NO. R-07-131

BY: COUNCILMEMBERS THOMAS, HEDGE-MORRELL, MIDURA AND CARTER

IN THE MATTER OF APPLICATION OF ENTERGY NEW ORLEANS INC. FOR AUTHORIZATION TO IMPLEMENT RIDERS TO RECOVER COSTS RELATED TO HURRICANES KATRINA AND RITA (DOCKET NO. UD-06-01)

RESOLUTION AND ORDER CERTIFYING ENTERGY NEW ORLEANS, INC.’S UNCOMPENSATED HURRICANE KATRINA STORM COSTS ELIGIBLE FOR RATEPAYER MITIGATION WITHDRAWN.

(SUBSTITUTE)

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RESOLUTION AND ORDER CERTIFYING ENTERGY NEW ORLEANS, INC.’S UNCOMPENSATED HURRICANE KATRINA STORM COSTSELIGIBLE FOR RATEPAYER MITIGATION

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the

City of New Orleans, the Council of the City of New Orleans (“Council”) is the governmental body

authorized to exercise regulatory control over rates, charges and the general conditions under which

electric and gas services are provided in New Orleans; and

WHEREAS, Entergy New Orleans, Inc. (“ENO” or “the Company”) provides electric service to all of

New Orleans except the Fifteenth Ward (“Algiers”) and gas service to all of New Orleans; and

WHEREAS, on August 29, 2005, Hurricane Katrina struck the City of New Orleans. The hurricane and

ensuing multiple levee failures caused widespread flooding throughout the City, endangering the lives

 and health of thousands of New Orleanians and causing catastrophic damage to homes, businesses, and

infrastructure. New Orleans was subject to mandatory evacuation, and the flooding and pervasive

damage rendered the City uninhabitable and prohibited residents from returning to their home for

months afterwards. The devastation caused by Hurricane Katrina is considered to be the worst natural

disaster in U.S. history; and

WHEREAS, as a result of Hurricane Katrina and the levee failures, ENO suffered severe,

unprecedented damage to its electric and gas utility systems and, with the exodus of residents from the

City experienced dramatic reductions in its customer base and, accordingly, its prospective base rate

revenues; and

WHEREAS, ENO reported that the damage to its electric infrastructure included: (1) all transmission

lines out of service with 78 transmission towers suffering significant damage, (2) all 22 of ENO’s

substations out of service; twelve of which sustained flood damage, and (3) extensive damage and

flooding to its distribution system with approximately 2,300 spans of distribution system conductor

(76% of the total line-miles), over 1,700 poles, and over 3,100 cross arms requiring replacement; and

WHEREAS, ENO reports that, immediately after Hurricane Katrina its gas system was inundated with

approximately four million gallons of brackish water, flooding 60% of the system causing unprecedented

damage, including: (1) damage to 12 of the 13 city gates, (2) severely impaired remaining life of 257

miles of cast iron pipe, 277 miles of low-pressure steel, 310 miles of high-pressure steel, and 1,400 miles

of gas service lines, due to accelerated corrosion levels and (3) the destruction of 80% of the natural gas

meters and regulators on ENO’s gas system; and

WHEREAS, on September 23, 2005, ENO filed a voluntary petition in the United States Bankruptcy

Court for the Eastern District of Louisiana (“Federal Bankruptcy Court”) seeking reorganization relief

under the provisions of the Chapter 11 of the United States Bankruptcy Code; and

WHEREAS, ENO, to this day, operates as a debtor-in-possession in Federal Bankruptcy Court; and

WHEREAS, on June 30, 2006, ENO filed with the Council its Application of Entergy New Orleans, Inc.

for Approval of Implementation of Post-Katrina Gas and Electric Formula Rate Plans (“FRP”) in Docket

Nos. UD-01-04 and UD-03-01 pursuant to Council Resolutions R-03-272 and R-05-U4; and

WHEREAS, on June 30, 2006, ENO also filed with the Council its Application of Entergy New Orleans,

Inc. for Authorization to Implement Riders to Recover Costs Related to Hurricanes Katrina and Rita and

to Adequately Fund a Storm Reserve (“Storm Cost Application” and “Storm Cost Recovery Riders” and

“Storm Reserve Riders,” respectively); and

WHEREAS, ENO’s Storm Cost Application requested authorization to implement Storm Cost Recovery

Riders to recover over a ten-year period $124.829 million for the costs of gas and electric restoration

work performed and recorded on the Company’s books through March 31, 2006 associated with

Hurricanes Katrina and Rita as well as a write-off for uncollectible expenses of $14.627 million for a total

recovery of $139.456 million; and

WHEREAS, the amounts submitted by ENO for recovery through Storm Cost Recovery Riders were

net of a total of $11.6 million ($4.4 million related to the early unwinding of gas hedging contracts and

$6.973 million related to SERI refund monies) authorized by the Council for the reasons and purposes

related to storm restoration in Resolutions R-05-554 and R-05-555; and

WHEREAS, on August 3, 2006, the Council adopted Resolution R-06-329 establishing procedures for

the consideration of ENO’s FRP Application and Storm Cost Application; and

WHEREAS, the Council found in Resolution R-06-329 that ENO’s Storm Recovery Riders and the

Storm Reserve Riders were separate requests for an increase in rates by ENO based on costs and

projections that were presented to the Council for the first time; and

WHEREAS, Resolution R-06-329 established separate dockets and procedural schedules for its

consideration of ENO’s FRP Application and Storm Cost Application with the bifurcation of ENO’s June

30th Storm Cost Application into two proceedings docketed as Council Docket Nos. UD-06-01 (to

address ENO’s request to implement Storm Cost Recovery Riders to recover costs associated with storm

restoration that had been incurred through March 31, 2006) and UD-06-02 (to address ENO’s request to

implement Storm Reserve Riders to fund restoration activities following future storms); and

WHEREAS, Resolution R-06-329 directed its Advisors to conduct an audit of the storm costs incurred

by ENO for the period ended March 31, 2006 which ENO requested recovery of through Storm Cost

Recovery Riders; and

WHEREAS, the procedural schedule for consideration of ENO’s Storm Cost Recovery Rider in Docket

UD-06-01 provided for the following deadlines:

August 3, 2006 – January 22, 2007Discovery on ENODecember 7, 2006 – January 22, 2007ENO

Discovery on other partiesDecember 7, 2006Intervenor Comments due

December 22, 2006Advisor Comments and

Recommendations and Draft Audit due

January 8, 2007ENO and Intervenor Responsive

Comments to Advisor Comments dueJanuary 18, 2007Final Audit dueWeek of January 22,

2007Evidentiary HearingFebruary 1, 2007Council Decision

; and

WHEREAS, on October 27, 2006, ENO filed an Agreement in Principle (“AIP”) that reflected a

settlement and accommodation by the signatories of the FRP proceeding as well as the Company’s

Storm Reserve Application; and

WHEREAS, after duly noting that the AIP was supported by all active parties to these proceedings and

after public notice, hearing and comments, on October 27, 2006 the Council adopted Council Resolution

R-06-459, approving the AIP; and

WHEREAS, the AIP settled the Storm Reserve Rider Docket UD-06-02 and established a $75 million

storm reserve to be funded over a ten (10) year period by ENO’s gas and electric ratepayers through a

rate rider on customer bills commencing with the first billing cycle of March 2007; and

WHEREAS, the AIP provided for the completion of the audit of ENO’s storm costs incurred through

March 31, 2006 as submitted by ENO in its Storm Cost Application by Bruno & Tervalon LLP, Certified

Public Accountants and Pailet, Meunier and LeBlanc, L.L.P., Certified Public Accountants (“Advising

Auditors”) in accordance with Resolution R-06-329. It also provided that the process for reviewing

ENO’s storm costs incurred after March 31, 2006 would be subject to the provisions of Council

Resolution R-06-329 regarding Docket UD-06-01; and

WHEREAS, the AIP designated specific accounting treatment of storm recovery costs and the

application of Community Development Block Grant (“CDBG Funds”) and insurance proceeds to be

received by ENO; and

WHEREAS, the AIP provided that if CDBG Funds for ENO’s storm restoration costs have not

materialized by September 1, 2007 in an amount that significantly mitigates ENO’s storm costs incurred

through March 31, 2006, ENO may file for emergency rate relief; and

WHEREAS, the AIP provided that to the extent ENO’s storm-related uncollectible expenses are

deemed eligible for CDBG Funds and are certified and reimbursed by CDBG Funds, ENO would

reinstitute the SERI refund amounts previously authorized by the Council for ENO to fund ENO’s cash

flow in its storm restoration efforts as provided for in Resolution R-05-555 for use in post-Katrina energy

conservation and efficiency programs in New Orleans; and

WHEREAS, following the process adopted by R-06-329 the Advising Auditors submitted a Draft Audit

of ENO’s storm costs incurred through March 31, 2006 to the Council on December 22, 2006; and

WHEREAS, the Draft Audit identified four overall objectives of the audit, which included, (1) identify

the types and amounts of costs ENO has incurred and booked as storm recovery costs through March

31, 2006, and develop an understanding of how ENO recorded its storm recovery cost transactions, (2)

verify the appropriate booking, accounting, accuracy and validity of storm recovery costs reported by

ENO in its June 30, 2006 application, (3) determine whether ENO’s storm recovery costs include only

those costs associated with storm restoration activities, and (4) determine whether ENO’s storm

recovery costs are duplicated or double-recovered through other rate mechanisms; and

WHEREAS, the Draft Audit found that a total of $401,208 in storm costs were not adequately

supported or otherwise not verifiable as storm costs, and that, in all material respects, the total valid storm costs of Hurricanes Katrina and Rita amounted to $139,054,329 for the period August 2005 through March 31, 2006. It also included seven recommendations for the Council including: (1) require ENO to notify the Council when and how much was received from insurance proceeds, (2) require ENO to notify the Council of any tax benefits derived from the storm loss(es) and the timing of those benefits from the current Internal Revenue Code (“IRC”) and any future changes to the IRC relating to storm damage, such as, but not limited to the extension of Go Zone tax benefits, (3) require ENO to notify the Council of the amount(s) and dates received from the CDBG grant(s), (4) require ENO to notify the Council of the amounts and dates received of any other Federal, State, Local, Corporate, Non-profit and/or individual funds received to be utilized to restore their operating systems, (5) require ENO to request Council approval prior to changing AFUDC rates, (6) require ENO to adopt the similar policies and procedures for recording storm costs as the State of Mississippi, and (7) require ENO to offset any future rate request amounts by any amount that prepetition costs are relieved through bankruptcy; and

WHEREAS, ENO filed Responsive Comments with the Council with respect to the Draft Audit on

January 8, 2007 which included the following suggestions among others: (1) greater clarity is necessary

 in the Final Report as to the purpose and scope of the instant audit and the conclusion of the Auditors

in order to facilitate the CDBG process and, (2) greater clarity is necessary in the Final Report regarding

the amount of storm restoration costs for which ENO seeks recovery (the amount to be approved and

certified $146.429 million) (3) greater clarity is necessary in the Final Report regarding the relationship

of tax benefits to ENO’s storm restoration costs, (4) the Company disagrees with the Auditors’

characterization of the company’s accounting associated with AFUDC and their proposal that approvals

of AFUDC rate changes occur in the future. The Company’s accounting process already includes the

recommended true-up of capital costs over time, and for greater clarity, the Final Report should omit

reference to a recommended true-up or state that the true-up is of capital costs only and not AFUDC, (5)

for greater clarity, the Final Report should omit the Auditors’ discussion of their proposal regarding

incremental cost accounting for storm restoration costs, (6) for greater clarity, the Final Report should

not include the Auditors’ Recommendations set forth in the Draft Report; the Company suggests that

such recommendations be included in a separate documents, and (7) the Company is working with the

Auditors to determine whether support does exist for the transactions that resulted in the exception of

$401,208 identified on page 9 of the Draft Report; and

WHEREAS, no comments were filed regarding the Draft Audit by any other parties to the proceeding;

and

WHEREAS, in consideration of ENO’s comments, the Advising Auditors finalized their Audit and

submitted their Final Audit to the Council on January 18, 2007, $401,208, which maintained the same

level of costs were not adequately supported or otherwise not verifiable as storm costs and clarified

that ENO’s actual total requested recovery amount was $146.429 million when accounting for the

reversal of the $6.973 million SERI refund credit to ENO’s storm uncollectibles. The Final Audit opined

that ENO’s Storm Cost Application (with the exception of the $401,208) presented in all material

respects, reasonable and necessary storm costs of $146.028 million; and

WHEREAS, the primary difference between the Advising Auditors’ Final Audit and the Draft Audit

included the elimination of four of the seven recommendations. The three recommendations in the

Final Audit are: (1) require ENO to notify the Council when and how much was received from insurance

proceeds, (2) require ENO to notify the Council of the amount and dates funds are received from the

CDBG grant(s), and (3) require ENO to notify the Council of the amounts and dates received of any other

Federal, State, Local, Corporate, Non-profit and/or individual funds received to be utilized to restore the

operating systems; and

WHEREAS, by letter dated December 13, 2006 Oliver M. Thomas, Jr., President of the New Orleans

City Council, requested the Advising Auditors to “... expedite the certification of both the $139 million

ENO costs... and the remaining $61 million dollars in costs within four weeks of formal receipt;” and

WHEREAS, on December 18, 2006, ENO submitted its Supplemental and Amending Application of

Entergy New Orleans, Inc. for Recovery of Storm Restoration Costs Related to Hurricanes Katrina and

Rita in Accordance with Council Resolution R-06-459 (“Supplemental Storm Application”); and

WHEREAS, ENO’s Supplemental Storm Application submitted storm costs incurred for the period April

1, 2006 through October 31, 2006 of $51.914 million to the Council for certification for recovery; and

WHEREAS, on January 18, 2007, the Council adopted Resolution R-07-41 which expressed its desire

to expedite the review of ENO’s storm costs and to avoid multiple evidentiary hearings for consideration

of each of ENO’s storm cost recovery submissions. Resolution R-07-41 ordered that the hearings with

respect to all storm costs filed by ENO on or before January 22, 2007 be conducted at the same time;

and

WHEREAS, consistent with the Council’s expressed intent in R-07-41, it adopted a modified

Procedural Schedule to accommodate consideration of all supplemental storm costs submitted by ENO

on or before January 22, 2007 as follows: (1) all parties have the right to discovery through January 31,

2007, (2) the Advisors shall file written comments, recommendations, and a Draft Audit on or before

January 29, 2007, (3) ENO and Intervenors shall file written comments in response to the Advisors’

written comments, recommendations, and Draft Audit on or before February 2, 2007, (4) the Advisors

file the Final Audit on or before February 9, 2007, and (5) an evidentiary hearing on all costs submitted

by ENO through January 22, 2007 would commence February 22, 2007; and

WHEREAS, Resolution R-07-41 expressed the Council’s intent to render a decision by March 1, 2007;

and

WHEREAS, on January 22, 2007, ENO filed with the Council its Second Supplemental and Amending

Application of Entergy New Orleans, Inc. for Recovery of Storm Restoration Costs Related to Hurricanes

Katrina and Rita in Accordance with Council Resolution R-06-459 (“Second Supplemental Application”)

which submitted storm costs in the amount of $11.994 million incurred from November 1, 2006 through

December 31, 2006; and

WHEREAS, contemporaneous with its Second Supplemental Application ENO filed a Motion to

Substitute Original Affidavits in the Supplemental and Amending Application of Entergy New Orleans,

Inc. for Recovery of Storm Restoration Costs Related to Hurricanes Katrina and Rita in Accordance with

Council Resolution R-06-459; and

WHEREAS, on January 29, 2007, the Advising Auditors submitted their Draft Audit for costs submitted

by ENO for the period April 1 through December 31, 2006; and

WHEREAS, the Advising Auditors’ Draft Audit found no storm costs in the Audit sample that were not

adequately supported or otherwise not verifiable as storm costs. The Draft Audit opined that ENO’s

Storm Cost Applications for the period April 1, 2006 through October 31, 2006 and November 1, 2006

through December 31, 2006 presented, in all material respects, reasonable and necessary storm costs of

$51.913 million and $11.994 million respectively; and

WHEREAS, ENO filed comments on the Draft Audit on February 2, 2007 which stated that, “The

Company is in substantial agreement with the Council Advisors’ conclusions contained in the

 Independent Accountants’ Draft Report on Audit of Costs Associated with the Storm Cost Recovery

Riders...December 31, 2006. As indicated…in their Final Report;” and

WHEREAS, on February 8, 2007 the Advising Auditors submitted their Final Audit of

the storm costs incurred by ENO for the periods April 1, 2006 through December 31, 2006; and

WHEREAS, the Final Audit did not deviate from the Draft Audit as submitted by the Advising Auditors

on January 29, 2007 and found that the total $51.913 million of storm costs incurred for the period April

1, 2006 through October 31, 2006 and $11.994 million of storm costs for the period November 1, 2006

through December 31, 2006 as submitted by ENO presented, in all material respects, reasonable and

necessary storm costs for Hurricanes Katrina and Rita; and

WHEREAS, the Final Audit summarized ENO’s total storm cost recovery costs submitted to the

Council for audit as a total of $210.337 million comprised of $146.429 million sought through March 31,

2006, $51.914 million sought for April 1, 2006 through October 31, 2006 and $11.994 million sought for

November and December 2006; and

WHEREAS, it was concluded that in the Advising Auditors two Final Reports, a total of $209.936

million in storm costs, inclusive of ENO’s storm uncollectible estimate, incurred by ENO through

December 31, 2006 have been deemed reasonable and necessary. The $209.936 million includes

$205.026 million related to Hurricane Katrina and $4.910 million related to Hurricane Rita; and

WHEREAS, the Advising Auditors conducted an extensive audit of ENO’s storm restoration costs

incurred through December 31, 2006. In conjunction with its several Applications, ENO provided the

Advising Auditors with considerable volumes of detailed information and supplemented this with

substantial additional information in the form of documents and workpapers in response to data

requests regarding its processes, procedures, and internal controls established to account for and

support storm restoration costs; and

WHEREAS, the Advising Auditors propounded 144 formal data requests to ENO, as well as other

requests for data, many of which contained multiple parts, and many of which required significant

amounts of information and records to be produced. In addition, the Advising Auditors and

representatives of ENO participated in numerous technical conferences, including one that occurred

over two consecutive days. The Advising Auditors also were provided liberal access to ENO personnel

responsible for ENO’s storm accounting processes. No party has filed with the Council a motion as to the

sufficiency of discovery or the responses provided by ENO thereto; and

WHEREAS, On January 31, 2007, ENO filed with the Council both Public and Highly Sensitive

versions of its Third Supplemental and Amending Application of Entergy New Orleans, Inc. for Recovery

of Storm Restoration Costs Related to Hurricanes Katrina and Rita in Accordance with Council

Resolution R-06-459 (“Third Supplemental Application”); and

WHEREAS, ENO’s Third Supplemental Application requested the Council to: (1) find that the

estimated future storm restoration costs for rebuilding ENO’s natural gas system due to damage from

Hurricane Katrina are reasonable and necessary and, consistent with such finding, certify such future

storm restoration costs for recovery in accordance with the above referenced Agreement in Principle,

particularly Paragraph 22; (2) find pursuant to Section 5 of Proposed Action Plan Amendment Number 6

for Disaster Recovery Funds that $200 million is the lesser of (a) 90% of the storm restoration costs

incurred through December 31, 2006 by ENO on account of Hurricane Katrina under review by the

Council and the estimated future storm restoration costs for rebuilding ENO’s natural gas system due to

damage from Hurricane Katrina, totaling $670 million, and (b) $200 million; (3) find the storm

restoration costs incurred through December 31, 2006 by ENO due to Hurricane Katrina under review by

the Council and the estimated future storm restoration costs for rebuilding ENO’s natural gas system

due to damage from Hurricane Katrina also exceed the $200 million in CDBG Funds allocated to ENO and

approximately $218 million in potential insurance proceeds for losses associated with Hurricane Katrina,

which the Company expects to receive, and $9.9 million in insurance proceeds, which the Company has

already received; and (4) recommend that the Louisiana Recovery Authority/Office of Community

Development direct the payment of the $200 million in CDBG Funds to ENO as soon as practical; and

WHEREAS, ENO’s Third Supplemental Application, for the first time, requested certification by the

Council of estimated costs associated with rebuilding ENO’s gas system, subject to true-up once the

costs are incurred and paid; and

WHEREAS, on February 15, 2007 the Council issued Resolution R-07-88 which determined the

necessity for the Council’s Engineering Utility Advisors to conduct an independent engineering review of

ENO’s Third Supplemental Application and established a procedural schedule; and

WHEREAS, the procedural schedule contemplated the following: (1) the Advisors’ written comments

and Draft Independent Engineer’s Report due on or before February 26, 2007, (2) ENO and Intervenors

file written comments in response to the Advisors’ written comments and Draft Independent Engineer’s

Report due on or before March 1, 2007, and (3) the Final Independent Engineer’s Report and comments

due on or before March 5, 2007; and

WHEREAS, due to the expedited time frame for consideration for ENO’s Third Supplemental

Application and given the pressing need for CDBG Funds, Resolution R-07-88 conveyed the Council’s

intention to set the matter for hearing at the Council’s Utility Committee Meeting scheduled for March

8, 2007, and to render a final decision by March 15, 2007; and

WHEREAS, the Draft Independent Engineer’s Report regarding ENO’s Third Supplemental Application

was submitted on February 26, 2007 and included the following opinions: (1) based upon ENO’s

proposed plan to return its natural gas system to the level of service and reliability that existed prior to

the occurrence of Hurricane Katrina, its current estimate of its natural gas system’s reconstruction costs

of $465 million is not unreasonable, given ENO’s planned design and re-construction methods

employing HDPE pipe in the replacement of its existing cast iron and steel piping; and the current level

of construction costs being experienced in the Gulf Coast region and the New Orleans Metropolitan

Area; (2) ENO’s current estimate of its natural gas system’s reconstruction costs, based upon ENO’s

proposed plan to return its natural gas system to the level of service and reliability that existed prior to

the occurrence of Hurricane Katrina, meets the criteria of Hurricane Katrina-related costs eligible for

reimbursement for future rebuilding costs, subject to true-up once said costs are incurred and paid, as

provided for in the LRA Action Plan Amendment Number 6 dated February 9, 2007 and approved by the

U.S. Department of Housing and Urban Development (“Plan Amendment 6”); (3) based upon ENO’s

proposed plan to return its natural gas system to the level of service and reliability that existed prior to

the occurrence of Hurricane Katrina, ENO’s Hurricane Katrina unmet estimated natural gas system costs,

when considering: (a) its current estimated cost and method of reconstruction for its natural gas system,

(b) the recommendations of the Council’s Advising Auditors’ as contained in their Report Nos. 1 and 2,

and (c) the Council’s Engineering Utility Advisor’s estimate and allocation of ENO’s potential estimated

receipt of all insurance proceeds attributable to its natural gas system, lie between $319.305 and $319.706 million; and (4) ENO’s current estimated unmet costs of reconstruction and restoration of its natural gas system, and electric distribution, transmission and generating facilities is $442.026 million when taking into consideration: (a) the recommendations of the Council’s Advising Auditors as contained in their Report Nos. 1 and 2 which certified natural gas system and electric distribution, transmission and generating facilities’ storm costs of $205.026 million attributable to Hurricane Katrina, (b) ENO’s current estimate of its natural gas system’s reconstruction costs of $465 million which are based upon ENO’s proposed plan to return its natural gas system to the level of service and reliability that existed prior to the occurrence of Hurricane Katrina, and (C) ENO’s estimated total amount of potential insurance proceeds allocable to its natural gas system, and electric distribution, transmission and generating facilities of $228.0 million; and

WHEREAS, ENO filed its comments on the Draft Independent Engineer’s Report on March 1, 2007

which stated that ENO is in substantial agreement with the conclusions and opinions contained in the

Independent Engineer’s Report re: Third Supplemental Application of Entergy New Orleans, Inc. for

Recovery of Storm Restoration Costs; and

WHEREAS, after reviewing ENO’s responsive comments, the Council’s Engineering Utility Advisors

submitted their Final Independent Engineer’s Report regarding ENO’s Third Supplemental Application on

March 5, 2007; and

WHEREAS, the Final Independent Engineer’s Report found no changes from the Draft Independent

Engineer’s Report; and

WHEREAS, according to the Final Independent Engineer’s Report, the total amount of storm costs is

$670.026 million due to Hurricane Katrina when considering: (1) the opinion of the Council’s Advising

Auditors, as contained in their Final Audit Reports, that $205.026 million in storm costs due to Hurricane

Katrina that were incurred for the period of August 2005 through December 31, 2006 to restore gas and

electric service to ENO’s utility customers in New Orleans were deemed reasonable and necessary, and

(2) the opinion included in the Final Independent Engineer’s Report that ENO’s estimate of its natural

gas system’s reconstruction costs of $465 million in ENO’s proposed plan to return its natural gas system

to the level of service and reliability that existed prior to the occurrence of Hurricane Katrina is not

unreasonable; and

WHEREAS, the Independent Engineer’s Report serves as a litmus test for the reasonableness of ENO’s

cost estimate and receipt of insurance proceeds. No party shall be deemed to have approved, accepted,

agreed to, or consented to any ratemaking or other legal principle or policy, and nothing in the

Independent Engineer’s Report should be considered precedent for ratemaking, legal or policy

purposes.

Similar to any cost eligible for ratemaking purposes, ENO’s actual costs incurred for restoring its gas

system will be subject to review and approval by the Council; and

WHEREAS, ENO deems the individual components of its cost estimate for the gas system rebuild to be

highly sensitive; and

WHEREAS, ENO informs the Council that its most current estimate of insurance proceeds to be

received is $228 million; and

WHEREAS, the Independent Engineer’s Report found the total unmet storm related costs, due to

Hurricane Katrina, incurred to date by ENO for storm restoration and estimated costs for restoring its

 gas system when considering the opinions contained in the Advising Auditors’ Final Audit Reports and

the Independent Engineer’s Report, less the anticipated insurance proceeds is $442.026 million; and

WHEREAS, the $442.026 million in storm related costs far exceeds the $222 million necessary to meet

the Louisiana Recovery Authority (“LRA”) requirement to receive the total $200 million in CDBG Funds

available to ENO; and

WHEREAS, Congress allocated $11.5 billion to the states of Alabama, Florida, Louisiana, Mississippi,

and Texas through the U.S. Department of Housing and Urban Development’s CDGB program of which

Louisiana received $6.2 billion; and

WHEREAS, in fiscal year 2006 Congress allocated an additional $4.2 billion of CDBG Funds for

Louisiana for necessary expenses related to disaster relief, long-term recovery, and restoration of

infrastructure related to the consequences of Hurricanes Katrina, Rita or Wilma; and

WHEREAS, pursuant to the LRA Board approval of a Resolution on October 12, 2006 allocating $200

million of CDBG Funds to mitigate the costs that would flow to ratepayers for recovery that have been

and will be incurred by ENO to restore the electric and natural gas service to residents in New Orleans,

the LRA developed and submitted to HUD Plan Amendment Number 6 which outlines the criteria for the

Ratepayer Mitigation Action Plan; HUD approved such Plan in February 2007; and

WHEREAS, the Proposed Ratepayer Mitigation Action Plan defined the eligible costs for

reimbursement by CDBG Funds to include to the extent that such costs would otherwise be recovered

through rates charged to customers the following costs: (1) emergency and temporary response and

permanent restoration of electricity distribution systems, substations, transmission lines, and

generation facilities that are located within and serve the residents of the City of New Orleans, (2)

emergency and temporary response, permanent restoration, replacement and rebuilding of natural gas

distribution systems located within and serving the residents of the City of New Orleans, (3) emergency

and temporary relocation expenses due to the flooding of the City, (4) emergency communications,

logistics and administrative expenses, (5) repair and restoration of damaged support facilities, and (6)

replacement of materials and equipment inventories used in response and restoration efforts; and

WHEREAS, the Ratepayer Mitigation Plan limits eligible costs to the following: (1) all eligible costs

must be directly related to damages caused by Hurricane Katrina, and were incurred on or after August

28, 2005, (2) costs are eligible only to the extent that they were incurred to repair, restore, reconstruct,

rebuild, and replace facilities and inventories to approximately the same condition or levels that existed

before the onset of Hurricane Katrina, (3) eligible costs can include either reimbursement for previously

incurred costs for emergency and temporary response and restoration; or reimbursement for future

rebuilding costs, subject to true-up once costs are incurred and paid, and (4) the reimbursement

covered under any applicable insurance policy shall be primary to any consideration for receipt of

funding through this partial action plan. As such, coverage under all applicable insurance policies shall

pay first, or be subrogated back to the State, in the event that coverage was in place. Any

uncompensated eligible costs that remain after receipt of all applicable insurance recoveries shall be

eligible for payment under the Plan Amendment Number 6; and

WHEREAS, Ratepayer Mitigation Action Plan established the following funding limitations on the

award of CDBG Funds for ENO: (1) eligible costs shall not be reimbursed for more than 90% of their

eligible costs and (2) total CDBG Funds under the Plan shall not exceed the lesser of 90% of eligible costs

or $200 million. The second limitation implies that ENO must have at least $222 million in eligible costs

in order to receive the full $200 million in available CDBG Funds; and

WHEREAS, the Ratepayer Mitigation Action Plan projects that ENO’s unmet need for restoration of

infrastructure and rebuilding of its gas distribution system, net of estimated insurance proceeds of $250

million, will be $388 million, significantly in excess of the $200 million available in CDBG Funds; and

WHEREAS, the October 12, 2006 LRA Resolution established six (6) conditions for the award of the

CDBG Funds, as requested by the City Council of New Orleans, including the following: (1) CDBG

Funds may only be used to offset the cost of restoration, reconstruction and rebuilding of ENO’s

damaged electric and gas utility systems and to offset such other unrecovered fixed costs as may be the

responsibility of ratepayers, (2) CDBG Funds should be used to mitigate and/or eliminate possible rate

increases to New Orleans ratepayers, (3) no CDBG Funds may be used to profit ENO’s parent, Entergy

Corporation, (4) ENO must agree that all restoration, reconstruction, and rebuilding costs claimed for

CDBG Funds must be certified as reasonable and necessary through an independent process approved

by the LRA, (5) ENO must not claim in any forum capital assets paid for with CDBG Funds as additions to

the rate base for ratemaking purposes or for the valuation of ENO’s assets in connection with the City’s

perpetual option to purchase set forth in the applicable Ordinances, as amended, and (6) any CDBG

Funds awarded to ENO should be exempt from existing or future liens held by any of the applicant’s

bondholders and, except to the extent necessary to reimburse audited expenditures for restoration,

reconstruction, and rebuilding, the Entergy Corporation debtor-in-possession loan to ENO; and

WHEREAS, the Ratepayer Mitigation Action Plan states: “In addition, the State pledged to work with

the Congressional delegation, City Council and local governments, business interests, and others to seek

additional federal funds to cover future gas system repair costs which are largely due to salt water

intrusion that resulted from the failure of the federal government’s levee system”; and

WHEREAS, it is the Council’s present understanding that ENO must submit an application for the

receipt of the $200 million in CDBG Funds to the Office of Community Development (“OCD”), who will,

in turn, review ENO’s application, verify its contents, and determine the amount of CDBG Funds to

award ENO, in accordance with the provisions of the Ratepayer Mitigation Action Plan; and

WHEREAS, the Council believes that the reports of its Advisors regarding ENO’s incurred and

projected storm costs constitute the necessary independent certification process contemplated by the

LRA; and

WHEREAS, given ENO’s current bankruptcy status and the level of storm expenditures made to date,

the Council wishes to expedite the process for ENO’s receipt of the $200 million in CDBG Funds to occur

as soon as possible and at least by May 1, 2007; and

WHEREAS, the AIP provides for ENO to continue recording storm related costs beyond December

2006. While such costs will be recognized by the Council as a request for inclusion in the Base Rate

Case, they will not be automatically deemed to meet the prudence and used and useful standards and

ENO must bear the burden of such proof; and

WHEREAS, on the basis of record before the Council and the non-opposition of all the active

Intervenors in the Storm Cost Recovery process, the Council wishes to certify the total eligible storm

costs incurred and the estimated costs for repairing and replacing ENO’s natural gas system and electric

distribution, transmission and generating facilities due to Hurricane Katrina is $670.026 million, and

after offsetting ENO’s most recent estimate of insurance proceeds of $228.0 million, yields a total of

unmet storm restoration costs of $442.026 million for purposes of CDBG Funds; now, therefore:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS THAT:

Pursuant to the LRA Ratepayer Mitigation Action Plan, the Council, having the opportunity to review

ENO’s storm cost recovery filings and the Final Audit Reports certifies the $205.026 million in storm

costs incurred by ENO through December 31, 2006 related to Hurricane Katrina as reasonable and

necessary for purposes of satisfying the LRA and OCD requirements for receipt of CDBG Funds. In

addition, the Council certifies the estimate for the natural gas system repair and replacement of $465

million as reported by the Engineering Utility Advisors in their Final Independent Engineer’s Report for

purposes of satisfying the LRA and OCD requirements for receipt of CDBG Funds. The total certified

actual storm costs incurred and the estimated costs for repairing and replacing ENO’s natural gas system

and electric distribution, transmission and generating facilities is $670.026 million, and after offsetting

ENO’s most recent estimate of insurance proceeds of $228.0 million, yields a total of unmet storm

restoration costs of $442.026 million. The $442.026 million in storm related costs far exceeds the $222

million necessary to meet the LRA requirement to receive the total $200 million in CDBG Funds available

to ENO; and

It is imperative that ENO receive CDBG Funds as soon as possible so as to facilitate its exit from

bankruptcy by the proposed effective date of June 30, 2007, to offset costs that otherwise may be borne

by ratepayers. The Council urges the OCD to expedite its review of ENO’s pending application for the

receipt of $200 million in CDBG Funds and remit those funds to ENO by May 1, 2007. The Council is

willing to provide any necessary assistance to ENO and/or to the OCD in any way possible so as to

ensure the transfer of the CDBG Funds occurs by May 1, 2007.

As explained in Resolution R-06-459 on page 14, the CDBG funds will be used to offset ENO’s storm

restoration costs, including the cost to rebuild the natural gas system, on a dollar-for-dollar basis and

enable ENO to recover its storm restoration costs without imposing the proposed Storm Cost Recovery

Rider to collect these costs from ENO’s ratepayers. By paying for these storm restoration costs, CDBG

funds will inure directly to the benefit of the residents of New Orleans. The Ratepayer Mitigation Action

Plan estimates that the application of $200 million in CDBG funds will avoid an increase in revenue

requirements of $23,943,500 on an annual basis. As noted in the Ratepayer Mitigation Action Plan,

54.6% of New Orleans residents have low to moderate income; thus, the rate relief afforded by CDBG

funds will be of particular benefit to New Orleans residents with limited means to shoulder these costs.

To date, ENO’s ratepayers have not borne any of the storm restoration costs incurred by ENO.

The storm costs incurred by ENO that remain unmet after receipt of CDBG Funds and insurance

proceeds, and those related to Hurricane Rita which are not eligible for CDBG Funds, have not been

deemed to meet the prudence and used and useful standards for ratemaking purposes. Such costs are

subject to the provisions of the AIP, and the Council will consider such remaining costs for cost recovery

by ENO in its Base Rate Case filing due by July 31, 2008 for Council consideration in that proceeding in

accordance with the AIP.

BE IT FURTHER RESOLVED that the Council hereby authorizes the President of the Council to

transmit a certified copy of this resolution and a certified copy of the Council’s supporting evidentiary

record to the OCD as soon as possible with a cover letter, the form of which is attached notifying the

OCD of the following:

1. The Council certifies that the amount of Eligible Costs for ENO under the Ratepayer

Mitigation Action Plan is $670 million, consisting of $205 million in

Eligible Costs incurred through December 31, 2006 and $465 million of Eligible

Costs under the criteria established in the HUD approved Plan Amendment

Number 6.

2. The Council certifies that, in accordance with Section 5 of the HUD approved Plan

Amendment Number 6, $200 million is the lesser of (a) 90% of ENO’s Eligible Costs, which is $603

million, or (b) $200 million.

3. The Council certifies that the insurance estimate of $228 million due ENO on account of

Hurricane Katrina is not unreasonable.

4. Accordingly, the Council certifies that the total of uncompensated costs for ENO eligible for

ratepayer mitigation is $442 million under the criteria established in the HUD approved Plan

Amendment Number 6.

5. The Council requests that the OCD will take the steps necessary in the near future to secure

additional funding for the rebuilding of ENO’s natural gas system for the benefit of ratepayers

consistent with the State’s pledge.

6. The Council requests that the OCD take all steps necessary to make the $200 million in CDBG

funding available to ENO by May 1, 2007.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE

ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Carter, Fielkow, Head, Hedge-Morrell, Midura, Thomas, Willard-Lewis - 7

NAYS: 0

ABSENT: 0

AND THE RESOLUTION WAS ADOPTED.

\*\*Copies of the atttachment may be seen in full in the Clerk of Council’s Office, 1300 Perdido Street,

Room 1E09, City Hall.