expensive than MISO LMPs.

[74] *Id*., at 26:12 – 28:13, and Table 7, showing overall rate reductions for each customer class.

an equity ratio of the lesser of 50% or ENO's actual equity ratio.[75] Meanwhile, CCPUG asserts that ENO's capital structure must include short-term debt, because (a) it is abundantly available to ENO, (b) ENO routinely uses short-term debt for its operations, and (c) it is the lower-cost option for capital as compared to long-term debt and ENO's requested 10.75% ROE.

The capital structure is crucial to determining the "cost of capital", which courts have held to essentially be the same as the "fair rate of return".[76] A regulator may choose to disregard a utility's actual capital structure and utilize a hypothetical capital structure (typically with a lower amount of equity capital), but the regulator must make a finding that "the utility's capital investments were imprudent ***or*** **that the capital structure resulting therefrom was unreasonable**."[77] The exclusion of short-term debt from ENO's proposed capital structure is unreasonable. Even a modest amount of short-term debt can result in significant reductions in the base revenue requirement.[78] CCPUG is recommending that the Council include a small amount of short-term debt – approximately $16.8 million –in the capital structure, which is only 2.0% of total capitalization.

ENO has available two sources of short-term debt. The first source is the internal Entergy Money Pool whereby Entergy operating utilities that have a surplus of cash deposit it into the Money Pool and the Entergy operating utilities that need cash borrow it from the Money Pool.

The second source is an external Company-specific credit facility of $25 million, which includes fronting commitments of up to $10 million for the issuance of letters of credit against the borrowing capacity of the facility. ENO may borrow up to $150 million from the Entergy Money

[75] Advisors' Brief, at 39.
[76] *South Central Bell Telephone Co. v. Louisiana Public Serv. Comm'n*, 594 So.2d 357, 359-60 (La. 1992) (*citing*, *South Central Bell Telephone Co. v. Louisiana Public Service Comm'n,* 352 So.2d 964, 970 (La.1977).
[77] *Id*., 594 So.2d at 366. (Emphasis and italics added).
[78] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 40:1-4.

Pool, other internal short-term borrowing arrangements, and external sources pursuant to FERC authorization.

ENO has been both a borrower from and investor in the Entergy Money Pool, although it has been a borrower on balance over the last three years. In 2016, 2017 and 2018, ENO generally was a borrower from the Entergy Money Pool, except for temporary periods when it was an investor after it issued new long-term debt.[79] The 13-month average short-term debt using month-end balances outstanding was $7.870 million, although it borrowed as much as $43.7 million on any one day.[80]

Short-term debt is the lowest cost form of financing available to ENO. In 2018, the cost of its Entergy Money Pool borrowings was only $0.153 million, or slightly less than 2.0% based on the 13-month average outstanding.[81] This cost compares very favorably with the Company's cost of a new long-term debt issue in September 2018 at 4.0%.[82] It is also dramatically lower than ENO's requested cost of common equity at 10.75%, which actually is 14.65% when grossed-up for the income taxes, bad debt, and regulatory fees included in the revenue requirement.[83]

ENO points out that Mr. Kollen testified at the hearing that he is not claiming ENO has been imprudent regarding its use of short-term debt.[84] ENO also claims it does not "intend" to use short-term debt to finance its rate base.[85] These statements may be true, but they completely miss the point. Mr. Kollen illustrates that ENO uses short-term debt and that such debt is the least cost

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[79] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 38:19-22 and fn. 30, referencing ENO's Response to Data Request CCPUG 2-31. (Note: The Company has designated the attachment to this response as HSPM).
[80] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 39:1-5.
[81] *Id.*, at 39:8-10.
[82] *Id.*, at 39:10-12.
[83] *Id.*, at 39:12-14.
[84] ENO's Brief, at 57.
[85] *Id.*, at 61.

option for capital. The imprudence lies in ENO's refusal to include any short-term debt in its capital structure.

In his Direct Testimony, Mr. Kollen testified it is not reasonable – in other words, **it is *unreasonable*** – to exclude short-term debt from the capital structure and cost of capital.[86] If the Council agrees with Mr. Kollen that ENO's capital structure is unreasonable because it excludes all short-term debt, it may deploy a hypothetical capital structure that is reasonable.[87] It is reasonable to include short-term debt in the cost of capital because it is available to ENO and is the lowest cost form of financing.[88] The recommended short-term debt amount of $16.8 million that CCPUG recommends the Council include is very modest, and well below the $150 million authorized by FERC. Further, ENO's claim that Mr. Kollen's recommended 2.0% short-term debt is arbitrary misrepresents the evidence. As Mr. Kollen explained, the recommended 2.0% cost for the short-term debt is consistent with ENO's recent actual cost of borrowings from the Entergy Money Pool and is consistent with other short-term debt interest rates.[89] Finally, ENO's argument against using the Entergy Money Pool as a proxy for available short-term financing is ludicrous. The Entergy Money Pool exists precisely for the purpose of providing short-term financing to the Entergy utility subsidiaries, including ENO, and ENO has been a routine borrower from that pool. To ignore it as an available source of short-term debt would be to ignore reality. ENO encourages this Council to ignore reality and approve a capital structure that is patently arbitrary and capricious.

ENO's exclusion of short-term debt is further bad news for its customers; ENO again seeks to unnecessarily drive up its customers' costs by only including the highest-cost form of debt in

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[86] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 39:22 – 40:4. (Italics added).
[87] *South Central Bell Telephone Co. v. Louisiana Public Serv. Comm'n*, 594 So.2d 357, 366 (La. 1992)
[88] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 40:7-11.
[89] *See id.*, at 39:7-14 and 40:12-14.

its capital structure. ENO should be ordered to include short-term debt in its capital structure, which will result in a reduction of **$1.073 million** in the electric base revenue requirement and a reduction of **$0.155 million** in the gas base revenue requirement.[90] These quantifications are based on the electric rate base and gas rate base after the CCPUG recommended adjustments.[91]

F. ENO's Proposed Depreciation Rates are Unsupported and Unreasonable

ENO spends significant effort defending against CCPUG's recommended depreciation rates for Union Power Station, Power Block 1 ("UPS") and the NOPS plant.[92] None of ENO's arguments (each of which is nothing more than a rehash of its witnesses' Donald J. Clayton's and Robert Breedlove's pre-filed testimony) changes CCPUG's position. As Mr. Kollen thoroughly explained, the 30-year service life for UPS is unreasonably short, especially when compared to similar generating plants that have retired and/or are still in service. Mr. Kollen provided multiple examples of similar combined cycle plants being operated nearly 50 years,[93] which evidence strongly points to a 40-year service life estimate for UPS, not a 30-year life. Mr. Clayton, on the other hand, estimated a 30-year service life for UPS but was force-fed the retirement date for that unit by ENO and didn't even inspect UPS.[94] And the comparison Mr. Breedlove said was most similar to UPS is a pre-2000 generating plant,[95] even though he and Mr. Clayton claimed that Mr. Kollen's reliance on pre-2000 generating plants as proxies for UPS was unreasonable. All of this

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[90] *See* Exh. CCPUG-2 (Kollen Surrebuttal Testimony) (CCPUG)), at 6:1, Table entitled, "Entergy New Orleans, LLC, Summary of CCPUG Revenue Requirement Recommendations – Surrebuttal and Cross-Answering Update, Docket No. UD-18-07, Period II test year Ended December 31, 2018, $ Millions".
[91] *Id*., at 40:16-21.
[92] *See* ENO's Brief, at 125-132.
[93] *See* Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 29:15 – 30:2. Mr. Kollen's comparable plants included at least 10 similar units, such as Entergy Louisiana, LLC's Sterlington Unit No. 7, some of which are still in operation *more than* 50 years after their commercial operations date.
[94] TR, June 18, 2019 (Cross Examination of Donald Clayton), at 150:3-9.
[95] *See* Exh. ENO-48 (Rebuttal Testimony of Robert A. Breedlove ("Breedlove Rebuttal Testimony") (ENO)), at 8:7-9 and TR, June 19, 2019 (Cross Examination of Robert Breedlove), at 78:1-11. The Clear Lake unit went into service in 1985.

undermines ENO's service life estimate for UPS. The Advisors support ENO's proposed depreciation rates calculated by Donald J. Clayton.[96]

CCPUG opposes these accelerated depreciation rates because they will allow ENO to recover the depreciation expense related to UPS much more quickly than necessary, which will unnecessarily drive its customers' rates up. As Mr. Kollen explained, depreciation estimates are not a once-and-done exercise. The depreciation of UPS will be examined in future rate proceedings, and can be shortened or lengthened by the Council as ENO gains further experience with the service life of the unit.[97] Mr. Kollen estimates that the financial effect of using an appropriate 40-year service life for UPS to be a **$5.029 million reduction** in ENO's electric base revenue requirement.[98] The Council should, therefore, reject ENO's service life estimate for UPS for purposes of depreciation rates and adopt the 40-year service life recommended by CCPUG.

With respect to the NOPS facility, ENO seeks recovery of the associated revenue requirement through an interim rate adjustment as specified in its E-FRP, based on the first year NOPS revenue requirement.[99] Importantly, ENO does not propose any subsequent reduction in this interim adjustment as the plant investment is depreciated for book and tax purposes.[100] ENO claims in its brief that, "Although CCPUG has raised an issue concerning the depreciation rate applied to NOPS, the Company submits that such issue should be resolved in conjunction with the updated estimated non-fuel revenue requirement."[101] CCPUG disagrees.

ENO's proposal will lead to excessive recovery in the first year and every year thereafter until base rates are reset. This will occur because the rate of return (initially 10.50%) is excessive,

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[96] Advisors' Brief, at 39-40.
[97] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 30:8-15.
[98] *Id.*, at 30:17-18.
[99] *Id.*, at 45:18 – 46:4.
[100] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 46:4-6.
[101] ENO's Brief, at 171.

the depreciation rate and depreciation expense are excessive because they assume a service life of 30 years for NOPS, and the revenue requirement generally is at the maximum the first year and then declines due to the accumulation of book depreciation and the tax savings from accelerated tax depreciation but ENO does not propose to reduce the revenue requirement.[102]

Mr. Kollen investigated publicly-available information on retirements of combustion turbine plants, like NOPS, and found that similar units have been in operation for nearly 50 years or more.[103] As with the PPA capacity costs, the utility is made whole over time, because it will collect all of its depreciation, including consideration for salvage value.[104] The issue is whether ENO collects these costs over 30 years or 40 years or 50 years. Again, depreciation studies are performed periodically – it is not a once-and-done exercise – and each time experience is gained with the asset, and as new components are replaced and old components are removed and retired, the depreciation analysis is continuously updated.[105] Based upon his analysis, he recommends a 50-year service life assumption for NOPS for the revenue requirement be used, instead of ENO's 30-year assumption.

CCPUG urges the Council to adopt its recommendations for NOPS recovery in this proceeding. Mr. Kollen recommends that a 9.35% ROE be used in the E-FRP, the first-year revenue requirement be reduced to reflect a 50-year service life, and ENO be ordered to reduce the revenue requirement for NOPS each year to reflect an additional year of depreciation and deferred

[102] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 46:8 – 48:4.
[103] *Id.*, at 47:1-19.
[104] TR, June 21, 2019 (Cross Examination of Lane Kollen), at 9:15-24.
[105] *Id.*, at 10:18 – 11:3.

income tax expense.[106] He calculates the effect of his recommendations and concludes the first-year revenue requirement for NOPS should be **reduced by $4.073 million**.[107]

G. ENO's use of a Negative Net Salvage Value is an Unreliable Estimate that Costs Customers Money

ENO also defends heartily against CCPUG's recommendation that a 0% net salvage value be applied to UPS for purposes of determining depreciation.[108] As with other aspects of its Revised Application, here again ENO proposes to use unreliable estimates rather than actual facts to set rates. ENO proposes that it will lose money when – 15 or 20 years into the future – UPS is dismantled. Mr. Kollen rightfully criticizes this guesswork and recommends that ENO assume no net salvage value – positive or negative – until there is experience and facts to support such an estimate.

CCPUG urges the Council to rely on the facts and not guesswork. The Council should reject ENO's net negative salvage value for UPS and should, instead, adopt CCPUG's estimate of 0% as the appropriate salvage value.

H. The ARRT Plan Should be Approved, ***Provided*** a Mitigation Mechanism is Included

CCPUG's proposal to apply first $3.325M to large commercial customers to offset subsidization of ARRT: "This CCPUG proposal would, in effect, transfer the funding of Algiers mitigation to all other customers except those four large industrial customer classes."[109] In truth, only the large commercial customers are proposed to be burdened with funding the ARRT; other customer classes are paying $0 to fund the plan. CCPUG's recommendation, contrary to the

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[106] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 48:6-13.
[107] *Id.*, at 48:15-20.
[108] *See* ENO's Brief, at 132-134.
[109] Advisors' Brief, at 56.

Advisors' statements, would simply wipe out the subsidy; it would not cause any rate increase to any other customer classes. When addressing ENO's requested riders, the Advisors say, "Thus, an appropriately selected Rider should generate revenue from each customer class based on the costs determined to be recovered from each customer class as reflected in the allocation of the total cost of service."[110] The question becomes, why doesn't that same reasoning hold true for base rates as well as riders?

The Advisors recommend that the Council reject ENO's proposed Base Rate Adjustment Rider ("BRAR") to implement the ARRT Plan, because it would place the burden of the Algiers mitigation on the industrial customer classes.[111] The Advisors recommend, in the alternative, that the Algiers mitigation costs be "limited to Legacy ENO's residential class."[112]

Therefore, assigning the first $3.325M in additional reductions to the overall rate / revenue decrease to large commercial customers to offset subsidization of ARRT is the only just and reasonable solution.

I. ENO's Proposed Suite of Riders are Mostly Unnecessary and Unreasonable

The Advisors urge caution when using riders as cost recovery mechanisms.[113] CCPUG agrees. Even ENO recognizes that the two basic components of a utility's rates are (a) base rates, and (b) a Fuel Adjustment Clause ("FAC"), and that "[T]ypically, a utility recovers fuel, purchased power, and other *variable costs* of operation through its fuel adjustment clause, while other costs are recovered through base rates."[114]

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[110] *Id.*, at 66.
[111] *Id.*, at 91.
[112] *Id.*
[113] Advisors' Brief, at 64.
[114] ENO's Brief, at 7 (citing, *Gulf States Utils. Co. v. Louisiana Pub. Serv. Comm'n*, No. 92-1185 (La. 3/17/94); 633 So. 2d 1258, 1262, n.12). (Emphasis added).

The use of riders detracts from the preferred use of base rates to recover a utility's investment and guarantees 100% recovery of such costs. The Advisors agree with CCPUG on this point.[115] Utilities should not be guaranteed recovery; they should rather be provided the opportunity to recover such costs plus a reasonable return. The more a regulator approves for 100% recovery, the less incentive the utility has to control costs and operate efficiently. Further, riders are traditionally used to address volatile and unpredictable costs, not capital investments which are typically recovered through base rates. The Advisors agree with CCPUG, here, as well.[116]

Riders designed to recover non-volatile, capital costs which are within the control of the utility amounts to disfavored single-issue ratemaking. The Advisors further agree with CCPUG on this point.[117] The Louisiana Supreme Court addressed the issue of single-issue ratemaking recently, holding,

> Single-issue ratemaking occurs when a utility's rates are altered on the basis of only one of the numerous factors that are considered when determining the revenue requirements of a regulated utility. Relying on a single case from another jurisdiction, Entergy Louisiana claims that single-issue ratemaking is prohibited. Entergy Louisiana acknowledges, however, that the LPSC has previously stated only that '[s]ingle-issue ratemaking is to be avoided.'[118]

The Court went on to explain, "Additionally, single-issue ratemaking applies to the establishment of rates and is implemented so that a regulator does not grant an increase for a single cost without ensuring that there are no offsetting cost decreases."[119] Approval of ENO's requested Purchased Power Capacity Acquisition Cost Recovery ("PPCACR") Rider, Distribution Grid Modernization

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[115] *See* Advisors' Brief, at 64 (such riders provide "a near-guarantee that ENO will recover all of its costs contemporaneous with their incurrence or through a true-up mechanism involving carrying costs for any under collection balance).").
[116] *See id.*, at 64 (acknowledging that the FAC, PGA, and MISO riders are designed to recover costs that are variable in nature and outside the control of the utility).
[117] *See id.*, at 65.
[118] *Entergy Louisiana, LLC v. Louisiana Public Service Com'n*, 2008-0284, p. 17 (La. 7/1/08), 990 So.2d 716, 727 (quoting, LPSC Order No. U–22491 (April 4, 2000)) (footnotes omitted).
[119] *Id.*, 2008-0284, pp. 17-18, 990 So.2d at 727.

(“DGM”) Rider, Gas Infrastructure Replacement Plan (“GIRP”) Rider, and Reliability Incentive Mechanism (“RIM”) riders would result in single-issue ratemaking. These riders would also cause *rates increases **only***, and would lack any mechanism to offset such increases.

In addition, and perhaps more importantly, the PPCACR, DGM, GIRP, and RIM riders ENO proposes are *unnecessary*. As ENO’s witnesses testified at the hearing on the merits, ENO will continue to invest in distribution grid modernization projects, gas infrastructure replacement projects and reliability projects even without approval of such riders.

1. ENO’s Proposed “New” PPCACR Should be Rejected

ENO proposes a new PPCACR Rider. CCPUG objects to the proposed new PPCACR, because it would inappropriately allow near *automatic recovery* of new capacity costs and costs of newly-constructed generating assets without a full certification review by the Council.[120] The Council Advisors also oppose the new PPCACR on the basis that it will serve to prevent full certification review prior to plant investments being included in rates. The new PPCACR is also unnecessary as any new investment costs it would recover may be recovered through ENO’s proposed E-FRP.

The Advisors agree with CCPUG that the PPCACR should not recover “as-yet unknown non-fuel revenue requirements related to construction and/or acquisition of new capacity, new PPA or new LTSA.”[121] The Advisors note that such future revenue requirements related to the construction or acquisition of new capacity, new PPAs and new LTSAs are more appropriately recovered in a general rate proceeding “where all of ENO’s cost categories and magnitude of costs are considered in total.”[122] The Advisors finally assert that allowing such 100% recovery of such

[120] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), 52:16 – 54:2.
[121] Advisors’ Brief, at 98 (*citing*, Ex. ADV-1, at 32:3-6).
[122] *Id*. (*citing*, Ex. ADV-1, at 32:6-10).

future revenue requirements would constitute inappropriate single-issue ratemaking.[123] CCPUG is not opposed to the Advisors recommendations for the to-be-renamed Purchased Power Cost Recovery ("PPCR") Rider.[124]

2. ENO's Proposed DGM Rider Should be Rejected

The Advisors say DGM should not be approved, because it will result in single-issue ratemaking.[125] Watson also says the costs to be recovered through the DGM are predictable and within ENO's control.[126] Rider DGM is also unnecessary.[127] CCPUG agrees.

3. ENO's Proposed GIRP Rider Should be Rejected

The Advisors recommend Council approve recovery of GIRP infrastructure costs incurred preformed through the end of 2019 as generally approved by Resolution R-17-38, reject the proposed GIRP Rider as constituting inappropriate single-issue ratemaking and authorizing Council-authorized GIRP-related costs should be recovered through base rates, ENO be required to identify for the Council's consideration a rate of gas distribution pipe installation and dollar investment required to maintain the safe operation of ENO's gas system, and ENO be required to identify potential measures to mitigate the identified impact on ratepayers. Advisors' Brief, at 88. CCPUG is in general agreement with the Advisors' recommendations except for the inclusion of projected 2019 costs in the recovery of any GIRP infrastructure costs for all of the aforementioned reasons militating against the inclusion of projected costs in a utility's rates. CCPUG reiterates its position that all future GIRP-related costs should be recovered through the G-FRP, or, if not approved, through ENO's base rates. CCPUG is also supportive of the Advisors' recommendation

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[123] *Id.* (*citing*, Ex. ADV-6, at 17-7:2 [sic]).
[124] *See id*., at 99-100.
[125] *Id*., at 85. (*citing*, Exh. ADV-7, Watson Direct, at 86:20-21).
[126] *Id*. (*citing*, Exh. ADV-7, Watson Direct, at 89:6-7).
[127] *Id*. (*citing*, Exh. ADV-7, Watson Direct, at 89:15-17).

to form a working group composed of the Advisors, ENO, and Intervenors to explore cost mitigation measures.[128]

4. ENO's AMI Rider Should be Approved, *but* only with an Appropriate ROE

ENO states that it "proposes a customer charge for recovery of AMI costs because the number of customers ENO serves, in large part, drives the level of the costs associated with AMI," and that, "these costs should be recovered through a customer charge so that a customer bears only the cost that customer causes."[129] CCPUG agrees. CCPUG generally supports the AMI Charge Riders, provided however that the imbedded weighted average cost of capital (ROE) is set at an appropriate level. ENO proposes to use an imbedded ROE of 10.50% in the AMI Charge Riders.[130] As discussed previously, CCPUG asserts the correct and appropriate ROE for ENO is 9.35% and that ROE should be used to develop the AMI Charge Riders.

The Advisors recommend rejection of the AMI Charge Riders for electric and gas operations ("AMICE" and "AMICG") based on single-issue ratemaking grounds.[131] The Advisors' position on this issue is incorrect. A metering charge – as ENO has correctly pointed out – is a "per customer" charge. Advanced Meters are technologically superior to current meters; but they are still electric and gas meters. There is no reason to socialize customer-specific charges by including the costs of the AMI infrastructure in base rates. The AMI costs can be distinguished from the costs ENO seeks to recover via the DGM, GIRP and other inappropriate riders. The costs proposed to be recovered via the DGM and GIRP riders, for example, cannot be broken down into customer-specific amounts; the costs are invested to serve all customers. Conversely, the costs proposed to be recovered through the AMICE and AMICG riders are easily broken down on a

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[128] *See* Advisors' Brief, at 90.
[129] ENO's Brief, at 22.
[130] *Id.*, at 22.
[131] Advisors' Brief, at 94.

customer-specific basis. Customer A's AMI meter will not assist in providing service to Customer B.

Consider the Advisors' arguments regarding ENO's proposal to build some Electric Vehicle ("EV") charging stations and offer charging for free with the costs rolled into ENO's rates and borne by all ratepayers is "problematic".[132] To support their argument, the Advisors state, "[T]he generally accepted regulatory ratemaking principle of cost causation does not support socializing one ratepayer group's (*i.e.*, EV charging station users) costs among other groups (*i.e.*¸ all other ratepayers), even if the subsidy is small, it is not appropriate to require other ratepayers to pay for an EV charger customer's electricity."[133] The same logic applies for the AMI meters.

5. ENO's Proposed FRPs Should be Approved, *but* only if Projected Costs are Excluded and the Appropriate 9.35% ROE is Implemented

ENO's claim that its proposed Formula Rate Plan ("FRP") riders are "very similar to the previous FRPs approved by the Council" is demonstrably false.[134] While the FRP riders proposed by ENO bear similar features to the previous FRPs approved by the Council, there is one glaring difference. Although not proposed initially by ENO, the currently proposed FRPs would include a forward-looking test year extending a full calendar year beyond the historic test year (evaluation period) traditionally used in FRPs. As discussed below, the Council's Advisors recommended that the forward-looking test year be included as part of ENO's FRPs.

With respect to ENO's requested FRPs, the Advisors state they are in favor of a three-year approval which would reduce regulatory lag.[135] But then the Advisors go *further* and recommend

[132] *Id.*, at 137.
[133] *Id.*
[134] ENO's Brief, at 19.
[135] Advisors' Brief, at 66.

that ENO be permitted to include in the FRP future capital additions budgeted for the 12-month period immediately following the FRP test year.[136] Including future capital additions in the test year for FRP purposes is both unnecessary (even ENO did not request this) and ripe for abuse and should be rejected by the Council.

CCPUG supports ENO's proposals to implement Electric and Gas FRPs;[137] however, CCPUG is opposed to including projected costs in the electric and gas FRPs. ENO claims that CCPUG's opposition to the inclusion of projected costs in the FRPs runs counter to the Council's directives.[138] Nothing could be further from the truth. CCPUG recognizes that the Council has approved the NOPS project (although that approval is now in question) and the AMI project, for example, as being in the public interest. But that does not dictate the use of projected costs in setting rates. The Council never stated that projected, yet-to-be-incurred costs could be included in current rates. Inclusion of projected costs – which may or may not ever be incurred – undermines a utility's incentive to operate efficiently. Allowing ENO to include a "wish list" of investments it may make in the coming year in its current rates is fraught with peril and ripe for abuse. The use of projected costs in current rates also recovers costs from customers for assets that are not used and useful in providing them with service. The Council should reject the inclusion of projected costs and use of a forward-looking test year in the electric and gas FRPs and require the use of traditional, historical test years just as ENO initially proposed. ENO has simply not provided proof that it must recover costs before they are incurred to attract capital, provide reliable service, or generate a reasonable return. CCPUG maintains that its recommendations concerning the FRPs

[136] *Id.*, at 66-67 and 106.
[137] For ease of reference, the electric FRP is sometimes referred to as the "E-FRP", and the gas FRP is sometimes referred to as the "G-FRP".
[138] ENO's Brief, at 67-68.

are required to produce just and reasonable rates and, therefore, they should be adopted to prevent ENO from over-earning.

Further, ENO's assertion that it should be afforded contemporaneous recovery of looming "large investments"[139] is fully addressed through the E-FRP and G-FRP. Including projected costs in an FRP is entirely unnecessary to provide cost recovery without significant regulatory lag. As pointed out in CCPUG's Initial Post-Hearing Brief, the regulatory lag under ENO's initially-proposed FRP riders for an investment made in October would be roughly the following September, or less than one year. Since the FRP evaluation period (test year) is the most recently-completed calendar year, an investment made in January would be eligible for recovery the following September, for a maximum regulatory lag of 20 months.[140]

Nor are additional riders (such as ENO's proposed, modified Purchased Power Capacity Acquisition Cost Recovery ("PPCACR") Rider) necessary for reducing regulatory lag and providing contemporaneous cost recovery of such investments. What ENO proposes is that it never face *any* regulatory lag and that it be afforded *guaranteed* recovery of 100% of the forthcoming "large investments". No utility should ever be afforded such an extravagant and unparalleled guarantee at the expense of its customers. It is worth pointing out here that CCPUG is not opposed to all of ENO's proposed riders. The FRPs, modified so that only the historic test year is utilized, should be adopted. ENO's proposed AMI Rider should also be adopted. The FRPs, as originally proposed (*i.e.,* without the use of projected, forward-looking test years) will adequately recover future investments with minimal regulatory lag by maintaining ENO's ROE within an approved bandwidth. If the FRPs expire and are not renewed and ENO incurs large expenses or prudently engages in large capital investments that would harm its ability to provide reliable service, attract

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[139] ENO's Brief, at 20.
[140] TR, June 17, 2019, (Cross Examination of Laura Beauchamp), at 167:5 – 168:2.

capital, or generate a reasonable return, it can and should file a base rate case – just like most every utility in the country. ENO has provided absolutely no evidence that future investments must be recovered only through quarterly rate increases via the 100% recovery riders – and not through the FRPs – in order for it to earn a reasonable return.

6. ENO's Proposed RIM Rider Should be Rejected

ENO's proposed RIM Rider would permit ENO to earn more than its authorized ROE if it met certain reliability criteria. ENO is attempting to externalize one of its core duties to New Orleans customers — to pursue increased reliability. The gratuitous nature of the RIM proposal was confirmed under oath by ENO witness Melonie Stewart, who acknowledged that "ENO does not require an incentive to provide or to strive to provide reliable service."[141] Offering a regulated monopoly a "bonus" for doing what they are paid to do is not only patently absurd, but as a matter of policy, it represents a dangerous concession that removes the principal incentive to operate reliably and efficiently. The RIM Rider will serve to remove ENO's incentive to operate efficiently and invest economically. In fact, Mr. Thomas and Ms. Stewart admitted that ENO will continue to make investments to improve reliability of its service to its customers even *without* the RIM Rider.[142]

ENO, as the monopoly utility service provider in New Orleans has the duty to provide reliable electric and gas service at the lowest reasonable cost.[143] ENO is, therefore, free from competition. No incentive is necessary or advisable for a monopolist to encourage it to fulfill its obligations to its captive customers.

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[141] TR, June 18, 2019, (Cross Examination of Melonie Stewart), at 122:2-8.
[142] TR, June 18, 2019, (Cross Examination of Melonie Stewart), at 120:22 – 121:19; TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 78:9-19.
[143] TR, June 20, 2019, (Cross Examination of Joshua Thomas), at 70:8 – 71:1.

The Advisors recommend against incentivizing ENO to improve reliability.[144] They recommend – should the Council wish to provide such an incentive – to not do so through an ROE adjustment.[145] The Advisors rightfully claim that there is no direct relationship between a utility's ROE and distribution performance.[146] The Advisors recommend the Council reject the proposed RIM.[147] CCPUG agrees.

J. City of New Orleans Billing Issues

Advisors agree with ENO that a working group is likely not necessary to resolve the City's concerns, and are willing to work with the City and ENO to assist in resolving these concerns to the City's satisfaction.[148] CCPUG supports this recommendation. While the City and ENO have had some success working together to address City-specific billing issues during the pendency of this proceeding, the City remains receptive to and recommends the Council's consideration of the formation of a working group to address unresolved issues on a going forward basis.

K. FIN 48

The Advisors recommend that the Council reject ENO's proposal to exclude FIN 48 ADIT from its rate base.[149] CCPUG agrees with the Advisors on this point. ENO, on the other hand, claims it would be "unfair" to require it to share the benefits of its tax positions concerning FIN 48 with its customers.[150]

ENO has not subtracted related FIN 48 ADIT from rate base increases and base revenue requirement, which deprives its customers of *ever receiving* the carrying charge value of the FIN

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[144] Advisors' Brief, at 110.
[145] *Id*.
[146] *Id*.
[147] *Id*., at 111.
[148] *Id*., at 147.
[149] Advisors' Brief, at 41-42.
[150] ENO's Brief, at 147-148.

48 ADIT.[151] This occurs because customers paid the income tax expense as if there were no tax deduction, but ENO claimed the Uncertain Tax Position-related deductions, which reduced its current income tax expense and cash payments to the taxing authorities.[152] In this way, ENO pockets the carrying charge value on the savings that were funded by ratepayers. The Council should subtract the FIN 48 ADIT amounts from rate base.[153]

L. NOL ADIT

The Advisors recommend that the Council reject ENO's proposal to increase its rate base through the inclusion of Net Operating Loss Carry Forward ADIT assets.[154] CCPUG asserts that the possibility exists there will be additional reductions in NOL ADIT in connection with ENO's year-end 2018 accounting and in future years, including 2019. Therefore, if the Council does not reject ENO's inclusion of 2019 costs in rate base and operating expenses (which it should), it should update and reduce the NOL ADIT based on forecast taxable income in 2019.[155]

CONCLUSION

Based on the evidence and facts developed in the administrative record of this proceeding, CCPUG urges the Council to adopt its recommendations, discussed in detail, above. In particular, although not exclusively, CCPUG requests the Council, on the strength of the facts in the record and the applicable legal standards, to (a) order an overall rate decrease of $51.736 million (electric and gas rates), (b) set ENO's ROE at 9.35% for electric and gas operations, (c) order ENO to remove all projected 2019 costs and related expenses from its test years for Period I and Period II, (d) likewise order ENO to utilize only historic test years (earnings review periods) in its E-FRP

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[151] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 24:14-18.
[152] *Id.*, at 24:17 – 25:2.
[153] *Id.*, at 25:23 – 26:6.
[154] Advisors' Brief, at 45-46.
[155] Exh. CCPUG-1 (Kollen Direct Testimony) (CCPUG), at 19:14 – 20:16.

and G-FRP, and (e) reduce the unjustified, arbitrary, and capricious subsidies on commercial customers inherent in ENO's proposed rates by ordering the allocation among customer classes in rate design of the capacity costs associated with the EAI WBL and River Bend 30% PPAs on an equal percentage increase basis, rather than an energy basis, (f) direct ENO to employ a 40-year service life and a 0% net salvage value for UPS for depreciation purposes, as well as a 50-year service life for NOPS revenue requirement purposes, and (g) reject ENO's proposed DGM, GIRP, PPCACR and RIM riders as unnecessary, inappropriate examples of single-issue ratemaking, and unjustifiably resulting in continuous rate increases without any mechanism to consider offsets that may otherwise reduce rates.

CCPUG requests all other relief available under the facts and the applicable law.

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CERTIFICATE

I hereby certify that on this day a copy of the foregoing Crescent City Power Users' Group's Reply Post-Hearing Brief has been sent to the official service list by email, and/or served by United States mail, postage prepaid, through their representatives, at the following addresses:

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