

IN RE:

*Supplemental & Amending  
Application of Entergy New Orleans,  
Inc., et al*

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*Hearing - Public*

*December 19, 2017*

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CURREN COURT REPORTERS

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BEFORE THE  
COUNCIL OF THE CITY OF NEW ORLEANS

SUPPLEMENTAL AND \* UD-16-02  
AMENDING APPLICATION \*  
OF ENTERGY NEW \*  
ORLEANS, INC. FOR \*  
APPROVAL TO \*  
CONSTRUCT NEW \*  
ORLEANS POWER \*  
STATION AND REQUEST \*  
FOR COST RECOVERY \*  
AND TIMELY RELIEF \*  
\* \* \* \* \*

PUBLIC

Continuation of the evidentiary hearing  
in the above-entitled matter before Honorable  
Jeffrey S. Gulin, held at 601 Poydras Street,  
11th Floor, Bayou Rooms 1 and 2, New Orleans,  
Louisiana 70130, commencing at 8:30 A.M., on  
Tuesday, the 19th day of December, 2017.

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SEALED HSPM MATERIAL:  
(None)

SEALED CEII MATERIAL:  
(None)

\* \* \* \* \*

KATHY SHAW-GALLAGHER, certified  
Court Reporter, State of Louisiana,  
officiated in administering the oath to  
the witness.

1 P R O C E E D I N G S

2 JUDGE GULIN:

3 Good morning, everyone.

4 EVERYONE:

5 Good morning, Your Honor.

6 JUDGE GULIN:

7 I did see last night some  
8 correspondence -- or maybe it was early  
9 this morning -- concerning the running  
10 exhibit list.

11 Has that all been resolved,  
12 Mr. Edwards?

13 MR. EDWARDS:

14 Sir?

15 JUDGE GULIN:

16 Hold on one second. Sorry about  
17 that.

18 I was asking if -- I saw this  
19 morning some e-mail correspondence  
20 regarding the exhibit list. Has that all  
21 been resolved?

22 MR. EDWARDS:

23 I haven't -- My only response to the  
24 e-mail was that it said that it included  
25 the exhibits through yesterday, and at



1           least what I got on the e-mail did not.

2           So --

3           JUDGE GULIN:

4                    It was AP 1, 2, and 3, Ms. Hand?

5           MR. EDWARDS:

6                    Yes.

7           MS. HAND:

8                    Yes. Those are included in the  
9                    list. The documents didn't have a title  
10                   on them, so I had to kind of improvise  
11                   the description of them. If Mr. Edwards  
12                   would prefer a different description, I'm  
13                   more than happy to accommodate.

14          MR. EDWARDS:

15                    Well, at least on my e-mail, it  
16                    didn't even have those on there.

17                    They were on there?

18          MS. HAND:

19                    Yeah.

20          JUDGE GULIN:

21                    I think Ms. Hand indicated they were  
22                    at the very bottom. So you have to read  
23                    the whole page.

24          MR. EDWARDS:

25                    After two glasses of wine last

1 night, maybe I just went blind. Those  
2 are all from the -- Mr. Cureington's  
3 testimony, Exhibits 10 and 11, the three  
4 Air Products exhibits.

5 JUDGE GULIN:

6 All right. Well, check it out  
7 again, and obviously if there's an error,  
8 it will be corrected.

9 And by the way, just for the record,  
10 today is December 19th, our third day of  
11 hearing. And we're going a little bit  
12 out of order this morning. We're going  
13 to be presenting Mr. Robert Fagan for  
14 cross-examination on behalf of the joint  
15 intervenors.

16 And is there any other preliminary  
17 matter before we go to cross-examination  
18 of Mr. Fagan?

19 MR. BROWN:

20 Excuse me, Your Honor. Michael  
21 Brown on behalf of the Sierra Club. Just  
22 one more point of clarification with the  
23 exhibit list. I believe one of the  
24 exhibits, SC-7, it was at least my intent  
25 to admit it. I may not have said it

1           adequately, but that one I was hoping to  
2           admit for cross purposes, but if it's  
3           showing it's not admitted --

4           JUDGE GULIN:

5                   Okay. Is there any objection,  
6           admitting it for cross purposes? It's  
7           not substantive evidence. I think for  
8           completion of the record, I would be  
9           inclined to grant that request.

10                   So let's admit it for cross  
11           purposes.

12                   Was there another one that the  
13           status was unclear, Ms. Hand?

14           MS. HAND:

15                   Yes. I had AAE/350 No. 2 as  
16           pending. I believe they had moved it,  
17           but we never got a ruling from you on it.

18           JUDGE GULIN:

19                   Well, why didn't I render a ruling?  
20           Did I say -- Was I waiting -- Can anyone  
21           refresh my recollection on that, what I  
22           was waiting for?

23           MS. HAND:

24                   Yes. I have a note that it was --  
25           that there was no objection to moving it

1 as substantive evidence subject to  
2 verification, that you were waiting on  
3 verification from one of the parties if  
4 they had no objection to it.

5 JUDGE GULIN:

6 Okay. Well, assuming there's no  
7 objection at this point, it's admitted.  
8 If something is brought to my attention  
9 during the course of the hearing, we'll  
10 revisit that.

11 MR. GUILLOT:

12 SEC-8?

13 MS. HAND:

14 AAE/350-2.

15 JUDGE GULIN:

16 All right. Who is crossing?

17 MR. ALFORD:

18 I am, Your Honor.

19 JUDGE GULIN:

20 Okay.

21 ROBERT M. FAGAN,  
22 after having been duly sworn by the  
23 above-mentioned Certified Court Reporter, was  
24 examined and testified as follows:

25 MR. SMITH:

1           Your Honor, Josh Smith on behalf of  
2           Sierra Club. Before we begin cross, I  
3           did want to note I believe Mr. Fagan has  
4           four minor corrections, line edits, to  
5           his testimony if we could go through  
6           those first.

7           JUDGE GULIN:

8           I think that's the way to proceed.

9           Mr. Fagan, if you would, please.

10          MR. FAGAN:

11           The first edit is on page 7 of my  
12           testimony at line 13. Towards the end of  
13           the line, there's a sentence that begins,  
14           "Solar PV lowers summer peak load." And  
15           it should say "Solar PV lowers summer  
16           peak load on the transmission system."

17           The second is on page 13 at line 3.  
18           Towards the second half of the line, it  
19           says "would reduce peak loading." It  
20           should say "would reduce peak loading on  
21           the transmission system."

22           The third correction is on page 15,  
23           line 16. The first word on that line  
24           is -- currently is "cost effectiveness."  
25           It should say "cost effective."

1                   And the fourth location is on  
2                   page 39, line 1. It currently says  
3                   "lowering summer peak loads." It should  
4                   say "lowering summer peak loads on the  
5                   transmission system."

6                   JUDGE GULIN:

7                   Is that it?

8                   MR. FAGAN:

9                   Yes.

10                  JUDGE GULIN:

11                  Okay. Any objection to those  
12                  corrections?

13                  MR. ALFORD:

14                  No objection.

15                  JUDGE GULIN:

16                  All right. Mr. Smith or Mr. Brown  
17                  or whoever, do you by any chance have a  
18                  copy that you could allow me to use  
19                  during the course of cross, of his  
20                  testimonies?

21                  If it's not convenient, don't worry  
22                  about it, but if you have an extra  
23                  copy --

24                  MR. SMITH:

25                  I do. There are some other

1           testimonies in it, in the same binder,  
2           but this is it.

3           JUDGE GULIN:

4           Thank you. I appreciate it.

5           Okay. Whenever you're ready.

6           EXAMINATION BY MR. ALFORD:

7           Q. Good morning, Mr. Fagan.

8           A. Good morning.

9           Q. It's nice to see you again.

10          A. Same here.

11          Q. Am I correct that your trip here  
12 today is your first time you've been in New  
13 Orleans?

14          A. Yes, that's correct.

15          Q. You work for a consulting firm in  
16 Massachusetts that is called Synapse; correct?

17          A. Yes. Synapse Energy Economics.

18          Q. And the office of Synapse where you  
19 work is in Massachusetts; correct?

20          A. Yes.

21          Q. Synapse has clients who are in the  
22 solar industry; correct?

23          A. We have some in the solar industry.  
24 Most of our clients are consumer advocates,  
25 regulators, or regulatory staff, environmental

1 advocates. We have a small number of private  
2 clients.

3 Q. And most of Synapse's clients are  
4 not direct market participants in MISO; is that  
5 correct?

6 A. Yes, that's correct.

7 Q. You worked for an electric utility  
8 for three years after you graduated from  
9 college in 1981; correct?

10 A. Yes, that's correct.

11 Q. And that utility was in Rhode  
12 Island?

13 A. Yes.

14 Q. And that was the only utility that  
15 you've worked for as an employee; correct?

16 A. Yes, that's correct.

17 Q. You did not work in transmission  
18 planning when you were with the utility;  
19 correct?

20 A. No. I worked in transmission and  
21 distribution, operations and maintenance.

22 Q. But not in planning?

23 A. No.

24 Q. Did you have any role in operations  
25 or dispatch of electric generation for the



1 utility?

2 A. No. A little bit on the  
3 transmission and distribution side, circuit  
4 breakers, etc., components, but not generation.

5 Q. Did you have any role in generation  
6 resource planning when you worked for the  
7 utility?

8 A. No, I did not.

9 Q. And the work that you have done as a  
10 consultant in resource planning has been mostly  
11 outside of the southeast; correct?

12 A. Yes, that's generally correct.

13 Q. Have you ever participated in the  
14 negotiations for the sale of energy or  
15 capacity?

16 A. No, I don't believe I have.

17 Q. Have you ever participated in actual  
18 bidding into the MISO market?

19 A. No, I have not.

20 Q. When you prepared your testimony in  
21 this case, you did not review ENO's 2015  
22 integrated resource plan or any of the  
23 materials or transcripts that resulted from  
24 that proceeding; correct?

25 A. No. I've since looked at it, but

1 not comprehensively at all.

2 Q. When you prepared, your testimony  
3 you did not run an Aurora production cost  
4 model, did you?

5 A. No. Time and resource constraints  
6 did not allow us to do that.

7 Q. And when you prepared your  
8 testimony, you also didn't run any capacity  
9 expansion modeling packages; correct?

10 A. No, we did not run any capacity  
11 expansion models.

12 Q. Did you run any power flow modeling?

13 A. No, we did not. We just reviewed  
14 the results done by Entergy.

15 Q. Isn't it correct that there is no  
16 economic analysis in your testimony that  
17 demonstrates the cost impact to ENO's customers  
18 from the different resource possibilities that  
19 you mention?

20 A. The term "economic analysis" is a  
21 very broad term. There's no specific rerun of  
22 the Aurora production cost modeling, but  
23 there's certainly analysis behind looking at  
24 the alternatives and understanding  
25 directionally where the overall economics would

1 go if you made a particular change.

2 For example, as part of  
3 Mr. Cureington's testimony, he includes  
4 demand-side management costs and the savings  
5 associated with those are in his analyses.  
6 It's fairly straightforward to understand that  
7 if the demand-side management costs were not as  
8 high as he indicated there and the savings were  
9 greater, it would change the direction of the  
10 overall economic effect. So that type of  
11 analysis is -- made up a significant part of  
12 the testimony that I was charged to undertake.

13 MR. BROWN:

14 Your Honor, I'm going to move to  
15 strike the witness's response. It was  
16 nonresponsive. He went way far afield  
17 from the question.

18 JUDGE GULIN:

19 I think that was responsive.

20 EXAMINATION BY MR. ALFORD:

21 Q. Mr. Fagan, do you recall giving a  
22 deposition in this matter in November of this  
23 year?

24 A. Yes.

25 Q. Do you have a copy of that

1 deposition in front of you?

2 A. No, I don't.

3 MR. ALFORD:

4 Your Honor, may I approach?

5 JUDGE GULIN:

6 Please.

7 EXAMINATION BY MR. ALFORD:

8 Q. Okay. Mr. Fagan, if I could direct  
9 you to page 66 of that transcript.

10 MR. ALFORD:

11 And for the record, the deposition  
12 date is November 15th, 2017.

13 EXAMINATION BY MR. ALFORD:

14 Q. At the bottom of page 66, I asked  
15 you, Isn't it correct that there is no economic  
16 analysis here that demonstrates the impact, the  
17 cost impact to ENO's customers from the  
18 different possibilities that you mention? (As  
19 read.)

20 And your answer at the top of  
21 page 67 to my question was, Yes, that's  
22 correct. (As read.)

23 A. Yes, that's true. And clearly from  
24 the context on page 66, I had indicated that  
25 there were no specific metrics that show that,

1 but as I indicated, I believe during deposition  
2 and certainly just immediately prior to this,  
3 that I didn't have specific metrics because we  
4 were not able to rerun the Aurora to get at one  
5 of the more important components of costs. It  
6 doesn't mean that there wasn't, you know, a  
7 sense of analysis behind the work that we did.

8 Q. Thank you, Mr. Fagan.

9 Would you agree that Entergy New  
10 Orleans has an obligation to serve all customer  
11 load?

12 A. Yes, I would.

13 Q. And you would agree that the  
14 intervenors in this case don't have that same  
15 obligation?

16 A. No. They're not utility companies.

17 Q. When you prepared your testimony,  
18 you did not perform detailed integrated  
19 resource planning that would be necessary to  
20 determine whether ENO will be short or long  
21 over a 20-year planning horizon, did you?

22 A. No, I did not.

23 Q. And your testimony does not set  
24 forth a specific basket of resources that ENO  
25 could rely on in later years of this planning

1 horizon if NOPS is not constructed; correct?

2 A. Not a specific basket, but I did  
3 reference clearly in a number of places in my  
4 testimony the alternative resources that were  
5 available that in combination, you know, could  
6 make up a reasonable alternative portfolio in  
7 place of the gas plant.

8 Q. Mr. Fagan, isn't it true, though,  
9 that your testimony did not set forth specific  
10 quantities of any resources that you considered  
11 available?

12 A. Yes, that's true. Like I just said,  
13 it didn't set forth specific quantities. But  
14 it certainly made it clear that energy  
15 efficiency and demand response resources and  
16 solar PV and transmission reinforcement and  
17 possibly additional batteries all could make up  
18 a portfolio. And as my testimony was quite  
19 clear on, it's my testimony that Entergy did  
20 not do a full enough analysis of those  
21 different alternative combinations.

22 Q. Now, Mr. Fagan, your testimony does  
23 not address or dispute the methodology that  
24 Entergy uses to forecast load; correct?

25 A. Yes, that's correct.

1 Q. And you don't set forth in your  
2 testimony an in-depth analysis to assess the  
3 achievability of any particular level of  
4 planned DSM or energy efficiency deployment for  
5 New Orleans; correct?

6 A. I'm sorry. Could you repeat that  
7 question?

8 Q. Sure. You don't set forth in your  
9 testimony an in-depth analysis to assess the  
10 achievability of any particular level of  
11 planned DSM or energy efficiency deployment for  
12 New Orleans?

13 A. No. I do note very clearly that one  
14 of the DSM scenarios listed in Navigant's  
15 report, which was included as one of Entergy's  
16 exhibits, was the achievable DSM scenario.  
17 That was Scenario No. 1 from that report. And  
18 in that report, that suggests a level of DSM  
19 that was roughly twice as high as what Entergy  
20 is currently doing. And then there were  
21 additional scenarios in that report. So I  
22 certainly drew a comparison to Navigant's  
23 Scenario 1 as but one possible comparison point  
24 to the level of demand-side management that  
25 Entergy incorporated into its analyses in the

1 reference case portfolios.

2 Q. So you mentioned Navigant in your  
3 testimony, but you did not prepare or set forth  
4 in your testimony your own independent  
5 analysis; correct?

6 A. No. I relied upon the existence of  
7 Navigant's achievable scenario as a first  
8 comparison point to the level of DSM that  
9 Entergy had included in its reference  
10 portfolios.

11 Q. When you prepared your testimony,  
12 you didn't study the measures that ENO has  
13 deployed through its Energy Smart program, did  
14 you?

15 A. No, I did not study the measures.

16 Q. Isn't it correct that you have never  
17 produced a load forecast for the purpose of  
18 resource planning?

19 A. Yeah, that's certainly true.

20 Q. And in connection with your  
21 testimony, you did not analyze ENO's existing  
22 capacity resources; did you?

23 A. I'm sorry. Could you --

24 Q. Sure. In connection with your  
25 testimony, you did not analyze ENO's existing



1 capacity resources?

2 A. No, that's not true. I certainly  
3 looked at the material in Mr. Cureington's  
4 exhibits, in the confidential exhibits, I  
5 believe, that listed all of the resources that  
6 make up its portfolio. And I certainly did  
7 look at the balances, the capacity balances  
8 under his scenarios and then under scenarios  
9 where the demand-side management would be  
10 increased to have a general sense of the  
11 sensitivity of capacity balance in Entergy's  
12 portfolios to what it would look like if there  
13 was more solar or more demand-side management.  
14 And I believe I've got that stated in my  
15 testimony where I reference the fact that by a  
16 number of years out, Entergy is basically not  
17 short or not long under certain demand-side  
18 management and solar resource scenarios. So I  
19 certainly did look at their resources that they  
20 had listed as part of their supply portfolio.

21 Q. But, Mr. Fagan, in terms of looking  
22 at different capacity resources that Entergy  
23 listed, you did not do an independent review of  
24 any of those resources, did you?

25 A. No. There was no need to do -- I'm

1 not sure exactly what you mean by "an  
2 independent review." There are existing  
3 resources. Mr. Cureington's table laid out  
4 which of those resources and at what quantities  
5 were available over the planning period. There  
6 wasn't any particular need to review them.

7 Q. Do you agree that generating units  
8 cannot operate in perpetuity?

9 A. Yes, in general. There are some  
10 generating units that have been on since their  
11 construction at the turn of the century, but,  
12 generally, that's a true statement. The turn  
13 of the -- It's the 20th Century I was referring  
14 to. Very old hydro assets, for example.

15 Q. In connection with your testimony,  
16 you did not analyze the amount of solar  
17 capacity that can be located in New Orleans for  
18 the DSG load pocket, did you?

19 A. Not in connection with my testimony.  
20 Subsequent to my testimony, I did look at  
21 additional documentation.

22 MR. ALFORD:

23 Move to strike, Your Honor.

24 JUDGE GULIN:

25 Yeah. You don't need to go any

1 further than that, Mr. Fagan.

2 EXAMINATION BY MR. ALFORD:

3 Q. In connection with your testimony,  
4 Mr. Fagan, did you do an independent study to  
5 forecast solar PV costs?

6 A. No. I relied on, as referenced in  
7 my testimony, documentation that lays out the  
8 cost trends across the nation for utility scale  
9 and small scale solar.

10 Q. And when you prepared your  
11 testimony, you did not perform an independent  
12 analysis of the expected installation rate of  
13 solar in New Orleans; correct?

14 A. That's correct. I did not do that.

15 Q. And when you prepared your  
16 testimony, you did not do any analysis of  
17 capacity resource types or ages in MISO South;  
18 correct?

19 A. No. I don't think that's true.  
20 There's reference in my testimony to looking at  
21 the makeup of resources in MISO to have a sense  
22 of whether or not increased solar penetration  
23 in New Orleans would create problems, so to  
24 speak, for dispatch. So I had certainly looked  
25 at broadly the resource base in MISO South,

1 which is, you know predominantly gas and  
2 coal-fired assets and nuclear assets.

3 Q. Can I get you to turn back to the  
4 transcript of your November 15th, 2017,  
5 deposition? At page 85, and I'm at around  
6 line 10, and I'm reading from an answer that  
7 you gave, and I'm quoting you, But I haven't  
8 done any sort of, you know, real analysis of  
9 capacity resource types or ages in MISO South,  
10 end quote. (As read.) That was your  
11 statement; correct?

12 A. Yes, that's my statement.

13 Q. All right. Do you agree, Mr. Fagan,  
14 that the accelerated retirement of older  
15 generation in MISO South will put pressure on  
16 the capacity resource balance?

17 A. Only when looked at holistically  
18 with potential new additions of capacity.  
19 That's part of what goes on, units retire and  
20 new units are added. So the balance, of  
21 course, you have to look at both of those  
22 things, along with what's going on on the load  
23 side.

24 Q. Your testimony doesn't set forth an  
25 opinion on when different units in MISO South

1 might deactivate, does it?

2 A. No, it does not.

3 Q. And you agree that there are risks  
4 associated with relying on MISO's capacity  
5 market as a source of long-term capacity?

6 A. There are risks associated with  
7 considering relying on a market or building a  
8 resource in order to meet capacity needs.  
9 There's a risk of paying too much. For  
10 example, if you build a new plant, that's a lot  
11 more expensive than the resources available in  
12 the market.

13 You know, as is clear, Entergy  
14 covers most of its obligations throughout most  
15 of the planning period with the resources that  
16 it already has under obligation I would  
17 presume. So we're talking about a relatively  
18 small residual balance that a utility company  
19 could rely on the market, or it could just go  
20 ahead and build a new resource. Although  
21 clearly in this case, if it does that, Entergy  
22 will be long and then it will be exposed to the  
23 price patterns associated with the MISO  
24 capacity market because it will be relying on  
25 payments through that MISO capacity market for

1 any capacity that it might be long.

2 MR. ALFORD:

3 Your Honor, objection.

4 JUDGE GULIN:

5 I overrule the objection.

6 EXAMINATION BY MR. ALFORD:

7 Q. Mr. Fagan, do you agree that annual  
8 capacity prices can be volatile?

9 A. Yes.

10 Q. Isn't it correct that you set forth  
11 no analysis in your testimony about the  
12 capacity that may be available to ENO outside  
13 of the planning resource auction bilaterally or  
14 through power purchase agreements?

15 A. Yes, that's -- Well, yeah, to some  
16 extent. What I do reference in my testimony is  
17 the existence of MISO's 2017 resource survey  
18 results which sets out their expectations for  
19 resource surplus or shortage over the 2018 to  
20 2022 period. So my referencing that  
21 information is part of my overall sense of what  
22 might be available in the market, be it for  
23 bilateral purchase or be it for purchase on the  
24 actual MISO spot capacity market.

25 Q. Have you ever negotiated a power

1 purchase agreement?

2 A. No, I have not.

3 Q. And do you agree that your testimony  
4 does not contain your own analysis or  
5 projection of specific future capacity prices  
6 in MISO?

7 A. It doesn't contain my own  
8 projection. It certainly incorporates my own  
9 analysis in that looking at the reference that  
10 I just referred to, the 2017 MISO resource  
11 survey, I get a sense of the direction of  
12 whether or not the MISO capacity market is  
13 relatively long or relatively short, and  
14 following the fundamentals of that market,  
15 prices would fall from that.

16 Q. But you don't have your own  
17 projections of MISO capacity prices for the  
18 next five or ten years?

19 A. I do not, and I didn't need to. I  
20 relied on Entergy's projections and the  
21 alternative case projections to demonstrate  
22 that generally from a resource adequacy  
23 prospective, it's not economic to put in the  
24 gas plants.

25 Q. Isn't it correct that in preparing

1 your testimony, you did not review any  
2 extensive detail of the 2016 state of the  
3 market report prepared by the MISO independent  
4 market monitor?

5 A. It's correct, I did not review that  
6 report in detail. I focused on reviewing  
7 MISO's 2017 resource adequacy survey to have a  
8 handle on the relative supply shortage or  
9 surplus during the next five years.

10 Q. And when you prepared your  
11 testimony, you weren't familiar with narrow  
12 constrained areas within MISO South, were you?

13 A. No. I'm familiar with them, but I  
14 did not address any aspect of that or do any  
15 analysis of that as part of my testimony.

16 Q. And when you prepared your  
17 testimony, you didn't know whether New Orleans  
18 was located in a narrow constrained area;  
19 correct?

20 A. That's correct. I did not know  
21 that. But what I did know is that New Orleans  
22 is located in MISO'S Load Zone 9, and for the  
23 purpose of the capacity market and the resource  
24 adequacy construct, that drives the obligations  
25 and the dollar flows for capacity. That's the



1 construct that matters most, that it's part of  
2 Load Zone 9.

3 Q. Mr. Fagan, have you ever planned or  
4 operated transmission in MISO South?

5 A. No, I have not.

6 Q. Isn't it correct that when you  
7 prepared your testimony, you didn't do any  
8 studies to determine the feasibility of outage  
9 scheduling for transmission lines into the ENO  
10 service area for the next ten years?

11 A. That's correct. I did not do that.  
12 I would not be able to do that. I don't work  
13 for Entergy and I don't have the sort of  
14 information that one needs to have to do that  
15 sort of work.

16 Q. Isn't it correct that you've never  
17 worked in restoring an electric system after a  
18 hurricane?

19 A. Yes, that's correct. I have worked  
20 after a winter storm helping to restore  
21 distribution assets up in Massachusetts, but  
22 that was a long time ago.

23 Q. Mr. Fagan, do you agree that  
24 electric utility customers can benefit from  
25 natural gas generation?

1           A.    Yes, broadly speaking.  Entergy New  
2   Orleans and most of the ratepayers in the  
3   United States already benefit from that in that  
4   gas makes up a large fraction of the generating  
5   capacity.  So if you benefit from electricity  
6   consumption, you're benefiting from the use of  
7   natural gas to make up part of that generation.

8           Q.    Isn't it correct that most of the  
9   anticipated firm resource additions in MISO  
10  over the next ten years will be gas generation?

11          A.    I believe that's correct based on  
12  something that was presented to me at  
13  deposition, but I think what's important -- and  
14  I also believe that shows up in rebuttal  
15  testimony of Entergy witnesses.  But what's  
16  important to remember is that there are a lot  
17  of non-firm or non-committed resources that are  
18  queued up in MISO and that will play a role in  
19  the resources that come on to the system over  
20  the next decade even though they're not  
21  currently indicated as firm, committed  
22  resources.  And my testimony references some of  
23  the numbers around the amount of additional  
24  generation besides just the gas that's in  
25  MISO's queue.

1 MR. ALFORD:

2 Let me check my notes, Your Honor.

3 JUDGE GULIN:

4 Sure.

5 MR. ALFORD:

6 I may be done.

7 Mr. Fagan, thank you very much. I  
8 have no further questions.

9 JUDGE GULIN:

10 Let's go to the advisors.

11 MS. HAND:

12 If I could have just a minute, Your  
13 Honor. I think Mr. Alford asked a number  
14 of my questions. I just want to double  
15 check.

16 JUDGE GULIN:

17 Okay. Sure.

18 EXAMINATION BY MS. HAND:

19 Q. Good morning, Mr. Fagan.

20 A. Good morning.

21 Q. I'm Emma Hand with the Council's  
22 utility advisors, and we've met before, I  
23 believe.

24 A. Yes.

25 Q. And you have in front of you a copy

1 of your -- the deposition transcript from your  
2 deposition?

3 A. Yes.

4 Q. All right. Now, isn't it true,  
5 Mr. Fagan, that aside from being able to be  
6 relatively certain that it will be an amount  
7 greater than zero, you can't actually guarantee  
8 any particular level of savings from energy  
9 efficiency will occur?

10 A. Well, as an engineer, I could  
11 guarantee that if you replace appliances and  
12 replace light bulbs and replace refrigeration  
13 and motors and install variable frequency  
14 drives, beef up your insulation, replace your  
15 air conditioners, I can guarantee that there  
16 would will be savings, but I have not done the  
17 type of impact analysis or process analysis  
18 that one might do when looking at a demand-side  
19 management program, for example, so I can't  
20 place a number on it. It wasn't my charge.  
21 All I can do is look to the evidence that's --  
22 like Navigant's Scenario 1, for example, to  
23 know.

24 Q. Thank you.

25 And you have not or had not at the

1 time that you performed -- provided your  
2 testimony -- had not performed any analysis of  
3 the feasibility of deploying 200 megawatts of  
4 solar in New Orleans, had you?

5 A. That's correct. I had not done such  
6 an analysis.

7 Q. Okay. And you have not or had not  
8 at the time that you provided your testimony  
9 done any analysis of the amount of potential  
10 solar capacity that can be located in either  
11 New Orleans East, Orleans Parish, or DSG as a  
12 whole, had you?

13 A. No, I had not.

14 Q. Okay. And, similarly, you had not  
15 done any analysis on how much solar PV  
16 penetration will increase in New Orleans, have  
17 you?

18 A. No, I had not.

19 Q. And you also had not done a study of  
20 the economic viability of battery storage in  
21 MISO, had you?

22 A. No. I've only referenced the broad  
23 declining cost trends associated with that  
24 technology.

25 Q. Now, you would generally agree with

1 the statement that natural gas-fired capacity  
2 will continue to be an important part of the  
3 U.S. energy mix for the foreseeable future,  
4 don't you?

5 A. I do. Primarily because there's so  
6 much of it that's already in place right now  
7 and there's more of it that's on the immediate,  
8 near-term horizon.

9 Q. Thank you.

10 And you did not -- you would not  
11 guarantee, would you, that renewables and DSM  
12 alone would be able to keep the lights on in  
13 New Orleans in the event that a storm takes out  
14 the transmission grid and leaves New Orleans  
15 electrically islanded, would you?

16 A. No, nobody could. That's -- I don't  
17 really think that that's what's at issue here.  
18 The system works holistically, not just with  
19 renewables and DSM but with all of the other  
20 generating resources.

21 Q. All of which are dependent upon the  
22 transmission; correct?

23 A. Absolutely --

24 Q. Thank you.

25 A. -- as generation resources

1 nationwide are dependent on the transmission  
2 system.

3 Q. And behind-the-meter solar is not  
4 particularly likely to be able to support storm  
5 restoration, is it?

6 A. Not on its own. Storm restoration  
7 is a -- involves a lot more components than  
8 just the presence of rooftop solar. There  
9 certainly could be isolated areas where rooftop  
10 solar, if configured properly, could play a  
11 valuable role, you know, for example, in a  
12 microgrid type of an arrangement where critical  
13 facilities are designed to allow something like  
14 rooftop solar and batteries to allow something  
15 to operate until the rest of the system comes  
16 back after a hurricane. But, you know, it  
17 involves all the moving parts. It's never just  
18 about DSM and renewables. It's everything.

19 Q. Now, in a microgrid type of  
20 situation like that, would you expect the  
21 microgrid to be powered solely by solar PV or  
22 would there be another generator used in  
23 combination with solar?

24 A. Oh, there's so many different ways  
25 to do it. You could envision a microgrid

1 arrangement where it is just solar or batteries  
2 or a microgrid that would also include a diesel  
3 or a gas-fired generator, for example, but, you  
4 know, to help ensure police and fire and  
5 hospitals could get back more quickly. But  
6 certainly the emphasis that a utility would  
7 need to always make and does make as I  
8 understand it is to basically get the wires  
9 back. I mean, that's what causes the problem  
10 so that's what you do. You get the wires back.  
11 I mean, in general, it's not about the  
12 generation resources. It's about getting the  
13 wires back.

14 Q. Thank you.

15 And you would agree, wouldn't you,  
16 that there are risks to both being short on  
17 capacity and being long on capacity?

18 A. Those risks can be asymmetrical.  
19 Whether or not you're long or short and the  
20 financial effect depends upon your sense of  
21 what the price is going to be. If the price is  
22 looking like it's going to be relatively low,  
23 there's a greater risk if you're low on  
24 capacity. If the price is looking like it's  
25 going to be relatively high, there is a greater



1 risk if you're short on capacity.

2 Q. Thank you.

3 A. The situation we're in now is  
4 absolutely that we're looking like the price is  
5 going to be low and Entergy's proposal here is  
6 to be long on capacity.

7 Q. Thank you, Mr. Fagan.

8 Isn't it true that the multi-value  
9 projects in MISO are not designed to provide  
10 benefits to MISO South or to ENO specifically?

11 A. The multi-value projects were  
12 designed to allow a lot more wind to be  
13 integrated on to the grid. They were focused  
14 in MISO North when that was done. However,  
15 what affects MISO North affects MISO South in  
16 that it's a single region. And in the last set  
17 of capacity auctions, MISO North and MISO South  
18 have not been separated. The price has been  
19 the same. So basically if there is not a  
20 binding constraint in that capacity market  
21 between MISO North and MISO South, the effect  
22 of additional resources in MISO North that help  
23 maintain a surplus will have an affect on the  
24 clearing prices in MISO South.

25 The creation of MISO basically

1 expanded the market and Entergy's customers are  
2 completely exposed to Entergy's decisions as  
3 they look at the trajectory of what's going on  
4 with capacity prices in MISO South. And it is  
5 absolutely certain that there's a connection  
6 between those two regions. That's the  
7 structure of MISO. So it's important to not  
8 underestimate the ability of actions in MISO  
9 North to affect the broad capacity prices and  
10 affect the zones in MISO South.

11 Q. Thank you, Mr. Fagan.

12 And I believe this is my last  
13 question. You did not do in the preparation of  
14 your testimony any analysis to determine the  
15 feasibility of Entergy resolving its  
16 reliability issues by reducing its load over  
17 time or how long that would take to do, did  
18 you?

19 A. What I -- I did look at the  
20 testimonies of Entergy's witnesses. I did not  
21 specifically look at how the actions that  
22 Entergy takes would lower the load on the  
23 system or, you know, additional transmission  
24 investment would mitigate against the  
25 contingencies that they're concerned about, but

1 it is fairly straightforward directionally.

2 As we've seen with the updated  
3 exhibits by Entergy's witnesses that the  
4 violations are less extreme. When you  
5 incorporate solar PV and when you incorporate  
6 more demand-side management, the violations get  
7 less severe. So I think there is evidence in  
8 the record that follows from fundamentals. If  
9 the load is lower, you know, the violations are  
10 likely to be lower. It doesn't necessarily  
11 mean that you don't have to build all the lines  
12 that they have to build, but it gives them a  
13 little bit more room to maneuver.

14 MS. HAND:

15 Thank you, Mr. Fagan. That's all I  
16 have.

17 JUDGE GULIN:

18 Thank you, Ms. Hand.

19 Any redirect?

20 MR. SMITH:

21 Yes, Your Honor. May I have just  
22 one second to go over this?

23 JUDGE GULIN:

24 Absolutely. Go ahead.

25 (Whereupon a pause occurred in the

1 proceedings.)

2 MR. SMITH:

3 Okay. Thank you.

4 EXAMINATION BY MR. SMITH:

5 Q. Joshua Smith on behalf of Sierra  
6 Club. Thank you, Mr. Fagan.

7 I want to start -- go backwards,  
8 start with some of the last questions that  
9 Ms. Hand asked you. I believe at the end of  
10 her questioning, she asked you if you did any  
11 independent analysis of the feasibility or the  
12 impact that demand-side management measures  
13 would have on lowering the load on the system.  
14 Do you recall that question?

15 A. Yes, I do.

16 Q. Did Entergy's load flow analysis  
17 provide you with any way to evaluate that, or  
18 did their load flow analysis specifically  
19 identify the feasibility of DSM to lower load  
20 on the system?

21 A. I think their load flow analysis  
22 incorporated the lower levels of load from DSM  
23 in their subsequent analysis when they made the  
24 corrections for DSM. So their -- The last set  
25 of runs that they did would have incorporated a

1 lower level of modeled load in their power flow  
2 models.

3 Q. Ms. Hand also asked you, I believe,  
4 if you conducted any independent analysis of  
5 the economic viability of batteries in MISO.  
6 Do you recall --

7 A. She did. I think her question  
8 was --

9 JUDGE GULIN:

10 Well, wait for the question now.

11 Wait for a question.

12 EXAMINATION BY MR. SMITH:

13 Q. Do you recall if ENO conducted such  
14 an analysis?

15 MR. ALFORD:

16 Objection, Your Honor. There's no  
17 basis for that, no foundation.

18 JUDGE GULIN:

19 You're probably technically correct,  
20 but I'll allow it.

21 Go ahead.

22 MR. FAGAN:

23 No. In the portfolios that they put  
24 together, they didn't have specific  
25 battery alternatives than what was

1           presented in Mr. Cureington's testimony.

2           EXAMINATION BY MR. SMITH:

3           Q.     Ms. Hand asked you about whether you  
4           did any specific or independent analysis of  
5           solar DG penetration in the New Orleans area.  
6           Do you recall that question?

7           A.     I do recall that question.

8           Q.     Do you recall if ENO conducted a  
9           specific analysis of that penetration?

10          A.     I don't believe they did. I think  
11          there's reference in their testimony with a  
12          concern with being able to do that, but I would  
13          have to double check the specifics.

14                   I mean, I will note that the  
15          advisor's question was in the context of my  
16          testimony, and I know it's -- you know, after  
17          the fact, I've certainly looked at things after  
18          the fact a little bit more closely on the way  
19          to the hearing as is often the case in these  
20          types of cases.

21          Q.     I believe Mr. Alford asked you  
22          whether you conducted any analysis of the  
23          feasibility of obtaining outages to make  
24          transmission upgrades. Do you recall that  
25          question?

1           A.    I do recall that question.

2           Q.    Did ENO conduct such a feasibility  
3 study that you're aware of?

4           A.    No.  I believe they referenced  
5 concern about obtaining such outages, but there  
6 was no analytical evidence that I saw that  
7 documented the concerns that they were having  
8 and, in particular, whether or not they were  
9 having those concerns during the months in  
10 which the load would be expected to be much  
11 lower than in the summer months, for example,  
12 which is when the peak period is and when the  
13 stressors are most present.

14          Q.    I just have a couple more questions  
15 here.

16                    Mr. Alford asked you about your  
17 experiences at transmission planning, and I  
18 believe you stated you have not been a  
19 transmission planner; is that correct?

20          A.    That's correct.

21          Q.    In your experience, do you need to  
22 be a transmission planner to opine or provide  
23 analysis on a utility's planning?

24          A.    No, you don't.  There's certain  
25 things that I would not do, that I would not be

1 prepared to do, that I'm not -- I don't work  
2 for a utility company. I don't run load flows  
3 on a regular basis, but there's certainly a lot  
4 of different resource planning issues that in  
5 my years as an engineer and an economic  
6 analyst, that I'm well positioned to look at  
7 and critique.

8 MR. SMITH:

9 I think that's all I have, Your  
10 Honor.

11 JUDGE GULIN:

12 Thank you.

13 Anything, Mr. Alford?

14 MR. ALFORD:

15 No.

16 JUDGE GULIN:

17 Ms. Hand?

18 MS. HAND:

19 No, Your Honor.

20 JUDGE GULIN:

21 Thank you, Mr. Fagan. You're  
22 excused.

23 All right. Let's call the next  
24 witness. That would be Bliss Higgins.

25 Ms. Higgins.



1                   And questioning will be by  
2                   Ms. Miller.

3                   BLISS HIGGINS,  
4                   after having been duly sworn by the  
5                   above-mentioned Certified Court Reporter, was  
6                   examined and testified as follows:

7                   MR. CRAGIN:

8                   Your Honor, before we start the  
9                   cross-examination, we had a couple of  
10                  changes based on the agreement that we  
11                  had with the intervenors to her --  
12                  Ms. Higgins' testimony.

13                  JUDGE GULIN:

14                  Okay.

15                  MR. CRAGIN:

16                  This had to do with the CK technical  
17                  report references to Mr. Long, very minor  
18                  changes. On page 12 of the rebuttal  
19                  testimony of Ms. Higgins, line 12, the  
20                  sentence that starts, Mr. Jonathan Long  
21                  and the CK technical report also discuss  
22                  air quality, is going to be changed to  
23                  say just, The CK technical report also  
24                  discusses air quality. (As read.)

25                  And then we would delete

1 Footnote 19.

2 JUDGE GULIN:

3 Okay. And you'll provide a fresh,  
4 revised copy?

5 MR. CRAGIN:

6 We can, Your Honor, yes.

7 JUDGE GULIN:

8 Okay. Thank you.

9 All right, Ms. Stevens Miller.

10 MS. MILLER:

11 Thank you, sir.

12 EXAMINATION BY MS. MILLER:

13 Q. Good morning, Ms. Higgins.

14 A. Good morning.

15 Q. My name is Susan Stevens Miller, and  
16 I represent the Alliance for Affordable Energy  
17 and 350 New Orleans in this proceeding. And I  
18 just have a few questions for you today.

19 You work for a consulting firm; is  
20 that correct?

21 A. That's correct.

22 Q. Did you provide consulting services  
23 to Entergy with regard to the filing of either  
24 their air permits, the one for the CT or the  
25 one for the RICE unit?

1           A.    My firm was not engaged to prepare  
2 the air permit application. I did review some  
3 draft sections and had some consultation with  
4 Entergy regarding those draft applications, but  
5 was not, by any means, the primary party or  
6 firm preparing the applications.

7           Q.    Can you tell me what the goal of the  
8 prevention of significant deterioration program  
9 is?

10          A.    Yes. Generally speaking, the goal  
11 of the prevention of significant deterioration  
12 program is to assure that air quality in areas  
13 that are in attainment with National Ambient  
14 Air Quality Standards does not deteriorate  
15 significantly.

16          Q.    Can I ask you to turn to page 24 on  
17 your direct testimony, please?

18          A.    Sure. I'm there.

19          Q.    Okay. Table 3, what does that  
20 represent?

21          A.    Table 3 provides the PSD significant  
22 emission increase levels. So those are  
23 emission rates in tons per year of particular  
24 pollutants that are considered de minimus for  
25 emissions below that level that would not be

1 anticipated to have adverse impacts.

2 Q. And these are set by the EPA?

3 A. Yes, these are set by EPA.

4 Q. Can I ask you to turn to page 19, to  
5 Table 2? And I don't know if it's possible for  
6 you to have them both next to you. It might be  
7 easier to ask you the questions if they're side  
8 by side.

9 A. I think I can manage. What was the  
10 page number, please?

11 Q. Nineteen, and Table 2 there.

12 A. Okay.

13 Q. The second column there is the  
14 anticipated NOPS emissions for the RICE units;  
15 is that correct?

16 A. The second column is the anticipated  
17 permitted emissions, so not actual emissions,  
18 but potential to emit for the RICE units, and  
19 not just for the RICE units specifically, but  
20 for the facility as a whole.

21 And I think I need to make sure that  
22 we're clear here. This table represents  
23 preliminary emission calculations that were in  
24 development at the time that my testimony was  
25 prepared. So the emission rates in the

1 application as it was filed are somewhat  
2 different from this.

3 Q. Thank you.

4 Do you know if these emissions rates  
5 are for two-stroke or four-stroke generators  
6 that RICE units come in?

7 A. My recollection -- and I'm certainly  
8 not the technical expert on the RICE units. My  
9 recollection is that these are four-stroke  
10 spark ignition lean burn engines, but I'm, you  
11 know, not the right person to ask that  
12 question.

13 Q. But whether it's the four-stroke or  
14 two-stroke would make a difference in the  
15 emission levels that the units would produce;  
16 is that correct?

17 A. That could be one factor. There are  
18 a number of factors that would affect the  
19 emissions.

20 Q. If you compare the RICE unit  
21 emissions to the Table 3 EPA levels, the RICE  
22 units have significant emission rates for every  
23 type of pollutant except for SO2 and CO; is  
24 that correct?

25 A. The potential of facility-wide

1 emissions of the RICE project by itself are  
2 above the PSD significant emission rate for all  
3 pollutants with the exception of SO2, that's  
4 correct, taken by themselves.

5 Q. So, for example, with regard to the  
6 particulate matter 10, the RICE unit emissions  
7 are six times the EPA significant rate; is that  
8 correct?

9 A. Well, for PM10, the significant  
10 emission rate is 15 tons per year and for the  
11 RICE units, the permit application that follows  
12 is about 79 tons per year, so maybe closer to  
13 five times.

14 Q. And in the Column 1 is the  
15 previously existing Michoud power plant  
16 emissions; correct?

17 A. Yes, that's the retired units'  
18 permitted emission levels.

19 Q. And so the permitted emission levels  
20 at Michoud were for 781 megawatts; is that  
21 correct?

22 A. I would have to go back and check.  
23 I know that sounds about right.

24 Q. And so the -- But the RICE unit  
25 emissions are only for a hundred and

1 twenty-eight megawatts; is that correct?

2 A. That's correct.

3 Q. So on a per megawatt basis, the RICE  
4 units, based on the numbers here, actually emit  
5 twice as much PM10, PM2.5, and BOCs as the now  
6 deactivated units; is that correct?

7 A. I'd have to do the calculation, but  
8 I --

9 Q. Can you accept, subject to check of  
10 my lawyer math, that it's the amount?

11 A. (No response.)

12 Q. You testified that netting of the  
13 emissions from the now nonexistent Michoud  
14 plants with the proposed permit emissions from  
15 either the RICE unit or the CT unit is how the  
16 LDEQ will determine which permit is needed for  
17 the RICE units; is that correct?

18 A. Yes. I would generally agree with  
19 that characterization.

20 Q. You also describe what is meant by  
21 "contemporaneous period." Could you explain,  
22 that, please?

23 A. Yes. So -- I'd be glad to explain  
24 that. So in the air permitting process,  
25 emission changes are looked at within a

1 contemporaneous window and that's because  
2 emission changes occur over time and impact to  
3 air quality is affected by both increases and  
4 decreases that occur over a, you know,  
5 contemporaneous period of time, not just one  
6 instantaneous change.

7           So EPA has defined the  
8 contemporaneous period for PSD purposes as  
9 being changes that occur five years -- up to  
10 five years before construction on a new project  
11 would occur and out to the time when that new  
12 project actually commences operation. So it's  
13 generally five plus years that's considered  
14 contemporaneous with regard to emission  
15 increases and decreases.

16           Q. And I believe you state in your  
17 testimony that the contemporaneous period for  
18 the NOPS project would be January 2013 to  
19 October 2019; is that correct?

20           A. That's based on the projected start  
21 of construction date and start of operation  
22 date, so, yes.

23           Q. But the project will no longer be  
24 operational on October 2019 simply because this  
25 process won't be completed. So how would that



1 affect the contemporaneous period?

2 A. Well, I can't speak to the project  
3 schedule.

4 Q. I guess my question is, the Michoud  
5 plants were closed in 2016, so what's the time  
6 frame within which Entergy can take advantage  
7 of the netting of emissions allowed for a minor  
8 permit?

9 A. Well, so if -- For a project that  
10 would commence construction five years after  
11 the 2016, those emission reductions would be  
12 considered as part of the net emissions  
13 increase or decrease.

14 Q. I'm sorry. Did you say begin  
15 construction or begin operation?

16 A. Construction.

17 Q. Construction.

18 If the RICE units are considered to  
19 be a minor modification under the LDEQ's  
20 standards, Entergy New Orleans will not be  
21 required to install controls that meet the best  
22 available control technology; is that correct?

23 A. The minor modification  
24 classification is under the PSD program and  
25 minor modifications are not required to do a

1 back-to-best-available-control-technology  
2 analysis. That doesn't necessarily mean that  
3 it would not be installing the same or better  
4 levels of control based on other requirements  
5 that apply. So I couldn't agree with that  
6 statement.

7 Q. You couldn't absolutely say that  
8 they wouldn't, but under the PSD, they would  
9 not be required to?

10 A. That's right. But there are many  
11 other rules that apply.

12 Q. Why is it reasonable from a public  
13 health perspective to consider nonexistent  
14 emissions when calculating the level of  
15 polluting emissions from a new generator?

16 A. I believe that your question --  
17 Well, could you clarify what you mean by  
18 "nonexistent emissions"?

19 Q. Well, the plant's no longer there,  
20 so essentially you're deducting nonexistent  
21 emissions from the proposed emissions in order  
22 to come up with the emissions level?

23 A. So what the analysis is looking at  
24 is emission decreases of actual emissions  
25 that -- so the emissions from the Michoud unit

1 are real, actual emissions which have been  
2 emitted since around approximately 1940 or  
3 1950, I believe. So those are real emissions  
4 that have been in the air shed, in the area,  
5 and that decrease in emissions that result from  
6 the shutdown of those units is what's  
7 considered in the analysis. And that is very  
8 appropriate from a regulatory and air quality  
9 review perspective to consider both the  
10 decreases that occur as well as the increases  
11 that are proposed.

12 Q. But it is a regulatory fiction  
13 created by the permitting rules that since  
14 the -- essentially the air emissions may have  
15 existed since the 1950s, but they have not  
16 existed since June 2016. So while it is  
17 allowed under the permitting standards, it is a  
18 regulatory fiction to determine when the  
19 contemporaneous time period will be selected;  
20 is that correct?

21 A. No, that's not correct. I couldn't  
22 agree with that. There's no regulatory  
23 fiction. The regulations are, in fact, the  
24 law, and it's not a fiction to consider the  
25 emissions that were occurring. It's a real

1 impact on air quality to shut down the units  
2 thereby eliminating those emissions and to  
3 consider that in the framework of the new  
4 project as proposed.

5 Q. The City Council isn't issuing an  
6 air permit in this situation, is it?

7 A. No. The City Council doesn't issue  
8 air permits.

9 Q. And the City Council is not required  
10 to apply the standard that the LDEQ is applying  
11 to consider the emissions of the former Michoud  
12 plant in determining what the public interest  
13 is with regard to the emissions in the new  
14 plant; is that right?

15 MR. CRAGIN:

16 Objection; calls for a legal  
17 conclusion.

18 JUDGE GULIN:

19 Sustained.

20 EXAMINATION BY MS. MILLER:

21 Q. In considering whether to allow the  
22 polluting source to be constructed and  
23 considering whether it's in the public  
24 interest, can the City Council take into  
25 consideration existing physical conditions at

1 the site? Is that correct?

2 A. I can't speak to the City Council's  
3 policies or requirements.

4 Q. Next I want to ask you a couple of  
5 questions about the AERSCREEN process that C&K  
6 used to determine the -- to make their analysis  
7 of the air emissions at the site.

8 A. Okay.

9 Q. The AERSCREEN comes from the EPA; is  
10 that correct?

11 A. That's correct. It's an EPA model.

12 Q. And according to the EPA itself, for  
13 the AERSCREEN to work as intended, users must  
14 use the latest AERMOD executable as well as  
15 AERMAP terrain free processor. Do you know if  
16 C&K used these?

17 A. Well, first, I can't speak  
18 affirmatively to the guidance that you're  
19 citing specifically for AERSCREEN. I did have  
20 discussions with CK as to how they were  
21 executing the model, and my understanding is  
22 that they used the most recent versions of the  
23 model and, you know, any plug-ins that go along  
24 with it.

25 Q. Isn't the accuracy of the AERSCREEN

1 model widely known to possibly be off by a  
2 factor of two either direction?

3 A. In my experience, the model is  
4 conservative and tends to err on the high side.  
5 So if you run an AERSCREEN model and you also  
6 run a more refined model, in my experience, you  
7 typically get lower results for a number of  
8 reasons.

9 Q. Finally, I have some questions with  
10 regard to your determination that there's  
11 nothing within a mile, no residential, schools,  
12 things like that within a mile of the Michoud  
13 facility.

14 A. Sure.

15 Q. How does the LDEQ define "vicinity"?

16 A. There's not a regulatory term for  
17 "vicinity."

18 Q. And does the EPA, to your knowledge,  
19 have a regulatory term for "vicinity"?

20 A. No.

21 Q. Are you aware that this analysis for  
22 EJ screening, the EPA uses a proximity analysis  
23 of three miles from each facility?

24 A. I know that EPA has in some cases  
25 presented demographic data within a three-mile

1 radius. My analysis was speaking specifically  
2 to Dr. Wright's statements in her testimony in  
3 which she contended that there were residences  
4 within 4,000 feet or three-quarters of a mile.  
5 So I was reviewing that statement specifically.

6 MS. MILLER:

7 Thank you. That's all I have.

8 JUDGE GULIN:

9 All right. Thank you.

10 Okay. We have now Ms. Harden.

11 EXAMINATION BY MS. HARDEN:

12 Q. Good afternoon, Ms. Higgins.

13 A. Good morning.

14 Q. My name is Monique Harden, and I'm  
15 an attorney representing the Deep South Center  
16 for Environmental Justice.

17 Do all oil and gas facilities  
18 operating in Louisiana, do they all have air  
19 permits?

20 A. I can't speak to that.

21 Q. Would you be surprised if there are  
22 oil and gas facilities operating in the state  
23 without an air permit?

24 A. Not necessarily, no. I wouldn't --

25 Q. What would be the reason --

1 MR. CRAGIN:

2 Your Honor, can the witness please  
3 finish her answer?

4 JUDGE GULIN:

5 Please.

6 MS. HARDEN:

7 Oh, I thought she did. I'm sorry.

8 MS. HIGGINS:

9 I wouldn't be surprised that there  
10 are oil and gas facilities operating  
11 without air permits or exemption levels  
12 that -- you know, emission levels below  
13 which air permits are not required, for  
14 one thing. And in my experience, many  
15 oil and gas, particularly in the  
16 production end of the business, emissions  
17 fall below those exemption thresholds.

18 EXAMINATION BY MS. MILLER:

19 Q. With regards to oil and gas  
20 facilities that are major sources of pollution,  
21 do those require air permits under the Clean  
22 Air Act?

23 A. Yes. Major sources require air  
24 permits, yes.

25 Q. I should have clarified that in my



1 first question. Thank you.

2 And during your time at the  
3 Louisiana Department of Environmental Quality,  
4 did you approve air permits?

5 A. I did.

6 Q. Were any of your approvals for air  
7 permits issued to industrial facilities  
8 operating in cancer alley?

9 MR. CRAGIN:

10 Objection, Your Honor.

11 MS. HARDEN:

12 Why is that an objection?

13 MR. CRAGIN:

14 Define "cancer alley."

15 MS. HARDEN:

16 Cancer alley describes the section  
17 of the Mississippi River corridor between  
18 Baton Rouge and where it flows out to the  
19 Gulf of Mexico, the communities around  
20 that corridor and the industrial  
21 facilities that operate there.

22 MS. HIGGINS:

23 So there are many industrial  
24 facilities that operate along the  
25 Mississippi River between Baton Rouge and

1           New Orleans, and yes, I approved permits  
2           for those facilities.

3           EXAMINATION BY MS. HARDEN:

4           Q.     In that region?

5           A.     Yes, in that region.

6           Q.     Thank you.

7                     Is it your belief that adverse  
8           health effects would not occur from pollution  
9           allowed under the National Ambient Air Quality  
10          Standard?

11          A.     It's my belief that there would be a  
12          very low level of risk associated with air  
13          quality below the -- so ambient concentrations  
14          of pollutants below the National Ambient Air  
15          Quality Standards. That's what the standards  
16          are defined to do.

17          Q.     How would you define low level of  
18          exposure or low level of effects? Am I  
19          understanding that correctly?

20          A.     A very low level of risk is what I  
21          stated and EPA makes that determination on a  
22          case-by-case basis through the standard setting  
23          process. So their mandate is to adopt  
24          standards that are protective of health with an  
25          adequate margin of safety, considering

1 sensitive populations, considering multiple  
2 potential end points and adverse impacts. So  
3 that's -- that assessment is done by EPA.

4 Q. So your statement today that there's  
5 low risks is based on EPA setting up the  
6 regulation for pollution under the National  
7 Ambient Air Quality, which presumes a low level  
8 of risk below that standard?

9 A. Yes, at least in part. I would have  
10 to say it stems from Congress, from the federal  
11 law and the Congressional mandate and their  
12 adoption of that law and then EPA's  
13 implementation of it.

14 Q. I'd like to turn your attention to  
15 your rebuttal. Give me one minute. Yeah, your  
16 rebuttal testimony on page 4, looking at  
17 lines 5 through 11.

18 A. Hold on just a second.

19 Q. Sure. Let me know when you've had a  
20 chance to look at it. I have a question about  
21 it.

22 A. Ms. Harden, would you mind giving me  
23 the page number again?

24 Q. So we're in your rebuttal testimony,  
25 page 4 --

1 A. Okay.

2 Q. -- and we're looking at the lines 5  
3 through 11 on that page.

4 A. (Witness examines document.) Okay.

5 Q. Is it accurate to understand that  
6 your response means that there's no evidence of  
7 a level below which exposure to particulate  
8 matter would be guaranteed to be safe?

9 A. Could you repeat that question,  
10 please?

11 Q. I want to know if your statement to  
12 Question 7, if it's accurate to understand what  
13 -- your response there to mean that there is no  
14 evidence of a level below which exposure to  
15 particulate matter would be safe?

16 A. No, I don't think that that would be  
17 a proper interpretation.

18 Q. How would you say it?

19 A. Well, as I stated in my testimony,  
20 or to restate, a no risk threshold hasn't been  
21 conclusively determined from the scientific  
22 studies. That doesn't mean that there is no  
23 evidence that there would be such a level.

24 Q. So does that mean that there's no  
25 evidence of a risk of exposure to particulate

1 matter in terms of effects?

2 A. Could you repeat one more time for  
3 me, please?

4 Q. Would that mean that there is no  
5 level at which the risk of adverse effects  
6 would go away, let's just say?

7 A. A no adverse effects threshold or  
8 level has not been established or determined.  
9 That doesn't mean that there is no such level.

10 Q. Okay. So you're not saying that it  
11 doesn't exist. You're just saying that science  
12 hasn't gotten there to figuring it out?

13 A. Exactly.

14 Q. Are you aware of the report Fumes  
15 Across the Fence Line by the NAACP and the  
16 Clean Air Act task force? It analyzes the  
17 national data on the ill health effects of oil  
18 and gas pollution permitted under the Clean Air  
19 Act that disproportionately burdened over 1  
20 million African-Americans?

21 MR. CRAGIN:

22 Objection; assumes facts not in  
23 evidence.

24 JUDGE GULIN:

25 Well, why don't you just ask if she

1 is --

2 MS. HARDEN:

3 Is aware of the report?

4 JUDGE GULIN:

5 Yes.

6 MS. HIGGINS:

7 I don't know that, if I have seen  
8 the report or not. I'm not overly  
9 familiar with it certainly.

10 EXAMINATION BY MS. HARDEN:

11 Q. Have you done any work in analyzing  
12 cancer risks in Louisiana parishes?

13 A. I have over the course of my career  
14 reviewed toxicological information, including  
15 information on cancer risks in a regulatory  
16 setting and how that information is used to  
17 establish standards. I have not, you know,  
18 compiled that evidence or done studies.

19 Q. So you wouldn't know or would you  
20 know whether or not there are parishes here in  
21 Louisiana where air quality is above EPA's  
22 level of concern for cancer risk?

23 A. Yes, I have some knowledge of that.

24 MS. HARDEN:

25 I'd like to enter into evidence the

1 NAACP Clean Air Act report, Fumes Across  
2 the Fence Line, Your Honor, at this time.

3 JUDGE GULIN:

4 When you say "enter into the  
5 evidence," you mean you want to show it  
6 to the witness for cross-exam purposes?

7 MS. HARDEN:

8 I would like to do both if that's --

9 JUDGE GULIN:

10 Well, you're certainly not ready to  
11 enter it into evidence, but --

12 MS. HARDEN:

13 Well, for cross-exam purposes and  
14 then we'll see where it goes.

15 JUDGE GULIN:

16 Okay.

17 MS. HARDEN:

18 I think it's in the box.

19 JUDGE GULIN:

20 This will be DSCEJ No. --

21 MS. HAND:

22 Three, Your Honor.

23 JUDGE GULIN:

24 Ms. Higgins, would you remind me,  
25 did you indicate that you were or were

1 not aware of this?

2 MS. HIGGINS:

3 I haven't seen this report, Your  
4 Honor.

5 JUDGE GULIN:

6 Okay. All right.

7 MS. HARDEN:

8 I neglected to write down a  
9 particular page number, so if you can  
10 just bear with me one moment.

11 EXAMINATION BY MS. HARDEN:

12 Q. If I can get -- Ms. Higgins, hi. If  
13 I can get you to turn to page 18 of the report,  
14 and let me know when you're there.

15 A. I think I'm on page 18.

16 Q. Thank you.

17 Do you see Table 3 appears on your  
18 page 18?

19 A. Yes.

20 Q. So the title of this table is The  
21 top ten states with African-American  
22 populations living in counties above EPA's  
23 level of concern for cancer risk based on 2015  
24 population data. (As read.) And if you can  
25 take a moment to look at this table, you see



1 Louisiana is ranked second among these top ten  
2 states with high cancer risk levels, and it  
3 shows that the number of counties that pushes  
4 Louisiana up in the rankings is that there are  
5 19 -- counties, parishes, we know those are  
6 equivalent -- that there are 19 parishes in  
7 Louisiana with a level -- with air quality such  
8 that it exceeds EPA's concern for cancer risk.

9 In your experience with looking at  
10 cancer risk data, would you agree that 19  
11 sounds about right in the State of Louisiana or  
12 more or less than this report?

13 MR. CRAGIN:

14 Your Honor, I'm going to object.  
15 The witness has said she hasn't seen this  
16 report before. She's not laid a  
17 foundation.

18 MS. HARDEN:

19 I have, Your Honor.

20 JUDGE GULIN:

21 No, you have not, Ms. Harden.

22 MS. HARDEN:

23 Well, may I, please?

24 JUDGE GULIN:

25 Go ahead.

1 MS. HARDEN:

2 The witness has said that she has  
3 reviewed cancer risk data in the State of  
4 Louisiana over the years as part of her  
5 work.

6 JUDGE GULIN:

7 The proper way to use this,  
8 Ms. Harden, is to have her look over the  
9 chart and ask her if that refreshes her  
10 recollection about the cancer risk in  
11 Louisiana or something along those lines.  
12 But what you're attempting to do is read  
13 into the record this chart and then just  
14 ask her to comment on it. That's just  
15 not a proper way to do cross-examination,  
16 so --

17 MS. HARDEN:

18 Well, may I ask Ms. Higgins if this  
19 refreshes your memory in terms of the  
20 cancer risk information you've seen over  
21 the years?

22 JUDGE GULIN:

23 Sure.

24 MS. HIGGINS:

25 No.

1 EXAMINATION BY MS. HARDEN:

2 Q. It doesn't?

3 A. No, it doesn't.

4 Q. What's different about it for you in  
5 terms of the -- I'm specifically looking at the  
6 count of parishes being 19 in the state.

7 A. Yes. I mean, this is a totally new  
8 report to me. It looks like a pretty dense and  
9 certainly a very lengthy report. I really  
10 can't look at Table 3 out of context, you know.  
11 I don't even know how these states were ranked,  
12 what the basis was. I don't know what in this  
13 report EPA's level of concern for cancer risk,  
14 how they've defined that in the context of this  
15 NAACP report. There's just no way I can -- you  
16 know, I can comment on the table or the report  
17 without having had an opportunity to review it.

18 Q. Fair enough. Fair enough,  
19 Ms. Higgins.

20 Are you aware of how EPA comes up  
21 with cancer risk thresholds or levels?

22 A. I have an understanding of the  
23 process that they use, but this -- you know,  
24 out of context in this report, EPA's level for  
25 concern for cancer could be -- could have a

1 number of different meanings.

2 Q. Is it safe to say from your earlier  
3 testimony that you would agree that there are  
4 some parishes in this state that would be above  
5 what you know to be EPA's level of concern for  
6 cancer risk?

7 A. Not necessarily, no. I can tell you  
8 that I have looked at, you know, cancer risk  
9 data, EPA's National Air Toxics Assessments,  
10 which includes an evaluation of cancer risk. I  
11 can tell you that their, you know, descriptions  
12 of that data is heavily, you know, caveated  
13 with a -- you know, a lot of explanations. I'm  
14 aware of -- you know, of particular instances  
15 or cases over the years where, you know,  
16 evaluations have been performed. But, you  
17 know, no, I can't generally say that I'm aware  
18 of particular parishes in this state that are  
19 over, you know, for a particular oil and gas  
20 industry, which this seems to be referencing  
21 for parishes in Louisiana. I just can't make  
22 any comprehensive statement. This is  
23 completely outside the scope of my testimony  
24 and the review that I've done for this case.

25 Q. Okay. I don't want to burden you

1 with the report. I just thought this  
2 information would be in line with what your  
3 work is and might be able to comment it.

4 But let me ask you this. In terms  
5 of your testimony with regards to the  
6 permitting, does any of your experience look at  
7 impacts in terms of pollution loading, effects  
8 in terms of enforcement and monitoring and  
9 inspection of facilities? Does it go into  
10 those areas?

11 A. I think that was sort of a compound  
12 question. Could you repeat the first piece of  
13 information you asked me for?

14 Q. Actually let me strike that question  
15 because I'm getting low on time. Let me move  
16 on.

17 JUDGE GULIN:

18 Let me just also say real quickly.

19 MS. HARDEN:

20 Yeah.

21 JUDGE GULIN:

22 Just to be sure for the record,  
23 DSCEJ No. 3 is admitted for cross  
24 purposes.

25 MR. CRAGIN:

1           Your Honor, I mean, I'm not even  
2           sure it should be admitted for cross.  
3           She didn't cross her on it.

4           JUDGE GULIN:

5           Well, it's part of the  
6           administrative record in the sense that  
7           if my ruling is disturbed by the Council  
8           or by a reviewing court, it will be there  
9           for them to review, but obviously it's  
10          not in evidence, and, Council, should not  
11          be relying on it or even reading it in my  
12          judgment unless they reverse my ruling.

13          MR. CRAGIN:

14                 Thank you, Your Honor.

15          EXAMINATION BY MS. HARDEN:

16                 Q.    Ms. Higgins, is it correct that  
17                 Entergy did not submit an environmental  
18                 assessment statement along with its recent  
19                 application to the DEQ for a Title 5 air permit  
20                 renewal?

21                 A.    Yes, that's correct.  An  
22                 environmental assessment statement is not  
23                 required as part of that application.  It's my  
24                 understanding that DEQ has exercised its  
25                 discretion and requested an environmental

1 assessment statement and that Entergy is  
2 preparing one.

3 Q. And in light of that situation with  
4 regards to the initial air permit application  
5 that Entergy filed for the proposed CT gas  
6 plant, are you aware of that earlier permit  
7 application?

8 A. I'm aware there was an earlier  
9 application.

10 Q. I'm sorry?

11 A. Yes, I'm aware of the earlier  
12 application.

13 Q. Were you able to review that earlier  
14 application?

15 A. I reviewed it, yes, to some extent.

16 Q. Without -- Scratch that.

17 Do you have any -- With regards to  
18 the environmental assessment statement that  
19 Entergy is -- you're presenting today, is this  
20 in your testimony that they're preparing a new  
21 environmental assessment statement?

22 A. No, ma'am.

23 Q. How do you come to know that?

24 A. Through discussions with counsel.

25 Q. Counsel for?

1 A. For Entergy.

2 Q. Thank you.

3 MS. HARDEN:

4 I have no further questions.

5 JUDGE GULIN:

6 Thank you, Ms. Harden.

7 And for the advisors.

8 MR. BEATMANN:

9 No questions, Your Honor.

10 JUDGE GULIN:

11 Okay. Any redirect?

12 MR. CRAGIN:

13 No redirect, Your Honor.

14 JUDGE GULIN:

15 Thank you very much, Ms. Higgins.

16 You are excused.

17 MS. HIGGINS:

18 Thank you.

19 JUDGE GULIN:

20 Let's go ahead and take a ten-minute  
21 break. We'll come back at ten after ten  
22 and start with Mr. Losonsky.

23 (Whereupon a recess was taken.)

24 JUDGE GULIN:

25 Let's go back on the record.



1           Mr. Alford, you distributed an  
2           affidavit. You want to describe what  
3           that is and --

4           MR. ALFORD:

5           Thank you, Your Honor. This is the  
6           last component to our homework assignment  
7           from Friday, and what we have done here  
8           is moved a Q. and A. that had previously  
9           been in the testimony, in the  
10          supplemental testimony of Jon Long  
11          submitted in November of 2016. This  
12          affidavit by Dr. Losonsky provides  
13          information about the CK technical  
14          report.

15          JUDGE GULIN:

16          And, once again, you will be  
17          providing an updated, fresh testimony to  
18          incorporate all of this; correct?

19          MR. ALFORD:

20          Your Honor, on this one, we thought  
21          the most efficient thing to do is just  
22          take the Q. and A. and submit it in  
23          affidavit form. So the idea is that it  
24          won't mess up pagination throughout  
25          Dr. Losonsky's testimony.

1 JUDGE GULIN:

2 All right. So do we need to make  
3 this an exhibit then?

4 MR. ALFORD:

5 That would -- That would be our  
6 proposal, Your Honor. We would mark it  
7 as ENO-1.

8 JUDGE GULIN:

9 Do we already have an ENO-1?

10 MS. HAND:

11 I do not have one.

12 JUDGE GULIN:

13 No? Okay.

14 And this will be a sort of  
15 standalone ENO -- Any objection to this  
16 becoming substantive evidence?

17 MS. MILLER:

18 No, Your Honor.

19 JUDGE GULIN:

20 All right.

21 All right, Mr. Losonsky. If I could  
22 ask you to please stand, raise your right  
23 hand, face the court reporter.

24 GEORGE LONSONSKY, Ph.D.,

25 after having been duly sworn by the

1 above-mentioned Certified Court Reporter, was  
2 examined and testified as follows:

3 JUDGE GULIN:

4 Okay. Ms. Stevens Miller.

5 EXAMINATION BY MS. MILLER:

6 Q. Good morning, Dr. Losonsky.

7 A. Good morning.

8 Q. My name is Susan Stevens Miller, and  
9 I represent the Alliance for Affordable Energy  
10 and 350 New Orleans in this proceeding. I just  
11 had a couple of questions for you this morning.

12 Can you explain what is meant by the  
13 term "overtopping"?

14 A. Yes. Overtopping is the term that  
15 refers to what happens when a storm surge comes  
16 in and the water exceeds -- the elevation  
17 exceeds the elevation of a levee and then it  
18 pours over the top.

19 Q. And during Hurricane Katrina, the  
20 levees near Michoud were not breached; is that  
21 correct?

22 A. Yes. To my knowledge, that is  
23 correct.

24 Q. They were actually overtopped; is  
25 that correct?

1 A. Yes.

2 Q. Does FEMA still designate the  
3 Michoud site area as a critical flood zone?

4 A. I need you to explain to me or refer  
5 to me the definition, FEMA's definition of  
6 "critical flood zone" because as a member of  
7 the Flood Commission, there were many  
8 designations that were referring to various  
9 aspects of flooding as critical. So your  
10 definition, I need to please understand to be  
11 able to answer your question.

12 Q. Well, it would actually be FEMA's  
13 definition, but that's fine.

14 Are you aware that the Army Corps of  
15 Engineers' position that levees along the --  
16 will never provide adequate protection to the  
17 communities in New Orleans?

18 A. I spent five years on the Southeast  
19 Louisiana Flood Protection Authority East and  
20 we worked very closely with the Army Corps of  
21 Engineers, and I was appointed by Governor  
22 Kathleen Blanco to be on that commission when  
23 the Levee Board was reconstructed, reconfigured  
24 to include technical experts. So I was very  
25 intimately involved in the discussions with the

1 Army Corps of Engineers concerning the  
2 components that are necessary for providing  
3 flood protection, and those components are much  
4 more than levees.

5 And so the spirit of the quote that  
6 I think that you are quoting -- and you haven't  
7 shown me exactly where you got that from -- so  
8 to definitively address it, I should probably  
9 see that quote, but I'm giving you a general  
10 answer that refers to the spirit of your quote.  
11 And the spirit of the quote is it reflects the  
12 recognition that the Army Corps of Engineers,  
13 the Southeast Louisiana Flood Protection  
14 Authority East, and later on the Coastal  
15 Protection Restoration Authority, of course,  
16 had that the sum total of a protective system  
17 such as the hurricane and storm damage risk  
18 reduction system that we have now includes many  
19 more components than levees. And, of course,  
20 the most spectacular one is Lake Borgne Search  
21 Barrier, but there are many others.

22 Q. Do you know what standard the Army  
23 Corps of Engineers was required to build the  
24 new levee system, what standard they used to  
25 determine it was adequate?

1           A.     The construction of the hurricane  
2 and storm damage risk reduction system involved  
3 many different standards because it has many  
4 different components. There was a lot of  
5 research and testing that went into the  
6 determination of the correct actions to be  
7 taken with respect to all of the improvements,  
8 improvements to levees, as well as the new  
9 components. And so the Army Corps of  
10 Engineers, of course, used the appropriate  
11 standards so that the end result would be  
12 protection that could be quantified. And  
13 that's really the importance of the standards  
14 is to get the results, and we have that  
15 quantification of those results, then, finally  
16 in our master plan.

17           Q.     But I was talking specifically with  
18 regard to the levees, what standard did the  
19 Army Corps of -- was the Army Corps of  
20 Engineers required to use for the levees  
21 itself?

22           A.     Now, again, if you could be specific  
23 about which aspect of standards because there  
24 are various standards that are involved. Such  
25 as, for example, 100-year, 500-year storm

1 protection. That's a standard. There are  
2 standards that's referred to levee heights.  
3 That's a standard. So we really need to be  
4 more specific before we talk about standards.

5 Q. What standard did they apply from  
6 the Bush administration legislation that passed  
7 2007 Water Resources Development Act? What  
8 standard did that create for the design of the  
9 levees?

10 A. I'm aware that there was a Water  
11 Resources Act and that it generated standards.  
12 I cannot, as I sit here right now, recall the  
13 exact nature, but as I've explained before,  
14 there are many standards that actually went  
15 into the design and construction, and that's  
16 what's important for us having the protection.

17 Q. So since you cannot explain the  
18 standard adopted in the 2007 act, I assume you  
19 don't have a position or can't take a position  
20 on whether that standard was actually -- is  
21 actually lower than the standard the Army Corps  
22 of Engineers was instituting prior to Hurricane  
23 Katrina?

24 A. Well, if we're going to -- If I'm  
25 going to make any comments about the standard,

1 it would be helpful to look at it, but the  
2 hurricane storm damage risk reduction system  
3 was developed to provide protection for the  
4 city. And I am certainly not aware of a  
5 lowering in the sense of providing less  
6 protection.

7 Q. Are you familiar with the city  
8 ordinance on flood damage protection?

9 A. The -- I'm not -- It's not in my  
10 purview to be up to date on city ordinances,  
11 and I can say this, though, if the city has  
12 ordinances regarding flood protection, that  
13 kind of action falls under the general  
14 integrated program that the CPRA, Coastal  
15 Protection Restoration Authority's, master plan  
16 has defined. And there are many components to  
17 that, the Sewerage & Water Board, the City  
18 Council, of course, and all these various  
19 actions fall under the general protection  
20 provided by the master plan.

21 Q. But since you don't know about the  
22 specific city ordinance, you didn't do any  
23 analysis as to whether the plans for the site  
24 at Michoud actually meet that ordinance; is  
25 that correct?



1           A.     Well, the -- Repeat the question,  
2 please, to make sure that I specifically answer  
3 your question.

4           Q.     You stated that you weren't aware of  
5 the specific city ordinance regarding flood  
6 protection. Does that mean that you didn't do  
7 any analysis to determine whether the Michoud  
8 site actually meets the requirements of that  
9 ordinance?

10           MR. BARTON:

11                     Your Honor, I have to object here.  
12                     We haven't been given a specific  
13                     ordinance number. There are a lot of  
14                     city ordinances that relate to flood  
15                     protections.

16           JUDGE GULIN:

17                     Can you be more specific?

18           MS. MILLER:

19                     Sure. Ordinance No. 26906 adopted  
20                     on April 7th, 2016.

21           MR. BARTON:

22                     Do we have copies of that ordinance?

23           MS. MILLER:

24                     I have one copy of it. I'm not  
25                     asking for the terms. I'm asking if he

1 knows about it.

2 JUDGE GULIN:

3 You can answer that question. Are  
4 you familiar with that ordinance off the  
5 top of your head?

6 DR. LOSONSKY:

7 Off the top of my head, I don't have  
8 the numbers or the qualifications behind  
9 that ordinance, but I can say that if the  
10 ordinance concerns protection of any  
11 particular area from flooding, I have --  
12 My familiarity with the hurricane and  
13 storm damage risk reduction system and  
14 with the master plan tells me that we  
15 have a way to predict whether or not  
16 there will be flooding. And we have that  
17 and we can make determinations with  
18 confidence based on that.

19 The other thing is that my  
20 calculations and my work concerned  
21 determining whether or not the use of  
22 proposed pumps that will be needed for  
23 either of the two proposed units would  
24 create any damage or create any -- or add  
25 to subsidence and those are calculations

1           that I did. And I imagine that if there  
2           is an ordinance that relates to  
3           protection, I've addressed the protection  
4           that's needed to ensure that there's no  
5           risk in using the proposed wells for the  
6           two proposed units.

7           EXAMINATION BY MS. MILLER:

8           Q.     But essentially, neither of your  
9           reports addressed the specifics of the  
10          ordinance and whether the Michoud site meets  
11          the requirements of that city ordinance; is  
12          that correct?

13          A.     I can't address a specific  
14          ordinance.

15          Q.     Does your report cite that city  
16          ordinance in its discussion?

17          A.     No, we do not cite that ordinance in  
18          our discussion.

19          Q.     My next question is with regard to  
20          the C&K report on air emissions. You used the  
21          AERSCREEN; is that correct?

22          A.     This was not a part of the report  
23          that I worked on, so I have no expertise there.

24          MS. MILLER:

25                 Thank you, Your Honor.

1 JUDGE GULIN:

2 Thank you.

3 Ms. Harden.

4 EXAMINATION BY MS. HARDEN:

5 Q. Good afternoon, Mr. Losonsky.

6 A. Yes, correct.

7 Q. My name is Monique Harden. I'm an  
8 attorney with Deep South Center for  
9 Environmental Justice.

10 So in your testimony, you discuss  
11 groundwater effects and impacts, and I'd like  
12 to walk through that with you starting with  
13 have you had a chance to look at the direct  
14 testimony of Jonathan Long in this case?

15 A. Yes, I've had a chance to look at  
16 that.

17 Q. Would you mind taking a look at  
18 page 39 of his testimony?

19 DR. LOSONSKY:

20 Do I have that here?

21 MR. BARTON:

22 No, you don't. One moment.

23 DR. LOSONSKY:

24 Which page, please?

25 MS. HARDEN:

1                   Thirty-nine of his -- Did I say  
2                   direct testimony?

3                   MR. BARTON:

4                   You did.

5                   MS. HARDEN:

6                   Okay. Thank you.

7                   DR. LOSONSKY:

8                   This concerns Question 59?

9                   MS. HARDEN:

10                  That is correct.

11                  DR. LOSONSKY:

12                  All right.

13                  EXAMINATION BY MS. HARDEN:

14                  Q. If you could take a look at his  
15                  answer, refresh your memory on that.

16                                 (Whereupon a pause occurred in the  
17                  proceedings.)

18                  DR. LOSONSKY:

19                  All right.

20                  EXAMINATION BY MS. HARDEN:

21                  Q. Okay. So in reference to  
22                  Mr. Jonathan Long's direct testimony on page  
23                  39, I'd like you to answer this question. Do  
24                  you have any reason for disagreeing with his  
25                  testimony that the maximum possible daily use

1 of groundwater at the now deactivated Michoud  
2 Power Plant was 10.87 million gallons per day?

3 A. It's important to under -- to know  
4 what maximum possible use means. So as I  
5 understand it, maximum possible use is based on  
6 the flow rates of pumps. That's different from  
7 actual withdrawal rates from a well. So I'm  
8 sure that Mr. Long did not misstate or  
9 miscalculate the value that's based on the  
10 maximum flow rate of a pump, but, again, I  
11 stress that that does not equate to an actual  
12 flow rate from a well.

13 Q. Understood.

14 And, in fact, in Mr. Long's  
15 testimony, he has a little parenthetical insert  
16 there on line 9 that makes it clear he's  
17 referring to the withdrawal by pumps.

18 A. Yeah.

19 Q. So the distinction you were making  
20 is served by his testimony?

21 A. Uh-huh (indicating affirmatively).

22 Q. So you have no reason for  
23 disagreeing with that knowing that he's looking  
24 at the withdrawal from pumps?

25 A. Yes.

1 Q. All right. Further on in his  
2 testimony, I want to know if you have any  
3 reason to disagree with his testimony that the  
4 proposed CT gas plant is expected to withdraw  
5 90 percent less groundwater?

6 A. Could you please restate your  
7 question?

8 Q. Yeah. Would you disagree with his  
9 testimony that the proposed CT gas plant is  
10 expected to withdraw 90 percent less  
11 groundwater than the deactivated Michoud  
12 facility?

13 A. I can't --

14 MR. BARTON:

15 I'm sorry. What line are you on?

16 DR. LOSONSKY:

17 Thirteen, I think.

18 MS. HARDEN:

19 Thirteen and 14 where it says, NOP  
20 -- the New Orleans Power Station,  
21 proposed. NOPS shows a reduction of  
22 90 percent in comparison to the  
23 deactivated Michoud units. (As read.)

24 MR. BARTON:

25 Thank you.

1 DR. LOSONSKY:

2 And I can't agree with -- I don't  
3 agree with your characterization there  
4 because this refers, again, to the flow  
5 rates of pumps, not to the actual use of  
6 the gas plant.

7 EXAMINATION BY MS. HARDEN:

8 Q. So that with the CT flow rate of  
9 pumps, it would be 90 percent less than that of  
10 the deactivated Michoud facility. Would you  
11 agree with that?

12 A. That's what this is saying.

13 Q. So the answer is yes or no, sir?

14 A. Restate just to make sure that we  
15 didn't get -- because, you know, we've gone  
16 back and forth. And I just want to make sure  
17 for the record that's correct.

18 Q. Well, I'll just read the sentence  
19 and then you can say if you agree or you don't  
20 agree.

21 A. Yeah.

22 Q. Comparing the rate reported to the  
23 USGS to the absolute maximum possible  
24 groundwater usage rates for the NOPS shows a  
25 reduction of 90 percent in comparison to the



1 deactivated Michoud units. (As read.)

2 Do you agree with that statement?

3 A. I agree with that statement, but  
4 with reference, again, to that parenthetical  
5 of --

6 Q. Sure.

7 A. -- explanation that he has earlier,  
8 which applies here as well.

9 Q. So that would mean that with regards  
10 to that flow rate of the pumping for the  
11 proposed CT gas plant, that it would use  
12 10 percent of the flow rate pumped at the  
13 deactivated Michoud unit?

14 MR. BARTON:

15 I'm going to object here. That's a  
16 mischaracterization of Jonathan Long's  
17 testimony. The testimony says that  
18 maximum possible daily usage of  
19 groundwater at this site is defined as  
20 the largest amount that could be  
21 withdrawn by the pumps, not that will be  
22 withdrawn by the pumps. (As read.)

23 DR. LOSONSKY:

24 Thank you. That's what I was about  
25 to say.

1 MS. HARDEN:

2 So the issue is "could be"?

3 MR. BARTON:

4 Correct. He's talking about --

5 MS. HARDEN:

6 Okay. So restate with could be.

7 MR. BARTON:

8 -- pumping capacity and not about

9 capacity being specific unit --

10 JUDGE GULIN:

11 She understands.

12 Go ahead and restate the question.

13 EXAMINATION BY MS. HARDEN:

14 Q. Okay. So would you agree, then,  
15 that the proposed CT gas plant would be  
16 expected -- could be expected to withdraw  
17 10 percent of what -- of the flow rate pumped  
18 at the deactivated Michoud facility?

19 A. No, because what the plant could use  
20 does not depend on what the well is able to  
21 provide. What the well is able to provide has  
22 to do with aquifer and nature. What the pump  
23 could -- What the unit could use obviously has  
24 to do with the design of the unit and how it  
25 operates. And so that's an engineering

1 question.

2 Q. So, Mr. Losonsky, the reduction of  
3 90 percent leaves what? Ten percent? How  
4 would you characterize what's left in terms of  
5 the difference in margin?

6 A. I would agree that 100 percent minus  
7 90 percent equals 10 percent.

8 Q. What would that mean in terms of the  
9 statement, though, when he's saying 90 percent  
10 reduction? How would you characterize the  
11 remaining 10 percent?

12 A. I'm not sure what you mean by how  
13 would I characterize the remaining 10 percent?

14 Q. Would you characterize the remaining  
15 10 percent as the maximum possible daily use?

16 A. I'm sorry, but you've changed your  
17 wording a little, and obviously in this  
18 discussion, words do matter.

19 Q. Yes.

20 A. And so, yeah.

21 Q. If I can.

22 A. Yeah.

23 Q. With regard to the question I just  
24 asked --

25 A. Yes.

1 Q. -- would you agree that it's going  
2 to be 10 percent of the maximum possible daily  
3 use?

4 A. It?

5 Q. It. The CT gas plant, sir.

6 A. Well, that's -- that's, I think,  
7 where we're miscommunicating and I'm sorry  
8 about that. Because the 10 percent, 90  
9 percent, that all refers to the pump, the  
10 bilge, the pump, but you just mentioned in your  
11 last statement to me the CT gas plant. And,  
12 again, the CT gas plant's ability to use water  
13 is a very different question from the pump's  
14 ability to pump out of the well.

15 Q. For purposes of Mr. Long's  
16 testimony, he's looking at the effect of --  
17 he's measuring the amount of groundwater  
18 withdrawal. Do you agree with that?

19 MR. BARTON:

20 Objection. That's a  
21 mischaracterization of his testimony.

22 MS. HARDEN:

23 How is that?

24 JUDGE GULIN:

25 That's all right. I'll overrule

1           that. He can answer.

2           DR. LOSONSKY:

3                     Well, I'm sorry. Please again  
4           repeat your question so that I can  
5           accurately answer.

6           EXAMINATION BY MS. HARDEN:

7                     Q. Do you believe that Mr. Long's  
8           testimony here is measuring the amount of  
9           groundwater withdrawal?

10                    A. Your statement is incomplete because  
11           it doesn't say what groundwater withdrawal. If  
12           you're referring to the groundwater withdrawal  
13           that might be used by the plant, then these  
14           calculations are really irrelevant because they  
15           simply reflect what a pump is able to pump out  
16           of a well. Whereas, what the CT unit can use  
17           depends on the engineering factors of the  
18           actual plant.

19                    Q. It seems to me that you're quibbling  
20           with his testimony, and I'm just trying to find  
21           out how much that you rely on it in your  
22           assessment. And it doesn't seem like you are  
23           or you do rely on it?

24                    A. All right. In my work, I relied on  
25           the actual flow rates that are planned for both

1 of the units, and, as you know, those are  
2 different from these maximal possible --  
3 maximum possible flow rates that we're talking  
4 about here. So I am not disagreeing with Jon  
5 Long's testimony at all. It's very clear it  
6 refers to maximum possible use, which means use  
7 of the pump. I just want to make sure that  
8 we're not confusing that with maximum use of or  
9 any kind of use of the plant itself because  
10 that's a different issue, and that's the one  
11 that I was concerned with in my work. So my  
12 work concerned figuring out if there's any risk  
13 that's posed by using these wells to operate  
14 the plants.

15 Q. Have you calculated as part of your  
16 work how much in terms of gallons per day would  
17 be used?

18 A. The determination -- Let me back up.  
19 I'm a hydrogeologist, so my job here  
20 was to find out what Mother Nature is going to  
21 do when we use -- when Entergy uses those wells  
22 at the flow rates at which they're going to use  
23 them. All right? So I was concerned with  
24 parameters that reflect Mother Nature,  
25 parameters that reflect the aquifer and how it

1 responds. The value that you're referring to,  
2 which I think we've been kind of dancing around  
3 here, and I'm sorry about that.

4 Q. I haven't been dancing. Tried not  
5 to. That wasn't my aim here today.

6 A. Yeah. And I'm sorry about that  
7 characterization, but this back and forth,  
8 which ultimately leads to -- I'm sure we're  
9 both trying to think of the same thing, which  
10 is the value of the flow rate that is actually  
11 going to be used by the facility and,  
12 therefore, the flow rate that's actually going  
13 to come out of the pumps. That is an  
14 engineering value, which is one that is not  
15 within the purview of my job.

16 My job is to take the value and use  
17 it to determine whether or not it's safe. And  
18 I did that, and I determined -- I did that and  
19 I want to tell you, I did that because it's  
20 very important to me that the hurricane and  
21 storm damage risk reduction system is safe --

22 MS. HARDEN:

23 Judge, I'm --

24 DR. LOSONSKY:

25 -- and that's why I did that.

1 MS. HARDEN:

2 -- concerned about time and he's  
3 filibustering.

4 JUDGE GULIN:

5 You finished your answer.

6 EXAMINATION BY MS. HARDEN:

7 Q. So the answer is you did not  
8 calculate the usage because that's not a part  
9 of your purview?

10 A. Yes.

11 Q. Yes, thank you.

12 So moving on then, I'd like to know  
13 in your supplemental and amending direct  
14 testimony at page 10, line 16 through 17, and  
15 that continues on to page 11 at lines 1 through  
16 4 -- you can take a look at that.

17 JUDGE GULIN:

18 Say that one more time, please.

19 MS. HARDEN:

20 Sure. We're looking at  
21 Mr. Losonsky's supplemental and amending  
22 direct testimony page 10, lines 16  
23 through 17 and then continuing on page 11  
24 at lines 1 through 4.

25 JUDGE GULIN:



1 Thank you.

2 DR. LOSONSKY:

3 All right. So I just turned to the  
4 page, so --

5 JUDGE GULIN:

6 What page is that?

7 DR. LOSONSKY:

8 Page 10.

9 EXAMINATION BY MS. HARDEN:

10 Q. Sure. Lines 16 through 17.

11 A. Yeah.

12 Q. And continuing on to page 11,  
13 lines 1 through 4.

14 A. All right. Yes.

15 Q. Okay. So in this testimony, you  
16 comment on a media interview with Kathleen  
17 Jones, who is the lead author of the NASA Jet  
18 Propulsion Laboratory report on subsidence in  
19 New Orleans. But you did more than just read a  
20 news report, Mr. Losonsky. Did you also review  
21 the report itself on subsidence?

22 A. Yes, I did.

23 MS. HARDEN:

24 Your Honor, I'd like to enter for  
25 cross the NASA report.

1 JUDGE GULIN:

2 Okay. And we'll call that DSCEJ

3 No. 3.

4 MS. HARDEN:

5 Yes.

6 THE COURT REPORTER:

7 I have four.

8 JUDGE GULIN:

9 Four.

10 (Whereupon a pause occurred in the  
11 proceedings.)

12 EXAMINATION BY MS. HARDEN:

13 Q. I want to get your opinion on a few  
14 of the findings and conclusions in this report  
15 that you've previously reviewed.

16 JUDGE GULIN:

17 Can I get a copy of that, please?

18 MS. HARDEN:

19 Oh, I'm sorry.

20 JUDGE GULIN:

21 Thank you.

22 EXAMINATION BY MS. HARDEN:

23 Q. On page 10 in Section 4.1.2,  
24 groundwater withdrawal section of the report.

25 A. Yes.

1 Q. I want you to look at the first  
2 sentence in that section that reads,  
3 Groundwater withdrawal can be a primary driver  
4 of subsidence in urban and industrial areas and  
5 has been determined to be a causative agent in  
6 the Michoud area in New Orleans previously.  
7 (As read.)

8 Question: Do you have any basis for  
9 disagreeing with that statement?

10 A. Can you please direct me again to  
11 exactly what it says and what you are quoting?

12 Q. Are you on page 10 on the NASA  
13 report on subsidence? So we're looking at  
14 Section 4.1.2.

15 A. Yes.

16 Q. Titled "Groundwater withdrawal" and  
17 I just read the first sentence in that section.

18 A. Yes.

19 Q. Do you have any reason or any basis  
20 for disagreeing with that statement?

21 A. All right. The first part of it  
22 says that, Groundwater withdrawal can be a  
23 driver in urban areas. (As read.) That's a  
24 very general statement that I agree with.

25 The second part, has been determined

1 to be a causative agent in the Michoud area.  
2 (As read.) I don't know what the basis for  
3 that is or what the --

4 Q. So you haven't reviewed the report  
5 because it gives the basis?

6 A. Well, no. First of all, the --  
7 MR. BARTON:

8 Your Honor, I'm not sure if the  
9 witness was finished with his previous  
10 answer.

11 DR. LOSONSKY:

12 Yeah.

13 JUDGE GULIN:

14 Well, you can finish your answer  
15 before you answer this question.

16 DR. LOSONSKY:

17 If you want us to go to the portions  
18 of the report that provide the data that  
19 substantiate this, we could do that, but  
20 we need to do that first.

21 EXAMINATION BY MS. HARDEN:

22 Q. Mr. Losonsky --

23 A. I can't do that from memory.

24 Q. Okay. Mr. Losonsky, do you have --  
25 Because you've testified about this report, do

1 you have any reason for disagreeing with the  
2 data that serves the basis for that statement?

3 A. The data that I reviewed, which is  
4 the results of the subsidence rate  
5 measurements --

6 Q. I'm sorry. Can you clarify? That  
7 is in this report or something else?

8 A. It should be back here somewhere.  
9 Here it is. Vertical velocity millimeters per  
10 year, Figure 7A.

11 Q. What page are you on, sir?

12 A. I'm on page 14.

13 So -- Well -- Where are we in the  
14 Q. and A. here?

15 Q. Waiting for your response to the  
16 question.

17 A. Okay. Then please repeat the  
18 question.

19 Q. Do you have any basis for  
20 disagreeing with that statement?

21 A. Let me go back to the sentence  
22 itself, please. So it says -- The second part  
23 of it says that groundwater withdrawal -- and  
24 I'm going to skip the first part of the  
25 sentence -- has been determined to be a

1 causative agent in the Michoud area previously.  
2 (And read.) And that refers to a reference.  
3 So the data that this statement about causative  
4 agent in the Michoud area, firstly, that data  
5 would be in a different paper, not in this  
6 paper.

7 Q. Have you read or reviewed the Dokka  
8 report that is part of this report?

9 A. I have seen that report. I have  
10 read many other reports as well. And the  
11 general conclusion from the studies that have  
12 been done is in agreement with Kathleen's  
13 statement that there is not a -- an ability at  
14 this point to make a direct connection.

15 Q. Sir, I think the sentence she and  
16 the other co-authors from Louisiana State  
17 University and other academic institutions make  
18 is that it has been determined to be a  
19 causative agent in the Michoud area of New  
20 Orleans. And I just want to know do you agree  
21 or do you disagree?

22 JUDGE GULIN:

23 There is a third option, of course,  
24 and that option is that you're not in a  
25 position to say you agree or disagree.

1           So it's one of those three.

2           DR. LOSONSKY:

3                   Well, I want to be sure I give the  
4           best answer here. So just give me a  
5           minute, please.

6                   (Whereupon a pause occurred in the  
7           proceedings.)

8           DR. LOSONSKY:

9                   So, again, this refers to one paper,  
10          one paper of many. There has been a lot  
11          of research on this subject.

12          EXAMINATION BY MS. HARDEN:

13           Q.     But you're going beyond the bounds  
14          of this sentence.

15           A.     Yeah.

16           Q.     I really just want to know do you  
17          think that sentence is supported. The  
18          reference is to Dokka. Do you think Dokka  
19          supports that sentence?

20           A.     I would have to go back --

21           Q.     So you don't know?

22           A.     -- to specifically -- to  
23          specifically review Dokka's paper to see if I  
24          would agree with this statement as it's stated  
25          in here.

1 Q. Thank you.

2 And then, with regards to the --  
3 Let's see how much we can get through this.

4 Later on on page 10 -- we're still  
5 in the same section and the same paragraph, in  
6 the center of that first paragraph where it  
7 says, In Michoud's Figure 4, subsidence is 25  
8 to 30 millimeters per year at the power plant,  
9 Entergy New Orleans. The higher subsidence  
10 around the power plant is consistent with the  
11 previously documented influence of groundwater  
12 pumping on localized subsidence and increases  
13 near the Mississippi River where there are more  
14 water withdrawal wells. Figures 4B and 4C.  
15 (As read.)

16 Do you have any basis for  
17 disagreeing with that statement?

18 A. I'll read it to myself again,  
19 please.

20 Now, this refers to the effects of  
21 historical pumping, I believe, because they  
22 refer to more water wells near the Mississippi.  
23 Historically there were a lot more water wells  
24 than there are today. The subsidence, 25 to  
25 30 millimeters per year, is, in fact, what we



1 see in the figure that I referred to,  
2 Figure 6A. Well, actually -- Yeah.

3 I'm not sure if I agree with that  
4 because in the figure, the -- of course, we're  
5 not looking at this figure with the right --  
6 Here we go, Figure 7A. Sorry. We're not  
7 looking at the color version of the figure.  
8 This here refers to 25 to 30 millimeters per  
9 year. Generally that's what I saw in the way  
10 of -- when I looked at that figure, I saw in  
11 that range, 25 to 30 millimeters per year, is  
12 what the data provides and I think the data's  
13 good. So I agree with that part.

14 Let me make sure, since you're  
15 asking me to agree with a statement in this  
16 report.

17 Q. I'm not asking you to agree. I'm  
18 asking whether or not you do or you don't or  
19 you don't have enough information to do either.

20 MR. BROWN:

21 I'd like to object the witness's  
22 obvious evasiveness. I'd like that he be  
23 directed to answer the question.

24 JUDGE GULIN:

25 Okay. I think the witness said he

1 can't say he completely agrees and then  
2 he was going on to explain how he  
3 partially agrees. Do you want to leave  
4 it at he partially agrees, or do you want  
5 more specificity?

6 DR. LOSONSKY:

7 I can clarify this I think. I  
8 agreed --

9 MS. HARDEN:

10 Not in the time I have remaining, so  
11 I've got to move on. Let me just --

12 DR. LOSONSKY:

13 Okay.

14 MS. HARDEN:

15 I think we're going to have to leave  
16 it the way it is --

17 JUDGE GULIN:

18 All right. Let's move on.

19 MS. HARDEN:

20 -- in all fairness.

21 JUDGE GULIN:

22 Okay.

23 MS. HARDEN:

24 Thank you, Mr. Brown.

25 It's very frustrating because I'm

1 reading -- you know, this is in English,  
2 but at any rate --

3 JUDGE GULIN:

4 Well, you're going to have a chance  
5 to redirect.

6 MS. HARDEN:

7 Thank you.

8 MR. BARTON:

9 We've got a scientist on the stand  
10 being asked scientific questions. If  
11 he's not allowed the time to give  
12 scientific responses, I just -- He's not  
13 being evasive, and I object to counsel's  
14 characterization there, but I don't want  
15 to take up more of your time.

16 MS. HARDEN:

17 Thank you, because they're not  
18 scientific responses.

19 EXAMINATION BY MS. HARDEN:

20 Q. I'd like to get your thoughts about  
21 your time as a commissioner on the Southeast  
22 Louisiana Flood Protection Authority East. In  
23 your rebuttal testimony at page 19, lines 7  
24 through 15.

25 A. Nineteen, lines what, please?

1 Q. Sure. You're on page 19 of your  
2 rebuttal testimony and we're looking at lines 7  
3 through 15.

4 A. All right. Yes.

5 Q. So here you state that you do not  
6 believe that siting and operating the proposed  
7 Entergy gas plant would create any risk of  
8 damage to --

9 JUDGE GULIN:

10 Wait. Slow down.

11 MS. HARDEN:

12 I'm sorry.

13 EXAMINATION BY MS. HARDEN:

14 Q. Here you say that you do not believe  
15 that siting and operating the proposed Entergy  
16 gas plant would create any risk of damage to  
17 flood protection infrastructure; is that  
18 correct? (As read.)

19 A. That's correct.

20 Q. Are you aware that your belief is  
21 not shared by the current Commissioners on the  
22 Southeast Louisiana Flood Protection Authority  
23 East?

24 A. I am aware that at least some of the  
25 commissioners would agree. I don't know the

1 opinions of each commissioner, and the  
2 commissioners all have various backgrounds. I  
3 also don't know even the names of all the  
4 current commissioners. My term expired in  
5 2012, my five years.

6 MS. HARDEN:

7 Your Honor, may I approach the  
8 witness with purposes of cross?

9 JUDGE GULIN:

10 Sure.

11 MS. HARDEN:

12 This is a copy of the minutes from  
13 the Southeast Louisiana Flood Protection  
14 Authority East board meeting on Thursday,  
15 December 15th, 2016, that's being passed  
16 to you and counsel.

17 JUDGE GULIN:

18 It's being marked as DSCEJ No. 5.

19 And you're asking me like the last  
20 one, that it be admitted for cross?

21 MS. HARDEN:

22 Yes, sir.

23 JUDGE GULIN:

24 It is.

25 EXAMINATION BY MS. HARDEN:

1 Q. On page 9 --

2 MR. BARTON:

3 I'm sorry. We haven't gotten the  
4 document yet. I know we're only on  
5 admission for cross right now, but if  
6 this is going to be admitted to evidence,  
7 then we would object based on hearsay.

8 JUDGE GULIN:

9 Okay. We're not there yet. It  
10 hasn't been offered for that.

11 MR. BARTON:

12 All right.

13 EXAMINATION BY MS. HARDEN:

14 Q. In the meeting minutes, which are --  
15 it is a public record --

16 MR. GUILLOT:

17 Your Honor.

18 EXAMINATION BY MS. HARDEN:

19 Q. -- available online --

20 MR. GUILLOT:

21 Your Honor, one second, please. Her  
22 time has expired.

23 JUDGE GULIN:

24 Her time has expired? I thought we  
25 had two hours for this. Was I wrong?

1 MR. GUILLOT:

2 She had 30 minutes.

3 JUDGE GULIN:

4 I apologize.

5 DR. LOSONSKY:

6 I'm sorry.

7 JUDGE GULIN:

8 I'll give you an extra five minutes.

9 We're running -- We're well ahead of  
10 schedule. You can have an extra five.

11 MS. HARDEN:

12 Thank you, Judge.

13 EXAMINATION BY MS. HARDEN:

14 Q. I'd like to bring your attention to  
15 page 9 of the meeting minutes. You'll also see  
16 it's notated as page 27. It was a part of the  
17 exhibit introduced as part of public interest  
18 intervenors expert witness. Could you -- I  
19 just wanted to get your thoughts on the  
20 decision by members of the Commission to write  
21 a letter to the U.S. Army Corps of Engineers.  
22 This portion of the meeting minutes is titled,  
23 Discussions of concerns regarding accelerated  
24 subsidence secondary to groundwater withdrawal  
25 at the Michoud power plant. (As read.)

1                   And in this letter, a  
2 Commissioner -- if you could look at the second  
3 paragraph, I think it's pronounced "Luettich,"  
4 L-U-E-T-T-I-C-H.

5                   MR. BARTON:

6                   Your Honor, we haven't established  
7 that the witness is even familiar with  
8 this document or he's ever seen the  
9 document.

10                  JUDGE GULIN:

11                  Let's lay a foundation first, if  
12 you're going to read into the record.

13                  MS. HARDEN:

14                  Sure.

15                  EXAMINATION BY MS. HARDEN:

16                  Q.    Have you had a chance to look at the  
17 minutes for the Southeast Louisiana Flood  
18 Protection Authority East?

19                  A.    No. I just got this --

20                  Q.    You just got it?

21                  A.    -- and I was trying to listen to  
22 what you were saying and --

23                  MS. HARDEN:

24                  I think I'm going to need -- He's  
25 going to go over the five minutes. I can



1           feel it. I don't know what we can do  
2           with that.

3           JUDGE GULIN:

4           Okay.

5           MR. BARTON:

6                     When you present the witness with a  
7           document he's never seen before on the  
8           stand, he's got to have time to read and  
9           digest the document.

10          JUDGE GULIN:

11                     Go ahead. And we'll subtract the  
12          time it takes him to review the document  
13          from the five minutes.

14                     Go ahead and review the document,  
15          please, Mr. Losonsky.

16                     And then you can lay a foundation.

17                     Let us know when you've had an  
18          opportunity to do that so we can subtract  
19          that time.

20          MS. HARDEN:

21                     Thank you, Judge.

22          DR. LOSONSKY:

23                     All right. I've read it once.

24          EXAMINATION BY MS. HARDEN:

25                     Q. Okay. So, again, what you read was

1 a discussion that was recorded as part of the  
2 meeting minutes of the board of the Southeast  
3 Louisiana Flood Protection Authority East.

4 With regards to the discussion of  
5 the concerns, would you agree that for the  
6 members of the Commission, this concern  
7 regarded accelerated subsidence secondary to  
8 the groundwater withdrawal at the Michoud Power  
9 Plant?

10 MR. BARTON:

11 Again, we need specifics on the  
12 concerns. What are we talking about  
13 here? What line? What paragraph?

14 MS. HARDEN:

15 It's the title at the top  
16 underlined.

17 DR. LOSONSKY:

18 The paragraph is about a discussion  
19 of concerns regarding accelerated  
20 subsidence. I'm reading the title of the  
21 paragraph.

22 JUDGE GULIN:

23 Do you recognize this as the minutes  
24 of this proceeding?

25 DR. LOSONSKY:

1 I have -- First of all, this is from  
2 Thursday, December 2016. So I was not a  
3 member of the Flood Commission in 2016.  
4 My term ended in 2012. So I do not  
5 recognize this. This is not a meeting  
6 where I attended. It's not a meeting  
7 that I had anything to do with, and I  
8 haven't seen this before right now.

9 JUDGE GULIN:

10 Just keep that in mind.

11 MS. HARDEN:

12 Sure.

13 JUDGE GULIN:

14 Please don't read from the document.  
15 You can ask specific questions and then  
16 use this, if you like, for impeachment  
17 purposes, but that's the purpose of it at  
18 this point.

19 EXAMINATION BY MS. HARDEN:

20 Q. Do you think that the commissioners,  
21 it was reasonable for the commissioners to have  
22 this concern?

23 A. It is reasonable to be concerned  
24 about effects of water wells, and that's the  
25 very reason why I agreed to do the study that I

1 did, the analysis that I did of the use of  
2 water wells.

3 Q. Do you agree with their assessment  
4 in the -- of Commissioner Luettich where he  
5 discussed his concern regarding the potential  
6 relationship between the pumping of groundwater  
7 and subsidence and the potential impact to the  
8 HSDRRs, which stands for the Hurricane and  
9 Storm Damage Risk Reduction System  
10 infrastructure?

11 MR. BARTON:

12 Objection, Your Honor. The witness  
13 has already testified he's not familiar  
14 with the document. He's therefore not  
15 familiar with the assessment of  
16 Mr. Luettich.

17 JUDGE GULIN:

18 He can read it and tell us whether  
19 he agrees or disagrees or doesn't have an  
20 opinion.

21 DR. LOSONSKY:

22 I see here that he discussed  
23 concerns. I've already said that it's  
24 good to look at the issue of use of water  
25 wells. And I don't know any of the

1 background to the rest of the statement,  
2 so I don't know what he has in mind or  
3 what he knows about pumping rates,  
4 pumping rates that are proposed.

5 I will say that I think that if he  
6 knew what the proposed pumping rates  
7 were, he probably would not have gone  
8 into this statement, but I don't know  
9 that and I'm speculating. But I don't  
10 have the background here to what he's  
11 actually -- where he's coming from, what  
12 this is based on.

13 JUDGE GULIN:

14 One more question, please,  
15 Ms. Harden.

16 MS. HARDEN:

17 Okay. Thank you.

18 EXAMINATION BY MS. HARDEN:

19 Q. In your rebuttal testimony on page  
20 18, lines 8 through 9.

21 A. Yes.

22 Q. You looked at it?

23 A. Uh-huh (indicating affirmatively).

24 Q. Have you looked at it, sir?

25 A. Yes, I have.

1 Q. In this testimony, you state that  
2 The NOPS facility is higher than the  
3 recommended FEMA flooding elevation. (As  
4 read.)

5 What is that recommendation from  
6 FEMA?

7 A. We are obviously in the wrong  
8 report. You said rebuttal testimony and the  
9 rebuttal testimony has discussion of draw down.

10 MR. BARTON:

11 Could you give us the date of the  
12 testimony, Ms. Harden?

13 MS. HARDEN:

14 Yeah. I'm going to pick it up. One  
15 moment. I apologize for this.

16 EXAMINATION BY MS. HARDEN:

17 Q. So if you're in your rebuttal  
18 testimony, you're on page 18 and lines 8  
19 through 9 where it says --

20 A. Yes.

21 Q. You discuss Jonathan Long's  
22 testimony regarding a recommended FEMA flooding  
23 elevation and that the elevation in the design  
24 is higher than that recommendation from FEMA.

25 A. I see that.

1 Q. You said, One foot higher than the  
2 observed Hurricane Katrina flooding and 2.5  
3 feet higher than the recommended FEMA flooding  
4 elevation. (As read.)

5 A. Yes.

6 Q. Correct?

7 What is that recommendation from  
8 FEMA that you're discussing?

9 A. FEMA has recommended flooding  
10 elevations from all over the New Orleans area.  
11 And so this refers to -- and I don't have it in  
12 front of me, but the elevation that would have  
13 been recommended here.

14 JUDGE GULIN:

15 Thank you, Ms. Harden. We're going  
16 to have to leave it there.

17 MS. HARDEN:

18 Okay.

19 JUDGE GULIN:

20 Let's take a ten-minute break at  
21 this point. Let's come back at 21 after.

22 (Whereupon a recess was taken.)

23 JUDGE GULIN:

24 Back on the record.

25 Mr. Beatmann.

1 MR. BEATMANN:

2 I have one question, Your Honor.

3 EXAMINATION BY MR. BEATMANN:

4 Q. Hi, Mr. Losonsky. My name is Jay  
5 Beatmann. I'm here on behalf of the Council's  
6 advisors.

7 Just one clarifying question. Is it  
8 your understanding that the generating unit  
9 cannot use more groundwater than the pump can  
10 withdraw? Is that correct?

11 A. That the generating unit cannot use  
12 more groundwater than the pump can withdraw?  
13 Yes, I believe that's true.

14 MR. BEATMANN:

15 That's all I have.

16 JUDGE GULIN:

17 Any redirect?

18 MR. BARTON:

19 No, Your Honor.

20 JUDGE GULIN:

21 All right. Thank you so much,  
22 Mr. Losonsky. You're excused.

23 All right. Are we ready -- We've  
24 gone quite ahead, but are we ready to  
25 hear from Mr. Todd.



1 MR. GUILLOT:

2 Yes, Your Honor.

3 JUDGE GULIN:

4 Okay.

5 Good morning, Mr. Todd.

6 MR. TODD:

7 Good morning.

8 JUDGE GULIN:

9 If you would, please face the court  
10 reporter and raise your right  
11 hand.

12 ORLANDO TODD,  
13 after having been duly sworn by the  
14 above-mentioned Certified Court Reporter, was  
15 examined and testified as follows:

16 JUDGE GULIN:

17 Mr. Edwards.

18 MR. EDWARDS:

19 Yes, Your Honor. I'm ready to  
20 proceed.

21 JUDGE GULIN:

22 Please do.

23 EXAMINATION BY MR. EDWARDS:

24 Q. Mr. Todd, good morning. My name is  
25 Lanny Edwards. I represent Air Products in

1 this proceeding.

2 A. Good morning.

3 Q. If you wouldn't mind, would you  
4 please open your supplemental testimony to  
5 page 5, and on line 12 at page 5, you begin to  
6 discuss the cost recovery for whichever type of  
7 generation is ultimately approved in this case;  
8 is that correct?

9 A. I'm sorry. What line on page 5?

10 Q. It begins on page 12, I believe.

11 A. Oh, page 12.

12 Q. I'm sorry. Page 5, line 12.

13 A. Okay. I'm sorry. What was your  
14 question?

15 Q. My question is, is this where you  
16 begin talking about how to recover the cost  
17 irrespective of whether the CT unit or the RICE  
18 units are implemented?

19 A. Yes, that's correct.

20 Q. And if you would briefly look at  
21 your testimony on page 5 and 6, I believe you  
22 indicate that you expect, regardless of which  
23 unit would be approved, that neither would  
24 enter commercial operations until after the  
25 completion of the 2018 combined rate case; is

1 that correct?

2 A. That's correct.

3 Q. Thank you.

4 On page 6, you indicate that you  
5 want to recover the first year non-fuel revenue  
6 requirement associated with whichever unit is  
7 built through a PPCACR, P-P-C-A-C-R; right? I  
8 assume that's the purchase power capacity  
9 acquisition cost recovery rider?

10 A. Yes, that's correct.

11 Q. You provide on page 6 that using the  
12 PPCACR rider, it would be modified for such  
13 purpose on a similar exact cost recovery rider;  
14 is that correct? (As read.)

15 A. Yes, that is correct.

16 Q. Is your concern here mainly that you  
17 get to collect a revenue when the unit goes  
18 into service more so than a particular form of  
19 cost recovery mechanism?

20 A. Yes. It's the company position that  
21 we would like an exact recovery rider where we  
22 would have contemporaneous recovery of those  
23 costs. So, I mean, we actually proposed using  
24 the PPCACR rider, but if there is another  
25 vehicle that would get us the same results, we

1 wouldn't be opposed to that.

2 Q. Have you read the testimony of one  
3 of the advisors' witnesses, Mr. Victor Prep?

4 A. Yes, I have.

5 Q. It's my understanding that Mr. Prep  
6 recommends that one of two potential approaches  
7 be taken for cost recovery. One is to develop  
8 a second step rate case during the 2018  
9 combined rate case that would go into effect  
10 when the unit achieves commercial operation; is  
11 that right?

12 A. Yes, that's my understanding. My  
13 understanding from Mr. Prep's testimony is that  
14 he's proposing a two-step adjustment mechanism  
15 and he's using the combined base rate case as  
16 you've mentioned to do that through. And it's  
17 my understanding that from that base rate case,  
18 we would have rates set, what he calls the  
19 first step, sort of excluding the NOPS revenue  
20 requirement. And we're assuming that those  
21 rates would go into effect in August of 2019.

22 And then once the commercial -- Once  
23 NOPS goes into commercial operation, that's  
24 when the second rate adjustment would take  
25 effect.

1 Q. And is that an acceptable approach  
2 to you?

3 A. Yes, as I understand it, that would  
4 be an acceptable approach.

5 Q. Thank you.

6 The second approach that he  
7 discusses is a rider in which the non-fuel  
8 revenue requirements of NOPS, N-O-P-S, would be  
9 spread to customer classes as an equal percent  
10 of base rate revenue. Is that your  
11 understanding of his testimony?

12 A. Yes. I believe he mentioned -- and  
13 that would actually happen within the confine  
14 of the base rate case where the allocation of  
15 the revenue requirement for NOPS would be on  
16 the cost-of-service basis versus a per kilowatt  
17 basis that the current PPCACR rider uses.

18 Q. Would you agree that the kilowatt  
19 basis is inappropriate for this type of  
20 recovery?

21 A. The recovery of the NOPS investment?

22 Q. Yes.

23 A. Yes, it's probably not -- There's  
24 probably a better recovery method than a per  
25 kilowatt basis for NOPS.

1 Q. Thank you.

2 Mr. Prep states on pages 7 and 8 of  
3 his testimony that recovering non-fuel costs  
4 from customers based on volumetric kWh  
5 consumption is inappropriate. Would you agree?

6 MR. GUILLOT:

7 Give him a minute.

8 MR. TODD:

9 Yeah. What page was that?

10 MR. EDWARDS:

11 I'm sorry. It's page 7 and 8 of  
12 Mr. Prep's testimony.

13 MR. TODD:

14 Seven and 8?

15 Okay. What was your question again?

16 I've sort of scanned page 7 and 8 of  
17 Prep's testimony.

18 EXAMINATION BY MR. EDWARDS:

19 Q. Do you agree that it would be  
20 inappropriate to recover non-fuel costs from  
21 customers based on volumetric kWh consumption?

22 MS. MAURICE-ANDERSON:

23 Object, Your Honor. And asked and  
24 answered.

25 JUDGE GULIN:

1 I'll allow him to answer.

2 MR. TODD:

3 And the non-fuel O&M cost that you  
4 referenced, is that in particular to the  
5 NOPS unit alternatives?

6 EXAMINATION BY MR. EDWARDS:

7 Q. Well, it would be with respect to  
8 either unit that might be approved.

9 A. Either unit.

10 Q. Right.

11 A. Yes. As I stated previously, with  
12 NOPS -- and if we're using the rate case as  
13 Victor Prep's recommended, then that allocation  
14 of the NOPS O&M -- I'm sorry -- non-fuel O&M  
15 costs in addition to the investment would not  
16 be based on a per kilowatt basis.

17 Q. Thank you.

18 When Entergy New Orleans does  
19 cost-of-service studies, are non-fuel costs  
20 typically allocated to customer classes based  
21 on class demands?

22 A. It's my general understanding that,  
23 yes, the cost-of-service study does look at  
24 demand, you know, demand and allocator versus a  
25 per kilowatt basis.

1 Q. Demand not kilowatt consumption?

2 A. Right.

3 Q. And so that is because it's the  
4 customer demands that cause the fixed cost to  
5 be incurred; correct?

6 A. Yes, that's my general  
7 understanding.

8 Q. Thank you.

9 Have you read the testimony of Air  
10 Products witness Mr. Brubaker?

11 A. Yes, I did.

12 Q. And you didn't offer any testimony  
13 in response or rebuttal to his testimony, did  
14 you?

15 A. No, I don't believe I did.

16 Q. Mr. Brubaker's analysis indicates  
17 that when non-fuel revenue requirements are  
18 allocated on a kWh basis, Air Products is  
19 charged for about 3 1/2 percent of the total  
20 cost, whereas, if those costs were allocated as  
21 a percentage of base rate revenues, Air  
22 Products would be allocated approximately 1.2  
23 percent of those costs under the rate  
24 schedules.

25 Do you generally agree with that



1 statement?

2 MS. MAURICE-ANDERSON:

3 Your Honor, I'm going to object.

4 Mr. Edwards has already indicated that  
5 Mr. Todd did not opine on Mr. Brubaker's  
6 testimony, so I would say that it was  
7 beyond the scope of Mr. Todd's testimony.

8 JUDGE GULIN:

9 Yeah, I think that's true.

10 MR. EDWARDS:

11 Well, Your Honor, may I ask  
12 Mr. Todd?

13 EXAMINATION BY MR. EDWARDS:

14 Q. If you had an objection to  
15 Mr. Brubaker's testimony, you would have  
16 addressed it in your testimony, would you not?

17 MS. MAURICE-ANDERSON:

18 Same objection, Your Honor.

19 JUDGE GULIN:

20 You indicated that you had read the  
21 testimony?

22 MR. TODD:

23 Yes.

24 JUDGE GULIN:

25 Okay.

1 MR. TODD:

2 That was dated October 2017.

3 JUDGE GULIN:

4 Okay. Would you have necessarily  
5 responded to it if there were any  
6 disagreement with that testimony? In  
7 other words, could you have had some  
8 disagreement and still not have responded  
9 in your testimony?

10 MS. MAURICE-ANDERSON:

11 I'm going to object to that, Your  
12 Honor. I apologize. I apologize, Judge.

13 JUDGE GULIN:

14 I'm trying to help you out here.

15 MS. MAURICE-ANDERSON:

16 I understand, and I appreciate the  
17 assistance. I guess my concern is that  
18 who responds to testimony is done so in  
19 consult with attorneys and would be the  
20 basis of a privilege. Also, if  
21 Mr. Todd's job duties placed him in a  
22 position to be familiar with those  
23 quantifications, then perhaps he might  
24 have an opinion, but that's beyond the  
25 scope of his testimony.

1 JUDGE GULIN:

2 Well, he could have said that, I  
3 think.

4 MS. MAURICE-ANDERSON:

5 I'm sorry.

6 JUDGE GULIN:

7 Did you want to answer my question?

8 MR. TODD:

9 I'm sorry. What is your question?

10 MR. GUILLOT:

11 Just in terms of whether he responds  
12 is really a decision that the attorneys  
13 make. It's in the realm of the  
14 attorney --

15 JUDGE GULIN:

16 All right. I'll sustain the  
17 objection. I guess there's some  
18 privileged information there embedded in  
19 my question, so let's move on.

20 MR. EDWARDS:

21 I didn't quite follow that, Your  
22 Honor. I'm looking at 50,000 pages of  
23 testimony, at least half of which of  
24 every witness is if you have a concern  
25 about what another witness has said to

1 counter to your position, you address it.  
2 And I'm just asking, you did not address  
3 anything contrary to what -- Strike that.

4 EXAMINATION BY MR. EDWARDS:

5 Q. Mr. Todd, you did not address in  
6 your testimony any statement about  
7 Mr. Brubaker's testimony for Air Products, did  
8 you?

9 A. No, I did not, but I didn't file  
10 rebuttal testimony. I filed direct testimony  
11 in the original filing and then direct  
12 testimony in the supplemental filing. So I did  
13 not file rebuttal testimony.

14 Q. Is that because you didn't have  
15 anything to rebut for any witness, including  
16 Mr. Brubaker?

17 MS. MAURICE-ANDERSON:

18 Your Honor, I'm going to renew my  
19 objection.

20 JUDGE GULIN:

21 Sustained. Let's move on.

22 MR. EDWARDS:

23 I have no further questions.

24 JUDGE GULIN:

25 Let's go to the advisors.

1 EXAMINATION BY MR. REED:

2 Q. Good morning, Mr. Todd. Presley  
3 Reed on behalf of the advisors.

4 In your testimony, you are  
5 recommending that the company recover the cost  
6 of the LTSA through the fuel adjustment clause;  
7 isn't that correct?

8 A. That's correct.

9 Q. And can you briefly explain what the  
10 LTSA is?

11 A. Yes. LTSA stands for long-term  
12 service agreement, and it's my understanding  
13 Mr. Breedlove goes into a lot of detail in his  
14 direct testimony. But what I understand that  
15 is, that would cover certain major maintenance  
16 activity related to NOPS. And those activity  
17 will depend on, you know, the number of starts  
18 and the actual run hours for that unit. So  
19 those expenses would vary according -- you  
20 know, based on those two. And because of that,  
21 because of the variability in nature, we  
22 just -- the company position is that they are  
23 appropriate to be recovered through the fuel  
24 adjustment clause, the FAC.

25 Q. And the purpose of the FAC is to

1 recover fuel costs; isn't that correct?

2 A. Well, yeah. Primarily it's to  
3 recover fuel costs, but, I mean, because of the  
4 variability in those -- which fuel varies, you  
5 know, from month to month based on market  
6 conditions and other things, that the company  
7 position was that these LTS costs would also  
8 vary, depending on how the NOPS unit is  
9 operated, which would be variable in nature.

10 Q. Now, all variable costs are not  
11 recovered through the fuel adjustment clause,  
12 are they?

13 A. No, I don't believe. No.

14 Q. So the mere fact that a cost is  
15 variable does not require it to be recovered  
16 through the fuel adjustment clause?

17 A. No.

18 Q. All right. And in many instances,  
19 costs that are recovered through the fuel  
20 adjustment clause are done so because of the  
21 wide variation in the cost in terms of their  
22 fluctuation; is that correct?

23 A. Yes, that's my understanding.

24 Q. Now, is it your understanding  
25 there's going to be wide variation in the

1 amount of costs associated with the LTSA?

2 A. I mean, I don't know the actual  
3 details around, you know, the amount in  
4 variability, but just based on Mr. Breedlove  
5 testimony that I read, those payments to the  
6 original manufacturer will vary. Now, to what  
7 extent, I don't know.

8 Q. Right. Thank you.

9 And, for example -- and I think  
10 you've already testified that there are many  
11 costs that are variable costs that are not  
12 recovered through the fuel adjustment clause,  
13 like certain O&M costs; am I correct?

14 A. Yes. Yes, that's correct.

15 MR. REED:

16 I don't have any other questions,  
17 Your Honor.

18 JUDGE GULIN:

19 Okay. Thank you, Mr. Reed.

20 Any redirect of Mr. Todd?

21 MR. GUILLOT:

22 Would you give us a few minutes,  
23 Your Honor?

24 JUDGE GULIN:

25 Sure.

1 (Whereupon a pause occurred in the  
2 proceedings.)

3 MS. MAURICE-ANDERSON:

4 Your Honor, I have two quick  
5 questions for Mr. Todd on redirect.

6 EXAMINATION BY MS. MAURICE-ANDERSON:

7 Q. Mr. Todd, I believe Mr. Reed  
8 questioned you regarding the FAC and -- the  
9 fuel adjustment clause, and whether it's  
10 designed to recover fuel cost. My question to  
11 you is are there costs other than fuel costs  
12 recovered through the FAC currently?

13 A. Yes. I mean, currently the Council  
14 approved ENO recoverability of the LTSA cost  
15 that we have related to the Union Power Block 1  
16 acquisition and the Nine Mile 6 PPA, purchase  
17 power agreement. So we're actually running  
18 those LTSA expenses through the fuel adjustment  
19 clause.

20 Q. And I believe Mr. Reed -- Let me  
21 start over.

22 Are the long-term service agreement  
23 costs that are at issue here fuel related?

24 A. It's -- My understanding is that  
25 they act similar to how fuel would act as far



1 as the number of starts at that unit, you know,  
2 fuel would fluctuate based on that, and the  
3 actual run time. So in that comparison, they  
4 would fluctuate based on that plant, you know,  
5 running hours, which is similar to fuel. If  
6 you don't run the plant, you know, you would  
7 think that your fuel cost would be lower and if  
8 you do, you're using those fuel. So they sort  
9 of act similar in nature that fuel expense  
10 would.

11 MS. MAURICE-ANDERSON:

12 Thank you, Mr. Todd. That's all I  
13 have.

14 JUDGE GULIN:

15 Thank you.

16 Mr. Edwards, anything?

17 MR. EDWARDS:

18 No, Your Honor.

19 JUDGE GULIN:

20 And Mr. Reed?

21 MR. REED:

22 Just maybe a couple of questions,  
23 Your Honor.

24 RE-EXAMINATION BY MR. REED:

25 Q. Ms. Maurice just asked you whether

1 or not the LTSA costs are similar to fuel  
2 costs. Are there any fuel costs that are  
3 directly included in the LTSA costs?

4 A. No. To my understanding, the LTSA  
5 expenses are primarily going to be related to  
6 major maintenance activities at that plant.

7 Q. And she also asked you whether or  
8 not there are certain types of non-fuel costs  
9 that are currently being recovered through the  
10 FAC like the current PPCA -- whatever the rider  
11 is? I'm blanking right now.

12 MR. GUILLOT:

13 PPCACR.

14 EXAMINATION BY MR. REED:

15 Q. The PPCACR rider; is that correct?

16 A. I'm sorry. Would you repeat that?

17 Q. The PPCACR rider, for example, is a  
18 non-fuel cost that is currently being recovered  
19 through an FAC type mechanism; is that correct?

20 A. If you're asking about the PPCACR,  
21 we're currently recovering the Nine Mile 6  
22 revenue requirement through that, in addition  
23 to the Union Power Block 1 acquisition. So --  
24 But any fuel-related costs related to those  
25 are, you know, recovered through the FAC.

1 Q. And that would be appropriate  
2 because those are fuel-related costs?

3 A. Yeah. The fuel costs running  
4 through the FAC, yes.

5 Q. All right. But there's no precedent  
6 that will require the Council to approve the  
7 same type of recovery for the long-term service  
8 agreement cost through the FAC in this case,  
9 are there?

10 A. I think that's left up to the  
11 Council's decision.

12 MR. REED:

13 Thank you. Those are my questions.

14 JUDGE GULIN:

15 Okay. Thank you, Mr. Todd.

16 MR. TODD:

17 Thank you.

18 JUDGE GULIN:

19 You're excused at this point.

20 I was just going to say let's take  
21 stock of where we are now.

22 Ms. Lovorn-Marriage was scheduled for  
23 tomorrow. Any chance we can get her in  
24 this afternoon?

25 MS. MILLER:

1           Your Honor, we would object to her  
2           being considered this afternoon. We were  
3           told that one witness would roll over,  
4           not more. We have a number of documents  
5           that are being copied at the moment that  
6           we need to use as exhibits for her  
7           tomorrow.

8           JUDGE GULIN:

9           Okay. All right. I think that's a  
10          legitimate request. So we will -- And  
11          you're not ready for any other witness, I  
12          guess, of ENO? How about Mr. Rice?

13          MS. MILLER:

14          It's my understanding that a number  
15          of people aren't ready for Mr. Rice, if  
16          that's correct.

17          JUDGE GULIN:

18          How about Kolker?

19          MS. MILLER:

20          Mr. Kolker is not here today.

21          JUDGE GULIN:

22          Okay. All right, then. I guess is  
23          there anything else we can do today?

24          MR. REED:

25          Well, Your Honor --

1                   You say you're not ready for  
2           Mr. Rice?

3           MS. MILLER:

4                   No. It was my understanding that  
5           there were several people who are not  
6           ready for Mr. Rice.

7           MR. REED:

8                   We're ready.

9           JUDGE GULIN:

10                   Who's not ready?

11           MR. REED:

12                   Who's not ready?

13           MR. WIYGUL:

14                   This is Robert Wiygul for the Sierra  
15           Club. We're counting on having Mr. Rice  
16           tomorrow. I know this schedule has gone  
17           quickly, but we got here to set up.

18                   I think it was Maurice Stendahl who  
19           said, "If I had more time, I would have  
20           sent you a shorter letter." I think you  
21           may find it actually will make things  
22           move very quickly if we give him a little  
23           bit of time until tomorrow.

24           JUDGE GULIN:

25                   Okay. All right. Let's go ahead

1 and adjourn, then, for today. And we'll  
2 start tomorrow. Let's start at 9:00 A.M.  
3 tomorrow.

4 MR. GUILLOT:

5 Just for clarification purposes,  
6 Your Honor, which witnesses will we  
7 expect to take tomorrow?

8 JUDGE GULIN:

9 Ms. Lovorn-Marriage --

10 MR. GUILLOT:

11 And Charles Rice.

12 JUDGE GULIN:

13 -- Charles Rice, Kolker, possibly  
14 Stanton, possibly Lanzalotta. We're  
15 moving ahead.

16 MS. MILLER:

17 Your Honor, Ms. Stanton and  
18 Mr. Lanzalotta are actually flying in  
19 tomorrow. So I don't think they'll be  
20 available tomorrow.

21 JUDGE GULIN:

22 Okay. Well, I'll tell you what.  
23 Why don't the parties get together and  
24 see what they can work out if there's any  
25 modification to the schedule that can be

1 done so we're a little more efficient for  
2 the rest of the week.

3 Okay. I mean, I don't want to  
4 complain about going too fast, so it's  
5 tempered with that.

6 All right. See you-all tomorrow at  
7 9:00 A.M.

8 MR. GUILLOT:

9 Thank you, Judge.

10 (Whereupon the proceedings were  
11 recessed for the day at 11:44 A.M.)

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