

July 29, 2019

VIA HAND DELIVERY

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

RE: *Revised Application of ENO for a Change in Electric and Gas Rate in the City of New Orleans Pursuant to Council Resolutions R-15-194 and R-17-504 and for Related Relief*
CNO Docket UD-18-07
Our File No.: 7717-46

Dear Ms. Johnson:

Please find enclosed the original and three copies of Air Products and Chemicals, Inc.'s Initial Post-Hearing Brief which we request you file into the record in the above-referenced matter. Please file an original and two copies into the record and return a date-stamped copy to my office in accordance with normal procedures.

Should you have any questions regarding the above, please do not hesitate to contact me. Thank you for your assistance with this matter.

Very truly yours,



Carrie R. Tournillon

CRT/tp

Enclosures

cc: Official Service List UD-18-07 (via electronic mail)

**BEFORE THE
NEW ORLEANS CITY COUNCIL**

**IN RE: REVISED APPLICATION OF ENO)
FOR A CHANGE IN ELECTRIC AND GAS) DOCKET NO. UD-18-07
RATE IN THE CITY OF NEW ORLEANS) July 26, 2019
PURSUANT TO COUNCIL RESOLUTIONS)
R-15-194 AND R-17-504 AND FOR RELATED)
RELIEF)**

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

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**BEFORE THE
NEW ORLEANS CITY COUNCIL**

IN RE: REVISED APPLICATION OF ENO)	
FOR A CHANGE IN ELECTRIC AND GAS)	DOCKET NO. UD-18-07
RATE IN THE CITY OF NEW ORLEANS)	July 12, 2019
PURSUANT TO COUNCIL RESOLUTIONS)	
R-15-194 AND R-17-504 AND FOR RELATED)	
RELIEF)	

**AIR PRODUCTS AND CHEMICALS, INC.’S
INITIAL POST-HEARING BRIEF**

Air Products and Chemicals, Inc. (“Air Products”) respectfully submits this Initial Post-Hearing Brief in the referenced proceeding, pursuant to Order dated April 15, 2019, to set forth and urge adoption of the findings and recommendations of Air Products, which are fully supported by the evidentiary record.

I. Introduction

Air Products has been an industrial customer of ENO and its predecessor company NOPSI since 1965.¹ Air Products is the only customer of ENO that takes service on the Large Interruptible Service (“LIS”) Schedule.² In fact, most of Air Products’ load is interruptible - -

¹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 1:12 – 2:1 (February 1, 2019).

² Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:1-2 (February 1, 2019).

meaning that ENO does not need to have firm access to generation resources to serve Air Products as it does for other customers.³

Further, Air Products is one of only a few ENO customers that takes service directly from ENO's transmission system - - meaning that ENO does not need to invest in the distribution system to provide service to Air Products.⁴

In addition, Air Products is also a "high load factor" customer of ENO - - meaning that Air Products' load is more consistent and intense than most customers and helps spread the costs of meeting peak demand over more kilowatt hours.⁵

These characteristics of Air Products are important and relevant to this rate proceeding because they result in *Air Products being less costly to serve than other customers.*⁶ Further, these characteristics make Air Products uniquely situated in a cost of service ("COS") study and make Air Products more vulnerable to rate increases to the extent revenue requirement allocated to the LIS Schedule does not accurately or reasonably represent the costs to serve Air Products, as the full burden of those costs are born only by Air Products, as the only customer in that rate class.⁷

In this proceeding, Air Products has been mindful of the rate impacts on residential customers from combining the legacy ENO customers and Algiers customers. While Air Products has emphasized the importance of basing rates on cost causation, such as for the

³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:1 (February 1, 2019); Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 2:6-10 and 4:3-10 (April 26, 2019).

⁴ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:3-6 (February 1, 2019).

⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 7:10 – 8:1-6 (February 1, 2019).

⁶ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 6:15-18, 7:7-9, and 8:1-6 (February 1, 2019).

⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 15/8 – 16:18 (April 26, 2019).

purposes of furthering the goal of conservation, achieving rates that are equitable to customers and promoting cost-minimization,⁸ importantly, Air Products has not objected to ENO's overall allocation of its revenue requirement to the LIS Schedule⁹ - - *despite this allocation resulting in approximately \$2.5 million more in costs to Air Products than would be justified under strict cost of service and would result in residential customers being below cost of service by more than \$32 million.*¹⁰

However, Air Products has significant concerns with ENO's proposed Return on Equity ("ROE") and use of a Ratepayer Impact Measurement ("RIM").¹¹ Air Products also has significant concerns with certain COS methodologies and rate design approaches that have been proposed over the course of this proceeding due to the risks these proposals create in how ENO's revenue requirement will be updated and allocated to the LIS class over the term of a formula rate plan ("FRP"), such that costs allocated to Air Products may move even further away from COS over the FRP term.¹²

In this proceeding, Air Products has submitted into the evidentiary record the Direct Testimony and Surrebuttal Testimony of Christopher Walters (Exhibits AP-1 and AP-2, respectively) and the Direct Testimony and Surrebuttal and Cross-Answering Testimony of

⁸ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 12:7 – 15:6 (February 1, 2019).

⁹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:22-26 (February 1, 2019).

¹⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 10:8 – 11:11 and Schedules MEB-1 and MEB-2 (February 1, 2019). Schedules MEB-1 and MEB-2 summarize information provided in ENO workpapers included in the evidentiary record as Hearing Exhibit ENO-56, specifically Electric Period II-Section FF-Cost of Service-RR-1 ("Schedule RR-1") and Workpapers – WP_Statement AA-2_REV_E ("Schedule AA-2").

¹¹ See, generally, Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness (February 1, 2019) and Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness (April 26, 2019).

¹² See, generally, Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness (February 1, 2019) and Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness (April 26, 2019).

Maurice Brubaker (Exhibits AP-3 and AP-4). Air Products has also fully participated in the five days of Hearings on the Merits. As discussed herein, the evidence fully supports the Council's consideration and adoption of Air Products' findings and recommendations in this proceeding, as will be discussed herein.

II. Overview of Air Products Recommendations

In this proceeding, and through its expert consultants Mr. Walters and Mr. Brubaker with the firm Brubaker & Associates, Inc. ("BAI"), Air Products has developed and presented testimony and recommendations on a fair and reasonable ROE for ENO and raised several concerns and recommendations with respect to COS methodology and rate design issues. As their work relates to this proceeding, BAI provides consulting services in the economic, technical, accounting and financial aspects of public utility rates.¹³ BAI and its predecessor firm have participated in more than 700 regulatory proceedings in 40 states and Canada.¹⁴

Findings and Recommendations of Mr. Walters

Mr. Walters is a Senior Consultant in the field of public utility regulation with BAI and a Chartered Financial Analyst.¹⁵ Mr. Walters has been involved in utility rate of return filings since 2011, and has sponsored testimony before state regulatory commissions including Arkansas, Delaware, Florida, Illinois, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Ohio, Oklahoma, and Utah.¹⁶

¹³ See, e.g., Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, Appendix A, page 2:19-21 (February 1, 2019).

¹⁴ See, e.g., Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, Appendix A, page 2:17-18 (February 1, 2019).

¹⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, Appendix A, page 1:5-6 (February 1, 2019).

¹⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, Appendix A, page 2:12 and 3:7-9 (February 1, 2019).

As addressed in the Direct Testimony & Schedules of Air Products' witness Mr. Walters in this proceeding, Mr. Walters reviewed and analyzed the regulated utility industry's access to capital, credit rating trends and outlooks, the overall trend in the authorized ROE for electric utilities through the country, and the Federal Reserve's monetary policy actions and the impacts on the cost of capital.¹⁷ Mr. Walters also outlined how a fair ROE should be established, provided an overview of the market's perception of ENO's investment risk, commented on ENO's proposed capital structure, and presented his analysis to estimate an appropriate ROE for ENO.¹⁸ In his Surrebuttal Testimony & Schedules, Mr. Walters further examined an appropriate ROE for ENO and responded to the Rebuttal Testimony of Mr. Hevert on this issue.¹⁹

Mr. Walters' findings and recommendations are summarized as follows:

- The trend in authorized ROEs for electric utilities has declined over the last several years and has remained below 10.0% more recently.²⁰
- ENO witness Mr. Robert Hevert's recommendation for a cost of equity within the range of 10.25% to 11.25%, with a midpoint estimate of 10.75%, are overstated and do not represent an accurate estimate of the current market cost of equity for the Company, and would be much higher than a fair and balanced ROE for ratemaking purposes.²¹
- Based on the results of several cost of equity estimation method performed on publicly traded electric utility companies with comparable risk to ENO, the Council should award ENO a return on common equity of 9.35%, which is the midpoint of his recommended range of 9.0% and 9.7%.²²

¹⁷ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 2:15-17 (February 1, 2019).

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

¹⁹ See, generally, Hearing AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness (April 26, 2019).

²⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 2:17-19 (February 1, 2019).

²¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:12-17 (February 1, 2019).

²² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:4-8 (February 1, 2019).

- A 9.35% ROE will fairly compensate ENO for its current market cost of common equity while mitigating the claimed revenue deficiency in the proceeding, by fairly balancing the interests of investors and ratepayers.²³
- Based on the more in-depth and unbiased review of ROEs awarded to vertically integrated electric utilities provided in Mr. Walters' Schedule CCW-19, Mr. Hevert's recommended ROE range of 10.25% to 11.25% and his mid-point 10.75% point estimate are out of touch with the industry and his conclusions are misleading.²⁴
- Once issues with Mr. Hevert's assumptions for his ROE calculations are corrected, his studies would show that Mr. Walters' 9.35% recommended ROE for ENO is reasonable.²⁵
- For the same reasons detailed in Mr. Walters' Direct Testimony, Mr. Hevert's updated DCF, CAPM, and Risk Premium analyses in his Rebuttal Testimony produce excessive estimates for the required ROE and should be rejected.²⁶

Findings and Recommendations of Mr. Brubaker

Air Products witness Mr. Brubaker is a consultant in the field of public utility regulation and President of BAI.²⁷ Mr. Brubaker's experience spans nearly 50 years and includes testifying before the Federal Energy Regulatory Commission ("FERC"), in various courts and legislatures, and before state and municipal regulatory authorities, including the City Council of the City of New Orleans since about 1980, and in the states of Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Guam, Hawaii, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Nevada, New Jersey, New Mexico, New York, North

²³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:8-11 (February 1, 2019).

²⁴ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, page 4:9-12 and Schedule CCW-19 (April 26, 2019).

²⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:16-20 and Table 9 (February 1, 2019).

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

²⁷ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 1:5-6 (February 1, 2019).

Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, Wisconsin and Wyoming.²⁸ As it relates to this proceeding, Mr. Brubaker has extensive experience with the preparation of studies relating to electric utilities, including analyses of the cost to serve various types of customers, the design of rates for utility services, cost forecasts, and determinations of rate base and operating income.²⁹

As addressed in the Direct Testimony & Schedules of Air Products witness Mr. Maurice Brubaker, Mr. Brubaker primarily addresses electric class cost of service, revenue allocation, rate design, certain aspects of ENO's proposed Formula Rate Plan ("FRP"), the Purchased Power and Capacity Acquisition Cost Recovery Rider ("PPCACR"), and the proposed RIM adjustment to the Evaluation Period Cost of Equity ("EPCOE") which ENO proposes in conjunction with its proposed FRP. Mr. Brubaker also addresses a change proposed by ENO to its Service Regulations for electric service.³⁰ In his Surrebuttal and Cross-Answering Testimony & Schedules, Mr. Brubaker responds to ENO and the Advisors to the Council of the City of New Orleans ("Advisors") with respect to class cost allocation and rate design proposals that depart from traditional and accepted approaches for ratemaking, are arbitrary, create risk that revenues allocated to the LIS Schedule will move further away from COS over the term of any approved FRP, and fail to recognize that Air Products is less costly to serve than customers in other rate classes.³¹

Mr. Brubaker's findings and recommendations are summarized as follows:

²⁸ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:8-9 and Appendix A, page 2:1-3 and 14-20 (February 1, 2019).

²⁹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, Appendix A, page 2:2-5 (February 1, 2019).

³⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 24:12 – 25:19 (February 1, 2019).

³¹ *See*, generally, Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness (April 26, 2019).

- The methodologies employed by ENO in the development of its electric class cost of service study are appropriate. This includes use of the 12 coincident peak (“12 CP”) method for the allocation of generation-related fixed costs and purchased power agreements (“PPA”).³²
- Air Products is served at the transmission voltage level (does not require the distribution system) and its load is mostly interruptible. This makes the cost to serve Air Products substantially less than the cost to serve any other class of customers.³³
- The approach taken by ENO to allocate its claimed revenue requirement among customer classes is a step in the right direction of recognizing cost of service, but still leaves Air Products paying about \$2.5 million per year more than it should according to ENO’s own cost of service study.³⁴
- To the extent that ENO does not receive the full amount of revenues that it seeks, the difference between the amount sought by ENO and the amount determined appropriate by the Council should be apportioned only to those customer classes that are being charged rates above cost of service as shown on Schedule MEB-3. This would not cause the rates of any class to be higher than what ENO has proposed, and would reduce the burden on those customer classes who would be paying rates above cost of service.³⁵
- ENO’s proposal to realign certain fixed costs associated with a number of generation facilities and PPAs from the Fuel Adjustment Clause (“FAC”) and PPCACR to base rates should be approved.³⁶
- The cost recovery mechanism in the proposed PPCACR should be accepted.³⁷
- ENO’s proposed RIM should be rejected, and if it is not rejected, its application should be limited to customers who take service at the distribution level, and the

³² Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:14-17 (February 1, 2019).

³³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:18-21 (February 1, 2019).

³⁴ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:22-26 (February 1, 2019).

³⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:1-8 (February 1, 2019).

³⁶ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:9-11 (February 1, 2019).

³⁷ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:12-13 (February 1, 2019).

handful of customers (including Air Products) who take service at the transmission level should not be included in any RIM adjustments.³⁸

- ENO’s proposal to recover costs associated with NOPS, as contained in the proposed FRP, should be accepted.³⁹
- ENO’s proposal to reset rates to the EPCOE should be rejected. Instead, if the earned return on equity (“EROE”) is above the upper bandwidth, the rates should be adjusted so as to bring the ROE 60% of the way toward the upper bandwidth. Similarly, if the EROE is below the lower bandwidth, the rates should be adjusted so as to move the ROE 60% of the way toward the lower bandwidth.⁴⁰
- ENO’s proposed language change to the “Continuity of Service” provision in its Service Regulations should be rejected and that the current language be retained.⁴¹
- Advisors witness Mr. Prep attributes phantom costs to the interruptible service supplied to Air Products, and as a result materially over-allocates costs responsibility to Air Products. He fails to appreciate that ENO does not have to build or buy capacity to serve interruptible load. ENO’s approach of including 15% of the interruptible load in the class cost of service study for the allocation of generation-related capacity costs appropriately recognizes generation cost responsibility associated with that capacity.⁴²
- Advisors witness Mr. Prep’s class cost of service study mixes concepts of cost of service and rate mitigation. Mr. Prep’s assignment of widely ranging rates of return to various kinds of customers is completely arbitrary and not a proper measure of cost of service. In a cost of service study, all classes should be assigned the system average rate of return, and revenue deficiencies or surpluses calculated from that cost of service study. Rate mitigation is a separate matter, and should remain a separate step in the process of determining interclass revenue allocation.⁴³
- The proposal of the Advisors to include in cost of service studies and in FRP reviews the costs and revenues associated with cost recovery riders should be

³⁸ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:14-18 (February 1, 2019).

³⁹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:19-20 (February 1, 2019). Note: The Direct Testimony of Mr. Brubaker was filed prior to the Orleans City Parish decision to void the Council’s orders approving NOPS.

⁴⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:21-26 (February 1, 2019).

⁴¹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:27-29 (February 1, 2019).

⁴² Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:4-10 (April 26, 2019).

⁴³ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:11-17 (April 26, 2019).

rejected. Riders like the Fuel Adjustment Clause (“FAC”) that are designed to track and collect revenues separate and apart from base rates should not be included either in class cost of service studies or in FRP reviews. Such riders are designed to reflect certain specific costs, and have their own internal true-up or reconciliation mechanisms. Including these costs and revenues in cost of service studies or in FRPs distracts from the purpose of the FRPs, which essentially is to provide for adequate recovery of those cost collected through base rates rather than through separate riders.⁴⁴

- The Advisors’ recommendation to update all of the inputs to class cost of service studies, including demand and energy allocation factors that allocate cost among customer classes, during the course of annual FRP reviews is inconsistent with the general concept of FRPs, which are designed to provide an abbreviated and streamlined review of base rate cost recovery. The Advisors’ recommendation would essentially convert the FRP process into “mini” rate cases every year which would make the process unnecessarily complex, expensive, contentious and inefficient. FRPs typically have formulas which specify how any rate adjustments are to be accomplished, and apply adjustment as a uniform percentage of base rate revenues, whether there are increases, or decreases.⁴⁵
- To the extent that the Council allows Lost Contribution to Fixed Cost (“LCFC”) to be included in any cost recovery mechanism, it should be collected through the Energy Efficiency Cost Recovery (“EECR”) or the Demand Side Management Cost Recovery (“DSMCR”) mechanisms. To do otherwise would risk having customers who are not responsible for the LCFC pay for it. Inclusion of LCFC in a EECR or DSMCR (assuming LCFC is authorized by the Council) is appropriate because the beneficiaries of utility-sponsored energy efficiency efforts are those customers and classes of which those customers are a member.⁴⁶
- The structure of ENO’s and other parties’ decoupling mechanisms poses a substantial risk of a highly disruptive change in revenues for customers in classes that have only a few customers (Master-Metered Nonresidential, High Voltage and Large Interruptible Service) because the mechanism essentially would guarantee fixed cost recovery from those classes regardless of the level of purchases by customers in those classes. A modest change in the level of business operations, and hence the amount of power required from ENO, could cause a very disruptive increase to those customers.

⁴⁴ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:18-27 (April 26, 2019).

⁴⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:28-37 (April 26, 2019).

⁴⁶ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:38 – 3:6 (April 26, 2019).

- Either customer classes with only a few customers should not be included in any decoupling mechanism, or there should be a maximum change of 10% in the average charge per kWh between rate cases to customers in those classes.⁴⁷
- Additional decreases in ENO revenue requirements from the level proposed by ENO, as recommended by the Advisors and Crescent City Power Users Group (“CCPUG”), should be spread among customer classes that would be above their COS at ENO’s proposed rates, consistent with Schedules MEB-8, MEB-9 and MEB-10.⁴⁸

III. Discussion

A. Authorized Return on Common Equity

Based on extensive evidence in the record, including testimony put forth by four witnesses across three parties, Air Products opposes ENO’s proposed mid-point ROE of 10.75%. The evidence supports the Council authorizing ENO to earn an ROE of 9.35% or less. Further, the evidence demonstrates that the ROE testimony of ENO witness Mr. Hevert is flawed and would result in the authorization of an ROE that is excessive in today’s capital markets. As discussed below, Air Products’ witness Mr. Walters and CCPUG witness Mr. Richard Baudino each independently arrived at 9.35% as a fair and reasonable ROE for ENO. Further, Advisors witness Mr. Byron Watson determined that an even lower ROE of 8.93% was appropriate and reasonable - - further supporting that Mr. Walters’ recommendation is not understated.⁴⁹

Thus, Air Products respectfully requests that the Council authorize an ROE for ENO not higher than 9.35%.

⁴⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:7-17 (April 26, 2019).

⁴⁸ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:18-25 (April 26, 2019).

⁴⁹ Hearing Exhibit ADV-6, Direct Testimony of Bryon Watson, Advisors witness, page 2:7-9 (February 1, 2019).

1. Analysis of Air Products Witness Christopher Walters Supports 9.35% ROE

Air Products witness Mr. Walters undertook an extensive analysis of the regulated utility industry's access to capital, credit rating trends and outlooks, the overall trend in authorized ROEs for electric utilities throughout the country, and the impact that the Federal Reserve's monetary policy actions have had on the cost of capital.⁵⁰ Mr. Walters fully evaluated the market's perception of ENO's investment risk and considered ENO's proposed capital structure.⁵¹ Mr. Walters then used several cost of equity estimation methods performed on proxy group of publicly traded electric utility companies with comparable risk to ENO, including (1) a constant growth Discounted Cash Flow ("DCF") Model using the consensus of analysts growth rate projections, (2) a constant growth rate DCF model using sustainable growth rate estimates, (3) a multi-stage DCF model, (4) a Risk Premium model, and (5) a Capital Asset Pricing Model ("CAPM").⁵² Based on Mr. Walters' extensive analysis, he estimated that ENO's current market cost of equity is in the range of 9.0% and 9.7%, with a mid-point estimate of 9.35%.⁵³

Mr. Walters' ROE recommendation is consistent with observable evidence on trends in authorized returns for electric and gas utilities, which have declined over the last ten years.⁵⁴ As Mr. Walters presents in his Direct Testimony & Schedules, ROEs for electric and gas utilities have been reasonably stable well below 10.0% for about the last six years.⁵⁵ The most frequent

⁵⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 2:15-20 (February 1, 2019).

⁵¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 3:1-3 and 17:11 – 19:5 (February 1, 2019).

⁵² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 3:4-6 and 17:3-10 (February 1, 2019).

⁵³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 3:6-8 (February 1, 2019).

⁵⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 4:4- 10 and Figure 1 (February 1, 2019).

⁵⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 4:4- 10 and Figure 1 (February 1, 2019).

distribution of ROEs is less than 9.7%, with many below 9.5%.⁵⁶ Importantly, during this period of declining cost of capital, there has been significant improvement realized in the electric utility industry's overall credit quality and the ability of regulated utilities to access significant amounts of capital to support record amounts of capital investments over at least the last ten years.⁵⁷ As Mr. Walters points out in his testimony, robust valuations of regulated utility equity securities are an indication that utilities can sell securities at high prices, which is a strong indication that they can access equity capital under reasonable terms and conditions and at relatively low cost.⁵⁸

Importantly, Mr. Walters' analysis and recommendation for a 9.35% ROE for ENO took into consideration ENO's specific investment risk and proposed capital structure.⁵⁹ In fact, with two exceptions, Mr. Walters relied on the same proxy group used by Mr. Hevert in his ROE analysis.⁶⁰

Further, as Mr. Walters explains in his Surrebuttal Testimony & Schedules, in several instances in his calculation of an appropriate ROE for ENO, he opted to use the higher end of an estimate. For example, for his DCF analysis, Mr. Walters recommends a 9.1% ROE estimate that was based primarily on his Constant Growth DCF estimates, which were up to 163 basis

⁵⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 5:6-8 and Table 1 (February 1, 2019).

⁵⁷ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 6:1 – 7:12 and Figure 2 (February 1, 2019).

⁵⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 8:1-10 and Schedule CCW-1 (February 1, 2019).

⁵⁹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, at pages 17:11-19:5 (February 1, 2019).

⁶⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 19:10-13 (February 1, 2019). Those exceptions are that Mr. Walters excluded Southern Company and NextEra Energy from his proxy group due to their announcement that Southern Company would sell Gulf Power Company and Florida City Gas utility company to NextEra Energy. Such an announcement can distort market factors used in DCF and risk premium studies thereby warranting those companies from being excluded from Mr. Walters' proxy group at the time of his ROE analysis. *Id.* at 20:1-22.

points higher than his Multi-Stage DCF Model estimates.⁶¹ Similarly, in calculating a recommended ROE using a Risk Premium study, Mr. Walters applied a weight of 75% to his high-end risk premium estimates and a weight of 25% to the low end.⁶² This weighting methodology produced a risk premium over Treasury bonds of 6.1% and a risk premium over Utility bonds of 4.9%.⁶³ Applying the weights as Mr. Walters has done produces a risk premium over bond yields that are significantly above historical averages.⁶⁴ Mr. Walters then adds a projected 30-year Treasury bond yield of 3.6% to his risk premium estimate of 6.1% to produce a cost of equity estimate of 9.7%. Similarly, Mr. Walters then adds the current 13-week average A and Baa-rated utility bond yields of 4.44% and 4.96%, respectively, to his above-average utility bond risk premium of 4.9%.⁶⁵ The utility bond yield risk premium methodology produces a cost of equity in the range of 9.3% to 9.9%, with an average of 9.6%.⁶⁶ Mr. Walters concluded that the cost of equity based on the risk premium method falls within the range of 9.6% (utility bond method) and 9.7% (Treasury bond method), and Mr. Walters again decided to recommend the high end of the range of 9.7%.⁶⁷ In addition, in considering the ROE range of 7.3% to 8.2% produced using Mr. Walters' CAPM analysis, Mr. Walters' opted to recommend the high-end

⁶¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 36:8-12 and Table 6 (February 1, 2019).

⁶² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 41:6-16 (February 1, 2019).

⁶³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 41:6-16 (February 1, 2019).

⁶⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 41:6-17 (February 1, 2019).

⁶⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 41:15-16 (February 1, 2019).

⁶⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 41:17 – 42:2 (February 1, 2019).

⁶⁷ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 42:3-6 (February 1, 2019).

CAPM return estimate of 8.2%.⁶⁸ Thus, Air Products submits that Mr. Walters' ROEs analysis, which results in an overall recommended ROE of 9.35%, is reasonable and fair to ENO.

2. Analysis of ENO Witness Robert Hevert Supports an Excessive ROE and Is Flawed

In this proceeding, ENO is requesting authorization of a 10.75% ROE.⁶⁹ ENO's requested ROE is based on the testimony of its witness Mr. Robert Hevert and is the mid-point of Mr. Hevert's recommended range of 10.25% to 11.25%.⁷⁰ Mr. Hevert's recommended ROE is based on a (1) constant growth DCF analysis, (2) multi-stage DCF analysis, (3) CAPM, and (4) Bond Yield Plus Risk Premium methodology.⁷¹ However, as discussed in the Direct Testimony & Schedules and Surrebuttal Testimony & Schedules of Air Products witness Mr. Walters, Mr. Hevert's ROE estimate is overstated and should be rejected.⁷² In fact, as Mr. Walters testified, Mr. Hevert's recommended ROE of 10.75% is higher than all but one authorized ROE in the United States since 2014.⁷³ Importantly, Mr. Hevert's recommendation is higher than all authorized ROEs awarded to electric utilities in 2018 and 2019.⁷⁴ Mr. Hevert's grossly

⁶⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 48:9-15 (February 1, 2019).

⁶⁹ Hearing Exhibit ENO-26, Revised Direct Testimony of Robert B. Hevert, ENO witness, page 5:10-12 (September 2018).

⁷⁰ Hearing Exhibit ENO-26, Revised Direct Testimony of Robert B. Hevert, ENO witness, page 5:10-12 (September 2018).

⁷¹ Hearing Exhibit ENO-26, Revised Direct Testimony of Robert B. Hevert, ENO witness, page 3:6-9 (September 2018).

⁷² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:2 (February 1, 2019).

⁷³ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, page 3:21-23 and Schedule CCW-19 (April 26, 2019).

⁷⁴ Hearing Exhibit AP-2, Surrebuttal Testimony & Schedules of Christopher Walters, Air Products witness, page 4:1-2 and Schedule CCW-19 (April 26, 2019).

overstated ROE recommendation is a result of several flaws throughout his analysis. Flaws in Mr. Hevert's ROE analysis, which produce excessive results, include the following:⁷⁵

1. Mr. Hevert's constant growth DCF results based on the high growth rates are unsustainable and therefore unreasonable;
2. Mr. Hevert's multi-stage DCF is based on:
 - a. an unrealistic long-term GDP growth estimate that is not aligned with market participants' outlooks;
 - b. a manipulated dividend payout ratio adjustment; and
 - c. a terminal stock price that is produced by an unjustified price-to-earnings ("P/E") ratio assumption;
3. Mr. Hevert's CAPM is based on inflated market risk premiums; and
4. Mr. Hevert's Bond Yield Plus Risk Premium studies are based on inflated utility equity risk premiums.

But for Mr. Hevert's relying heavily on the highest growth rate estimates to support an unreasonably high ROE, Mr. Hevert's constant growth DCF mean results generally support a ROE no higher than 9.3% when considering the average of his growth rate estimates.⁷⁶

Similarly, Mr. Hevert's multi-stage DCF analyses are impacted by various assumptions and inputs made by Mr. Hevert that make it unreliable and result in manipulated dividend payout ratios and cash flow projections, inflating the dividend payouts and DCF results.⁷⁷ When the assumptions are corrected, his multi-stage DCF estimates would produce ROEs in the range of 8.36% to 8.7% (with an ROE of 8.54% on average).⁷⁸

⁷⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:2-14 (February 1, 2019).

⁷⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 54:3-6 (February 1, 2019).

⁷⁷ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 55:8-17 (February 1, 2019).55:8-17

⁷⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 61:18-19 and Table 11 (February 1, 2019).

With respect to his CAPM analysis, Mr. Hevert used market risk premiums that were overstated for at least two reasons. First, he did not measure the market risk premium in relationship to the projected risk-free rate, causing a mismatch in the market risk premium estimates and his CAPM returns.⁷⁹ Second, Mr. Hevert's market risk premiums also consist of growth rates of approximately 13.73% and 14.00%, which are far too high to be a rational outlook for sustainable long-term market growth.⁸⁰ As Mr. Walters testified, the growth rates used by Mr. Hevert in his CAPM analysis are more than two times the growth rate of the U.S. GDP long-term growth outlook of 4.20%.⁸¹ As a result, Mr. Hevert's DCF returns used within his CAPM analysis are inflated. Moreover, as addressed by Mr. Walters in Direct Testimony, Mr. Hevert made an error in his estimate of market risk premium used in his CAPM analysis:⁸²

Q DO YOU HAVE ANY OTHER ISSUES WITH MR. HEVERT'S MARKET RISK PREMIUM ESTIMATES?

A Yes. Mr. Hevert has made an error in the estimate of his market risk premium. Mr. Hevert measures the market risk premium based on his DCF return on the market less his current risk-free rate estimate of 3.11%.⁴⁴ He then relies on the market risk premiums of 12.62% and 12.99% as risk premium estimates used in his CAPM study on his Exhibit RBH-6. The error in his calculation is that the market risk premium that corresponds with a risk-free rate of 3.11% should not be the same as the market risk premium that corresponds with a risk-free rate of 3.48% as he uses on his Exhibit RBH-6. Rather, the market risk premium that corresponds with a risk-free rate of 3.48% should be the difference between his market return estimate of 15.73% and 3.48%, or 12.25%, and his market return estimate of

⁷⁹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, pages 62:11 – 63:7 (February 1, 2019).

⁸⁰ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 64:2-3 (February 1, 2019).

⁸¹ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 64:4-5 (February 1, 2019).

⁸² Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 65:11 – 66:7 (February 1, 2019) (internal citations omitted).

16.10% less his 3.48% risk-free rate, or 12.62%. In other words, Columns 3 and 4 of lines “Near-Term Projected 30-Year Treasury” of Mr. Hevert’s Exhibit RBH-5 are overstated. Overstating the market risk premium in his CAPM study where he uses a projected Treasury bond yield produces a flawed and erroneous result that overstates a fair CAPM return estimate for ENO in this proceeding.

As Mr. Waters further testified, once Mr. Hevert’s CAPM analysis is revised to reflect a more reasonable market risk premium and recent risk-free rates, Mr. Hevert’s CAPM analysis would support an ROE no higher than 8.7%.⁸³

Mr. Hevert’s Bond Yield Plus Risk Premium methodology is also unreasonable, due to Mr. Hevert’s contention that there is a simplistic inverse relationship between equity risk premiums and interest rates.⁸⁴ As Mr. Walters testified, this contention is not supported by academic research.⁸⁵ Further, Mr. Hevert’s analysis ignores the differentials in investment risk differentials, and his use of a long-term projected bond yield of 4.30% is not reflective of market participants’ outlook for ENO’s cost of capital during the period rates determined in this proceeding will be in effect.⁸⁶ Correcting the flaws in Mr. Hevert’s Bond Yield Plus Risk Premium produces risk premium results of 9.21% to 9.58%, which are comparable to the results of Mr. Walters’ ROE analyses.⁸⁷

As Mr. Walters demonstrates in Table 9 of his Direct Testimony (provided on page 20, herein), after using prudent and sound adjustments to correct the flaws in Mr. Hevert’s ROE

⁸³ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 66:8-14 (February 1, 2019).

⁸⁴ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 67:6-9 (February 1, 2019).

⁸⁵ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 67:8-9 (February 1, 2019).

⁸⁶ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 68:9-10 and 70:3-5 (February 1, 2019).

⁸⁷ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 71:1-7 (February 1, 2019).

analyses, discussed above, Mr. Hevert's own studies show that Mr. Walters' 9.35% recommended ROE for ENO is reasonable.⁸⁸

⁸⁸ Hearing Exhibit AP-1, Direct Testimony & Schedules of Christopher Walters, Air Products witness, page 51:16-20 and Table 9 (February 1, 2019).

TABLE 9

Hevert's Return on Equity Estimates

<u>Description</u>	<u>Mean¹</u>	<u>Adjusted²</u>
	(1)	(2)
<u>Constant Growth DCF</u>		
30-Day Average	9.24%	9.24%
90-Day Average	9.29%	9.29%
180-Day Average	<u>9.16%</u>	<u>9.16%</u>
Average Constant Growth DCF	9.23%	9.23%
<u>Multi-Stage DCF – Gordon Model</u>		
30-Day Average	9.23%	8.57%
90-Day Average	9.28%	8.70%
180-Day Average	<u>9.14%</u>	<u>8.36%</u>
Average	9.22%	8.54%
<u>Multi-Stage DCF – Terminal P/E</u>		
30-Day Average	9.89%	8.57%
90-Day Average	10.02%	8.70%
180-Day Average	<u>9.67%</u>	<u>8.36%</u>
Average	9.86%	8.54%
DCF Range	9.2% to 9.9%	8.5% to 9.2%
<u>CAPM Results (Bloomberg Beta)</u>		
Current 30-Yr Treasury (BB – 3.11%)	10.13%	7.40%
Current 30-Yr Treasury (VL – 3.11%)	10.34%	7.40%
Near-Term Projected 30-Yr Treasury (BB – 3.48%)	10.50%	7.77%
Near-Term Projected 30-Yr Treasury (VL – 3.48%)	10.71%	7.77%
<u>CAPM Results (Value Line Beta)</u>		
Current 30-Yr Treasury (BB – 3.11%)	11.66%	8.33%
Current 30-Yr Treasury (VL – 3.11%)	11.91%	8.33%
Near-Term Projected 30-Yr Treasury (BB – 3.48%)	12.03 %	8.70%
Near-Term Projected 30-Yr Treasury (VL – 3.48%)	12.28/%	8.70%
<u>Risk Premium</u>		
Current 30-Yr Treasury (3.11%)	9.96%	9.21%
Near-Term Projected 30-Yr Treasury (3.48%)	10.03%	9.58%
Long-Term Projected 30-Yr Treasury (4.30%)	10.28%	Reject
Range	10.25% to 11.25%	8.7% to 9.6%
Recommended ROE	10.75%	9.35%

Sources: ¹Hevert Direct at 22, 30, 34 and 37; Exhibits RBH-2 through RBH-7.
²Schedule CCW-17.

B. Cost of Service Methodologies

The testimony of Air Products witness Mr. Maurice Brubaker supports the unreasonableness of several COS methodologies proposed by the Advisors in this proceeding that would further shift costs to the LIS class and create risk that Air Products would move even further beyond paying rates based on cost of service. Specifically, as discussed below, Air Products respectfully requests the Council reject: the Advisors' proposed inequitable treatment of interruptible load that overstates cost responsibility to Air Products; the Advisors' proposed arbitrary and unreasonable assignment of rates of return by customer classes; and the Advisors' proposed annual updates to external factors that would eliminate the efficiency that an FRP is intended to provide between rate cases, creating unnecessary risk that rates could shift further away from cost of service outside of a full rate proceeding. Further, Air Products requests that to the extent the Council finds that a larger revenue decrease than proposed by ENO should be implemented, the additional decrease should be allocated to the customer classes above cost of service at the rates proposed by ENO in this proceeding.

1. Treatment of Interruptible Load

As previously stated herein, most of Air Products' load is interruptible. - - meaning that ENO does not need to have firm access to generation resources as it does for other customers.⁸⁹

As Mr. Brubaker testified:⁹⁰

Interruptible power is power that a utility sells to a customer with the understanding that (subject to the terms and conditions of the rate schedule) the power can be interrupted in order to use the capacity that was supplying the interruptible load for the purpose of supplying firm service customers. Because of this "bargain" the utility does not have to plan and install capacity (or enter into firm

⁸⁹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 2:1 (February 1, 2019).

⁹⁰ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 4:3-18 (April 26, 2019).

purchase power agreements) in order to supply power to the interruptible customer. The interruptible customer receives service when and if there is capacity adequate to fully satisfy the needs of firm customers, with some left over to serve the needs of interruptible customers.

....

Interruptible power is subordinate to firm power, as an electric utility has to plan to install capacity and/or enter into firm purchase power arrangements in order to properly plan to serve firm load. Firm customers generally expect to be able to take whatever amount of power they need whenever they want it, subject to force majeure conditions; whereas the interruptible customer receives service if there is capacity available after satisfying the needs of firm load customers.

Because ENO does not have to install capacity and/or enter into firm purchase power arrangements to properly plan to serve interruptible load, ENO does not include 100% of interruptible load in its load and capacity statements used in Integrated Resource Planning and capacity expansion studies.⁹¹ Rather, ENO uses a two-step process, as follows: (i) ENO projects its total load (firm plus interruptible) and adds a 12% planning reserve margin to the load; and (ii) ENO subtracts the interruptible load from the result to determine how much firm capacity resources it must plan to have.⁹² Thus, ENO does not have to plan to serve 88% of the interruptible load.⁹³

As ENO witness Ms. Myra Talkington testified in discussing ENO's proposed allocation of capacity-related generation costs and transmission costs: "ENO excluded 85% of the interruptible and curtailable load in determining the allocation of fixed costs based on average

⁹¹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 5:1-10 (April 26, 2019).

⁹² Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 5:1-10 (April 26, 2019).

⁹³ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 5:11-13 (April 26, 2019).

12CP (the adjustment to 15% recognized these customers' demand responsibility for reserves).”⁹⁴

In other words, ENO only arranges capacity to serve 12% of interruptible load (based on interruptible customers' demand responsibility for reserves) and ENO includes 15% of the interruptible load in determining demand allocation factors for generation costs for use in its class COS Study - - which is slightly more than an interruptible customers' generation cost responsibility.⁹⁵

As Ms. Talkington further testified at the Hearing on the Merits, this proposed exclusion of 85% of interruptible and curtailable load is consistent not only with ENO's historic treatment of these loads but also consistent with the treatment of these loads by ENO's sister company, Entergy Louisiana, LLC.⁹⁶

Notwithstanding the reasonable basis and precedent for ENO's proposed treatment of interruptible load, the Advisors' witness Mr. Prep proposes to change the demand allocation factors for interruptible load for use in the class COS Study.⁹⁷ Under Mr. Prep's alternative approach, Mr. Prep arbitrarily calculates a “credit” equal to 82% of an avoided capacity cost number and then “backs into” a kW demand number to include in the allocation of generation-related capacity costs, and as a result, Mr. Prep effectively assigns 54% of the interruptible load

⁹⁴ Hearing Exhibit ENO-46, Rebuttal Testimony of Myra Talkington, ENO witness, page 9/7-20 (March 2019).

⁹⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 5:11-18 (April 26, 2019).

⁹⁶ Hearing Transcripts, Talkington, page 71:2-9 (June 18, 2019).

⁹⁷ Hearing Exhibit ADV-4, Direct Testimony of Victor Prep, Advisor witness, pages 47:6 – 47:3 and Exhibit VP-12 (February 1, 2019).

as a firm capacity equivalence, in contrast to the 15% used by ENO and supported by Air Products.⁹⁸

As discussed above, interruptible customers are responsible for only 12% of generation-related capacity costs. Thus, including 15% of interruptible customer load is consistent with cost causation and reasonable. As Ms. Talkington testified:⁹⁹

The average 12CP demands associated with curtailable or interruptible loads have been adjusted to recognize the benefit these customers provide to all customers. These customers may be curtailed or interrupted at any time, including at the time of Company peak. ***Interruptible load provides a benefit to all customers as it helps to avoid costs associated with acquiring additional capacity, whether it is actually interrupted or not.*** For these reasons, the curtailable and interruptible loads for Legacy ENO customers were excluded from the demands used to calculate the Average 12CP.

Mr. Prep's alternative approach is not based on the cost of serving interruptible or any other verifiable metric and does not recognize the value interruptible customers create for all customers by helping to avoid costs associated with acquiring additional capacity, whether it is actually interrupted or not. As a result, Mr. Prepr's approach destroys the benefit of the bargain customers such as Air Products made when taking interruptible service and is unreasonable and inequitable. As Ms. Talkington confirmed at the hearing, if only 12% of an interruptible customer's load is counted in ENO's capacity requirements, including 54% of the customer's interruptible load for allocating fixed generation-related capacity costs would result in the customer paying far more than justified under cost of service principles.¹⁰⁰

⁹⁸ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 7:3-11 (April 26, 2019); Hearing Exhibit ADV -4, Direct Testimony of Victor Prep, Advisor witness, Exhibit VP-12 (February 1, 2019).

⁹⁹ Hearing Exhibit ENO-45, Revised Direct Testimony of Myra Talkington, ENO witness, pages 10:18 – 11:4 (September 2018).

¹⁰⁰ Hearing Transcripts, Talkington, page 72:14 – 73:8 (June 18, 2019).

Air Products respectfully requests the Council reject the alternative treatment of interruptible load proposed by the Advisors and instead include 15% of interruptible load in calculating demand allocation factors for use in its class COS Study - - consistent with ENO's historic practice.

2. Use of Total Revenue in Class COS Study

As explained by ENO witness Matthew Klucher, ENO prepared a fully-allocated or fully-distributed, embedded class COS Study that was limited to total base rate revenues and costs, consistent with ENO's historical practice and "consistent with commonly accepted cost of service methodologies".¹⁰¹ ENO removed revenues and corresponding costs for which the revenue requirement will be collected over a twelve month period through other mechanism than base rates to assure that only the Company's base rate revenue requirement was considered for rate making purposes.¹⁰² However, the Advisors have proposed a "total electric utility cost of service" for determining class COS, which would include not only revenues collected in base rates but also revenues collected through other mechanism or "total revenues," including revenues from exact cost recovery riders such as ENO's fuel adjustment clause ("FAC").¹⁰³ The Advisors witness Mr. Prep testified that the Council has required the use of total revenues in its Resolution R-17-504.¹⁰⁴

Air Products disagrees that using total revenues (including fuel revenues) to determine class cost responsibility of base revenues is appropriate and equitable to customers, and further

¹⁰¹ Hearing Exhibit ENO-42, Adopting Direct and Rebuttal Testimony of Matthew Klucher, pages 3:19 – 4:1 and 5:13-14 (March 2019).

¹⁰² Hearing Exhibit ENO-42, Adopting Direct and Rebuttal Testimony of Matthew Klucher, page 4:1-6 (March 2019).

¹⁰³ ADV-4, Direct Testimony of Victor Prep, Advisor witness, pages 13:1-15, 14:3-7, 17:4-18, 18:7-15, and Table 3 (February 1, 2019).

¹⁰⁴ ADV-4, Direct Testimony of Victor Prep, Advisor witness, pages 26:18-27:6 (February 1, 2019). [Resolution R-17-504 was marked as Hearing Exhibit CCPUG-8.]

disagrees that the Council should adhere to parameters for COS methodologies to be used in this rate case that was established by resolution in an undocketed proceeding, as clearly stated on the Resolution R-17-504.

As ENO witness Mr. Klucher testified, fuel and purchased power are expense items on which there is no investment (and thus no return is earned by ENO) and which are collected through a rider mechanism that allows for dollar-for-dollar recovery.¹⁰⁵ The riders include a true up and result in customers paying no more and no less than the actual cost of fuel and purchased power used to provide electric service.¹⁰⁶ Further, since the revenue requirements for fuel and purchased power are not included in base rates (but are recovered through a separate rider), it is not appropriate to include these costs in revenues used for calculating class COS that will be used for base rate making purposes.¹⁰⁷ As Mr. Klucher testified at the hearing, including these non-base rate revenues would skew a class's base rate revenue requirement responsibility.¹⁰⁸

Mr. Klucher's testimony on this is consistent with that of Air Products witness Mr. Maurice Brubaker, with respect to the Advisors' similar proposal to include revenues from base rates and exact recovery riders, such as the FAC, in annual FRP evaluations. As Mr. Brubaker testified, as will be discussed further under Section III.C.1.a, below, by including FAC revenues in the base revenue requirement used to adjust revenues after an FRP review has been conducted, then fuel revenues that recover cost that have made no contribution to the under- or over-

¹⁰⁵ Hearing Exhibit ENO-42, Adopting Direct and Rebuttal Testimony of Matthew Klucher, page 4:17-19 (March 2019).

¹⁰⁶ Hearing Exhibit ENO-42, Adopting Direct and Rebuttal Testimony of Matthew Klucher, page 4:19-20 (March 2019).

¹⁰⁷ Hearing Exhibit ENO-42, Adopting Direct and Rebuttal Testimony of Matthew Klucher, page 4:21-23 (March 2019).

¹⁰⁸ Hearing Transcripts, Klucher, page 204:21 – 205:7 (June 17, 2019).

recovery will be part of the factor used to apportion any revenue changes, which will produce a distorted result.¹⁰⁹

Air Products appreciates that the Advisors have proposed use of “total revenues” in an effort to comply with their reading of Resolution R-17-504. However, such resolution was not part of a docketed proceeding.¹¹⁰ While the resolution reflects the positions of Mr. Prep on COS methodologies, the Council’s decision to adopt such methodologies in the resolution was not informed by the process undertaken in this rate proceeding to develop an extensive evidentiary record.¹¹¹ As Mr. Prep testified at the Hearing on the Merits, he does not recall any other stakeholder providing input on the COS methodology included in the resolution; testimony was not filed; and Mr. Prep was not called to testify at a hearing or be cross-examined on his recommendations.¹¹² Thus, Air Products submits that the Council should not adhere to its decision in the resolution but should fully consider the evidence in the record in this proceeding that supports limiting revenues included in a class COS Study only to base rate revenues.

Air Products respectfully requests the Council to reject the Advisors proposed use of “total revenues” in a class COS Study and to maintain the historic practice of using only revenues from base rates and addressing the revenue requirement responsibility for each rider as a separate issue determined specific to the rider.

3. Rate of Return by Customer Class

To establish ENO’s class revenue targets in a COS Study, the Advisors’ witness Mr. Prep establishes widely divergent rates of return (“ROR”) for individual customer classes. As seen on

¹⁰⁹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 11:11-18 (April 26, 2019).

¹¹⁰ Resolution R-17-504 at 1. [Resolution R-17-504 was marked as Hearing Exhibit CCPUG-8.]

¹¹¹ Hearing Transcripts, Prep, pages 211:10-25, 212:19-23, and 216:23 – 218:6 (June 20, 2019).

¹¹² Hearing Transcripts, Prep, pages 216:11-14 and 218:7-18 (June 20, 2019).

Mr. Prep's Exhibit VP-20 rates of return assigned to customer classes range from 1.60% for the residential class to 21.31% for the Municipal Building Class and include an 18.50% ROR assigned to the LIS class.¹¹³ However, Mr. Prep provides no quantifiable basis or objective standard used for his proposal. As Mr. Prep testified at the Hearing on the Merits, in developing his assignment of rates of return by customer class: no specific algorithm was used; there was no principle constraint as to what one rate class rate of return should be versus another.¹¹⁴

ENO witness Mr. Klucher's Rejoinder Testimony further supports the arbitrariness of Mr. Prep's proposals and risk that it presents to customers going forward. As Mr. Klucher testified, the varying before-tax rates of return for each class override Mr. Prep's allocation factors and effectively re-allocate costs rather than merely determine the return on rate base and will likely be subjectively revised each year, consequently resulting in the allocation factors not having an impact on the revenue allocation process in the FRP.¹¹⁵ Thus, Air Products submits that the proposal, which is not based on any specific methodology, creates significant uncertainty and risk in the determination of a class cost responsibility given that it can override other allocation factors.

For example, as Mr. Prep acknowledged at the Hearing on the Merits, while the residential class makes up about 55% of ENO's rate base, Mr. Prep's proposal would result in the residential class revenue requirement including a return component of only about 10% of ENO's rate base.¹¹⁶ Thus, Mr. Prep's proposal is not only arbitrary and would unnecessarily

¹¹³ Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony and Exhibits of Victor Prep, Exhibit VP-20 (April 26, 2019).

¹¹⁴ Hearing Transcript, Prep, page 196/24-198/6 (June 20, 2019).

¹¹⁵ Hearing Exhibit ENO-43, Rejoinder Testimony of Matthew Klucher, pages 10:4-7 and 11:9-11 (May 2019).

¹¹⁶ Hearing Transcript, Prep, page 190/7-13 and 193/7-18 (June 20, 2019), discussing Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony and Exhibits of Victor Prep, Exhibit VP-20 (April 26, 2019).

create uncertainty and risk to customers as to what their cost responsibility will be going forward, but also is unreasonable and inequitable to customers.

Witnesses for Air Products and ENO have taken issue with Mr. Prep's proposed assignment of widely divergent rates of return by class:

- Air Products witness Mr. Brubaker testified: "This appears to be completely arbitrary and end-results oriented, designed to achieve a particular outcome of class revenue allocation. There can be no justification for rates of return ranging from 1.60% for the residential class to 21.31% for the Municipal Building class and all of the various other rates of return assigned to the other classes, including 18.50% for the LIS class."¹¹⁷
- ENO witness Ms. Talkington testified: "The return amounts that Mr. Prep varied represent the capital cost of serving each class cost of customers. There is only one measurement of capital cost – ENO's weighted average cost of capital. A cost-based allocation of those costs would result in each class' relative rate of return equaling the Company's cost of capital. Mr. Prep provides no support for his contention that the capital costs should vary from customer class to customer class, or that the capital cost of serving one class of customers (Residential) is as low as 1.60% return on rate base, while that of another (Municipal Building) is as high as 21.31% return on rate base. Yet that is the result of his method. It is clear that Mr. Prep's approach of varying class returns to arrive at what he believes to be reasonable class revenue requirements is a rate moderation technique being passed off as a cost allocation technique."¹¹⁸
- ENO witness Mr. Klucher testified: "While I agree that regulators are not required to strictly follow COS Study results, I would not characterize an approach that applies varying before-tax rates of return as class cost of service. ... Finally, the before-tax rate of return concept that Mr. Prep has proposed essentially ignores how the Company calculates taxes, as well as how taxes are allocated to the various customer classes within the class COS Study."¹¹⁹

As Mr. Brubaker explained in testimony, class COS includes system average rates of return being earned on the rate base of each customer class.¹²⁰ Moderating rate increases when

¹¹⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 8:11-15 (April 26, 2019).

¹¹⁸ Hearing Exhibit ENO-47, Rejoinder Testimony of Myra Talkington, pages 5:27 – 6:6 (May 2019).

¹¹⁹ Hearing Exhibit ENO-42, Adopting Direct and Rebuttal Testimony of Matthew Klucher, page 11:13-19 (March 2019).

¹²⁰ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 9:11-13 (April 26, 2019).

moving toward cost of service should be a step that is completely separate from calculating the class cost of service.¹²¹

Thus, Air Products respectfully requests the Council to reject the Advisors proposed assignment of divergent rates of return by customer class and instead include for each class the system average rate of return requirement.

4. Allocation of Any Additional Revenue Decrease

Air Products has proposed that to the extent the Council authorizes a revenue decrease that is larger than the amount proposed by ENO, that the additional decrease be allocated to those customer classes that are above cost of service at ENO's proposed rates.¹²² As discussed above, while ENO has moved a step in the right direction in its proposed class allocations, several customer classes (such as the LIS Schedule) are still above costs of service.¹²³ For example, under ENO's proposed revenue allocations, the LIS Schedule (Air Products) will be paying approximately \$2.5M more annually than ENO's class COS indicates its costs ENO to provide service to ENO.¹²⁴ Thus, to the extent additional decreases in revenue are authorized by the Council, Air Products urges the Council to allocate those decreases to the customer classes

¹²¹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 9:7-11 and 19-20 (April 26, 2019).

¹²² Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 15:7-16 (February 1, 2019).

¹²³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 3:22-26 (February 1, 2019).

¹²⁴ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 3:22-26, 10:8 – 11:11 and Schedules MEB-1 and MEB-2 (February 1, 2019). Schedules MEB-1 and MEB-2 summarize information provided in ENO workpapers included in the evidentiary record as Hearing Exhibit ENO-56, specifically Electric Period II-Section FF-Cost of Service-RR-1 ("Schedule RR-1") and Workpapers – WP_Statement AA-2_REV_E ("Schedule AA-2").

who are above cost of service to help bring ENO's proposed rates for those classes closer to cost of service.¹²⁵

In furtherance of its recommendation, Air Products has provided several calculations of this re-allocation based on the recommended additional revenue decreases proposed by Air Products, CCPUG and the Advisors.¹²⁶

C. Rate Design and Revenue Recovery Mechanisms

In this proceeding, several changes to ENO's current rate design and recovery mechanisms have been proposed. ENO and the Advisors have each proposed changes to the mechanics of prior versions of ENO's electric formula rate plans ("FRP"), and as required by Council Resolution R-16-103,¹²⁷ a decoupling mechanism has been proposed. As discussed below, Air Products has concerns with several of the proposed changes to the electric FRP and with the structure of the proposed decoupling mechanism. Air Products also has concerns with some aspects of the proposed electric FRP that were retained from the prior FRP. Several of these provisions of the electric FRP and the structure of the decoupling mechanism create risk for Air Products more so than other customers. Others would over-compensate ENO for providing reliable service, which it is required to provide, or essentially guarantee ENO earns within an authorized bandwidth every year without regard to the efficiency of its operations. Thus, Air Products submits that the evidence supports rejection and/or modification of the following aspects of any electric FRP and decoupling mechanism approved by the Council.

¹²⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 15:7-16 (February 1, 2019); Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 20:24-26 (April 26, 2019).

¹²⁶ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 19:8 – 20:4 and Schedules MEB-8, MEB-9 and MEB-10 (April 26, 2019).

¹²⁷ Resolution R-16-103 was marked as Hearing Exhibit ENO-57.

1. Electric Formula Rate Plan Mechanics

As supported by the evidence, Air Products requests the Council reject or revise the following aspects of any electric FRP adopted in this proceeding.

a. Use of Total Revenues

Similar to the Advisors proposal to include total revenues (base revenue and rider revenue) in a class COS Study, the Advisors have proposed to use total revenues in annual FRP evaluations to determine the FRP revenue adjustment for each customer class.¹²⁸ Air Products urges the Council to reject the Advisors' proposal to use total revenues in FRP evaluations.

As ENO witness Mr. Kutcher testified, consistent with his recommendation for class COS Studies, only those costs that are to be collected through base rates should be included in the FRP.¹²⁹

Moreover, as Air Products witness Mr. Brubaker testified, "Revenues and expenses associated with revenue requirement items that have mechanisms designed to track, reconcile and true-up costs and revenues and that operate independently of base rates, such as the FAC the Mid-Continent Independent System Operator ("MISO") rider, the EECR rider, DSMCR rider and Advanced Metering Infrastructure ("AMI") rider should not be included in FRP reviews, but rather should be excluded so that the focus can be on base rate revenues that may or may not be producing excessive or insufficient revenues." This is because these rider revenues have nothing to do with whether ENO is under-earning or over-earning. Mr. Brubaker further testified that it

¹²⁸ Hearing Exhibit ADV-4, Direct Testimony of Victor Prep, page 78:3-8 (February 1, 2019).

¹²⁹ Hearing Exhibit ENO-42, Adopting and Rebuttal Testimony of Matthew Kutcher, page 14:9-11 (March 2019).

is important to exclude rider revenues and expenses from FRP evaluations to avoid distorting the allocation of any increase or decrease in revenue changes pursuant to the FRP evaluation.¹³⁰

As an example, Mr. Brubaker discussed the FAC:¹³¹

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

Thus, Air Products has concerns that inclusion of FAC revenues in FRP evaluations will result in a distorted allocation of base rate revenues from any increase or decrease in revenue pursuant to the FRP evaluation that could be particularly harmful to Air Products, as a large interruptible customer (and ENO's only interruptible customer). Air Products urges the Council to require ENO to exclude revenue from exact recovery riders from FRP evaluations to avoid such distorted and inequitable results.

b. Recovery of Lost Contributions to Fixed Costs ("LCFC")

In this proceeding, ENO has requested to recover LCFC through its proposed new Demand Side Management Cost Recovery ("DSMCR") Rider.¹³² However, the Advisors witness Mr. Prep has proposed that ENO not be allowed to recover LCFC in any cost recovery mechanism and instead proposes that LCFC should be included in annual FRP reviews and

¹³⁰ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 11:1-9 (April 26, 2019).

¹³¹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 11:11-18 (April 26, 2019).

¹³² Hearing Exhibit ENO-10, Revised Direct Testimony of D. Andrew Owners, page 20:1-5 (September 2018).

decoupling mechanisms.¹³³ Mr. Prep further proposed that LCFC could be recovered in FRP evaluations through an adjustment of the evaluation period customer class “billing determinants.”¹³⁴

As Mr. Brubaker testified, LCFC is created when customers use less energy as a result of utility-sponsored and funded energy efficiency programs.¹³⁵ Including LCFC in the rider mechanism (the EECR Rider or DSMCR Rider) will appropriately keep those costs associated with the programs which created them, and with the benefits produced by them which inure to the particular customer classes who are using less energy and imposing less demand as a result of those programs.¹³⁶

However, at the Hearing on the Merits, Mr. Prep clarified that the “billing determinants” used to recover LCFC in base rates in annual FRP evaluations and decoupling mechanism would use the same allocation to customers as used in the EECR to recover the underlying energy efficiency costs.¹³⁷ Thus, with the clarification, if Mr. Prep’s proposal is to include LCFC in FRP evaluations and decoupling mechanisms *using the same allocation used by the EECR* then this would seem to address Mr. Brubaker’s concern that customers who are not responsible for the LCFC would have to make up for it.

¹³³ Hearing Exhibit ADV-4, Direct Testimony of Victor Prep, page 76:4-7 (February 1, 2019); Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony of Victor Prep, page 29:16 – 30:4 (April 26, 2019).

¹³⁴ Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony of Victor Prep, 29:19 – 30:4 (April 26, 2019),

¹³⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 12:17-18 (April 26, 2019).

¹³⁶ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 12:22 – 13:2 (April 26, 2019).

¹³⁷ Hearing Transcripts, Prep, page 221:24 – 223:3 (June 20, 2019). *See also* Hearing Exhibit ADV-5, Surrebuttal and Cross-Answering Testimony of Victor Prep, Exhibit VP-20 at Row 14 (April 26, 2019), which provides the Advisors proposes allocation of energy efficiency costs through the EECR Rider.

c. RIM Adjustment

ENO is proposing a new mechanism for its FRP that would allow ENO's EPROE to be adjusted +/- 25 basis points based on certain measurements of distribution system reliability.¹³⁸ As previously discussed, ENO is proposing an authorized ROE of 10.75%, which under the proposed RIM mechanism could be adjusted up to 11.00% or down to 10.75%.¹³⁹

Air Products urges the Council to reject the proposed RIM.¹⁴⁰ However, to the extent the Council finds it appropriate to approve some form of RIM, as discussed herein, such adjustments should not apply to transmission level customers, such as Air Products.¹⁴¹

As previously discussed under Section III.A of this brief, and as supported by the testimony of Air Products witness Mr. Walters, CCPUG witness Mr. Baudino and the Advisors witness Mr. Watson, the recommended 10.75% starting point ROE is excessive. Further, as Air Products witness Mr. Brubaker testified, the RIM mechanism is conceptually flawed because it would reward ENO for doing what it is supposed to be doing in the first place – namely, providing reliable service.¹⁴² In addition, through ENO's proposed Distribution Grid Modernization Rider, ENO would already be charging customers for the cost of upgrading its distribution grid, which would in turn be expected to improve reliability - - thus, customers (not Entergy shareholders) would have already paid for the improved reliability of ENO's distribution system.¹⁴³

¹³⁸ Hearing Exhibit ENO-1, Revised Direct Testimony of Joshua Thomas, page 23:17-22 (September 2018).

¹³⁹ Hearing Exhibit ENO-1, Revised Direct Testimony of Joshua Thomas, page 25:15 – 26:2 (September 2018).

¹⁴⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 21:4-5 (February 1, 2019).

¹⁴¹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 22:3-4 (February 1, 2019).

¹⁴² Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 20:16-19 – 21:3 (February 1, 2019);

¹⁴³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 21:9-11 (February 1, 2019).

While Air Product recommends the Council reject the proposed RIM adjustment, to the extent the Council finds it appropriate to approve a form of RIM adjustment, Air Products submits that it should not apply to customers who take service at transmission level, as such customers are not benefitted from improvements in reliability on the distribution system.¹⁴⁴ As Mr. Brubaker testified, it is clear from the testimony of ENO witness Ms. Melonia Stewart, the entire focus of reliability improvement is at the distribution level.¹⁴⁵ Further, as Mr. Brubaker testified, all of the programs discussed and all of the dollar expenditures contemplated are designed to improve the reliability of the distribution system, and no plans or programs are planned for the transmission system.¹⁴⁶ Further, from ENO's responses to Air Products discovery, it is equally clear that ENO's reliability improvement plan does not include any work on the transmission system, and that the safety measure will not even consider outages that affect customers taking service at the transmission level.¹⁴⁷

d. Resetting Rates If ROE Is Outside FRP Bandwidth

ENO has proposed that its FRP include a +/- 50 basis point bandwidth around its EPCOE, such that if its earned ROE falls within the bandwidth, then no adjustments are made to rate.¹⁴⁸ However, if the earned ROE is either below or above the bandwidth range, ENO has

¹⁴⁴ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 22:3-4 (February 1, 2019);

¹⁴⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 21:11-13 (February 1, 2019).

¹⁴⁶ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 21:18 – 22:2 and Schedule MEB-4 (February 1, 2019).

¹⁴⁷ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 21:18 – 22:2 and Schedule MEB-4 (February 1, 2019).

¹⁴⁸ Hearing Exhibit ENO-41, Revised Direct Testimony of Phillip B. Gillam, ENO witness, page 7:12-13 (September 2018).

proposed a complete reset in rates such that rates would be recalculated to bring ENO's earnings to the EPCOE.¹⁴⁹

Air products objects to the proposed reset to EPCOE and proposes that should ENO's earned ROE fall above or below the proposed 50 basis point bandwidth, the revenue adjustment be only partially moved 60% of the way towards the upper or lower end of the bandwidth, respectively.¹⁵⁰ As discussed by Mr. Brubaker in his Direct Testimony, the existence of a bandwidth recognizes that there is a range of reasonableness around any given point estimate or finding of ROE.¹⁵¹ By leaving rates unchanged over a reasonable range (*e.g.*, the proposed ± 50 basis points), the FRP also avoids having rates change every year for minor changes in results of operations, which could cause small increases in one year followed by small decreases in another year, and so forth.¹⁵² However, the proposed structure of ENO's bandwidth adjustment mechanism, which resets rates to the EPCOE if ENO earns outside of the bandwidth, reduces the incentive for the utility to improve its efficiency of operations.¹⁵³

For example, if ENO's earned ROE is above the upper bandwidth and ENO is required to reset to the EPCOE, this would reduce the incentive for ENO to be efficient, as it would mean that it will result in a rate decreases.¹⁵⁴ Similarly, if ENO's bandwidth operates such that when ENO's earned ROE is below the lower bandwidth its rates are reset back to the EPCOE,

¹⁴⁹ Hearing Exhibit ENO-41, Revised Direct Testimony of Phillip B. Gillam, ENO witness, page 7:14-17 (September 2018).

¹⁵⁰ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 23:13 – 24:11 (February 1, 2019).

¹⁵¹ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 22:16-18 (February 1, 2019).

¹⁵² Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 22:18 - 23:2 (February 1, 2019).

¹⁵³ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 23:3 – 24:11 (February 1, 2019).

¹⁵⁴ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 23:7-11 (February 1, 2019).

resulting in a rate increase, there would be no incentive for ENO to maintain or improve efficiency as doing so will push its earned ROE up into the zone of no change.¹⁵⁵ As Mr. Brubaker explained in testimony, in the “zone of no change,” ENO would be worse than if it has lowered its earned ROE below the lower bandwidth in order to have the right to reset its rate to the midpoint ROE.¹⁵⁶

No party, including ENO, has opposed Mr. Brubaker’s recommendation on this. Thus, Air Products urges the Council to adopt the recommendation, as uncontested, and revise ENO’s proposed FRP, such that any revenue adjustments from ENO earning more than or less than the upper or lower bandwidths, respectively, only move ENO 60% of the way toward the upper or lower bandwidth.

e. Decoupling Adjustment

In this proceeding, ENO has proposed to implement a revenue “decoupling” element in its FRP, as a change to its FRP in order to implement the Decoupling Pilot Program approved by the Council in Resolution R-16-103.¹⁵⁷ As ENO witness Mr. Phillip Gillam testified, ENO’s proposed decoupling adjustment includes four steps, with the objective of calculating the fixed and variable revenue deficiency or excess for each rate class based on the allocation of the electric revenue requirement by rate class and fixed cost versus variable cost classification determined in this rate proceeding and then to calculate a corresponding FRP rate adjustment for

¹⁵⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 24:1-6 (February 1, 2019).

¹⁵⁶ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 24:1-6 (February 1, 2019).

¹⁵⁷ Hearing Exhibit ENO-41, Revised Direct Testimony of Phillip B. Gillam, ENO witness, pages 28:15 – 29:1 (September 2018).

each rate class.¹⁵⁸ ENO did not propose to allocate the evaluation period revenue requirement to each rate class using rate class allocation factors calculated based on evaluation period data, but proposed to rely on the allocation of electric revenue requirement by rate class and fixed cost versus variable cost classification determined in this rate proceeding.¹⁵⁹ Further, ENO proposed that the decoupling adjustment would only be applied if ENO's earned ROE for the evaluation period falls outside the FRP's bandwidth.¹⁶⁰

In response to ENO's proposed decoupling adjustment, witnesses for the Advisors and the Alliance for Affordable Energy ("Alliance") proposed various changes. Proposed changes of the Advisors include that the decoupling adjustment be calculated using updated external allocation factors based on evaluation period data.¹⁶¹ Proposed changes of the Alliance include that the decoupling adjustment would apply regardless of whether ENO's earned ROE fell within or outside the bandwidth.¹⁶²

With respect to the Advisors' recommendation, ENO's proposed decoupling mechanism would be structured such that in each annual FRP evaluation, all external allocation factors of the COS Study would be updated, including the demand and energy allocation factors that allocate cost among customer classes.¹⁶³ However, as Air Products witness Mr. Brubaker testified, Mr. Prep's proposal would essentially convert the FRP process into a "mini" rate case every year,

¹⁵⁸ Hearing Exhibit ENO-41, Revised Direct Testimony of Phillip B. Gillam, ENO witness, page 32:6-14 (September 2018).

¹⁵⁹ Hearing Exhibit ENO-41, Revised Direct Testimony of Phillip B. Gillam, ENO witness, page 7:12-13 (September 2018).

¹⁶⁰ Hearing Exhibit ENO-41, Revised Direct Testimony of Phillip B. Gillam, ENO witness, pages 34:18 – 35:9 (September 2018).

¹⁶¹ Hearing Exhibit ADV-4, Direct Testimony of Victor Prep, pages 79:20 – 80:2 (February 1, 2019).

¹⁶² Hearing Exhibit AAE-1, Direct Testimony of Pamela Morgan, pages 13:1 – 14:11 (February 1, 2019).

¹⁶³ Hearing Exhibit ADV-4, Direct Testimony of Victor Prep, pages 79:20 – 80:2 (February 1, 2019).

which would make the process unnecessarily complex, expensive, contentious and inefficient.¹⁶⁴ Air Products opposes this change and requests that the Council continue to apply any adjustments from an annual FRP evaluation as a uniform percentage of base rate revenues, whether there are increases or decreases, as is typically the formula for accomplishing rate adjustments in FRPs.¹⁶⁵

Further, with respect to the Alliance's recommendation, such change would result in decoupling adjustments for each rate class in each year of the FRP term regardless of ENO's overall earned ROE.¹⁶⁶ To the extent the Council adopts a decoupling mechanism in this proceeding, Air Products witness Mr. Brubaker recommends that the decoupling mechanism adopted by the Council only result in an adjustment if ENO's overall earned ROE is outside the bandwidth of the FRP.¹⁶⁷

In addition, as Mr. Brubaker testified, the decoupling adjustment creates significant risk for customers in rate classes with only a few customers, such as Air Products' rate class LIS, such that Mr. Brubaker testified the situation could only be considered an "unintended consequence" from the Decoupling Pilot and would result in material changes in the terms and conditions of electric service for customers in such classes.¹⁶⁸ This is because for rate classes with only one or a few customers, relatively small changes in required revenue contributions of

¹⁶⁴ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 2:33-38 and 15:8-10 (April 26, 2019).

¹⁶⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 2:29-38 and 12:3-11 (April 26, 2019).

¹⁶⁶ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 15:3-7 (April 26, 2019).

¹⁶⁷ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 17:19-20 (April 26, 2019).

¹⁶⁸ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 16:11 – 17:5 (April 26, 2019).

the class can have significant impact on the rates of the customers in the class, which could affect the customers' demand ratchets.¹⁶⁹ As Mr. Brubaker testified:¹⁷⁰

Under normal ratemaking, customers are only subject to the minimum billing provisions, and in some cases demand ratchets, that are incorporated in the approved electric utility tariffs. Applying a decoupling mechanism to classes with only a few customers could materially upset those terms and conditions.

Conversely, for customers that are part of larger classes with hundreds of millions of dollars in total revenue, the impact would be considerably dilute and would not likely disrupt the customers rates overall since the percentage change in total class revenue would be quite small.¹⁷¹ This risk to rate classes with only a few customers is compounded by recommendations of the Advisors and the Alliance.¹⁷²

Thus, Mr. Brubaker recommended that one of two solutions be applied to address the “unintended consequences” that a decoupling adjustment could have on rate classes with only a few customers.¹⁷³ The first recommendation of Mr. Brubaker is to exclude from the decoupling mechanism those classes with only a few customers.¹⁷⁴ As Mr. Brubaker points out, the revenues of these customers noted above amount to less than 3% of total base rate revenues, so this exclusion would not materially impact the operation of a decoupling mechanism.¹⁷⁵

¹⁶⁹ For example, the Mastered-Metered Non-Residential class has one customer, the High Voltage class has two customers and the Large Interruptible Service Class has one customer. See Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 16:4-5 (April 26, 2019).

¹⁷⁰ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 17:8-11.

¹⁷¹ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 16:15-18 (April 26, 2019).

¹⁷² Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 17:11-17 (April 26, 2019).

¹⁷³ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 17:20-22 (April 26, 2019).

¹⁷⁴ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 17:22 – 18:1 (April 26, 2019).

¹⁷⁵ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 18:1-3 (April 26, 2019).

However, in the alternative, should the Council not want to exempt any customer rate classes from the decoupling mechanism, Mr. Brubaker recommended to cap the percentage change in average revenue per kWh between rate cases that result from the application of the decoupling mechanism to 10% for individual customers in rate classes Master Metered Non-Residential, High Voltage and Large Interruptible Service, which would greatly reduce the potential for highly disruptive changes in these classes rates.¹⁷⁶

In rejoinder testimony, ENO witness Mr. D. Andrew Owens confirmed the concern expressed by Air Products witness Mr. Brubaker.¹⁷⁷ Mr. Owens attached to his testimony ENO's analysis illustrating the significant volatility ("unintended consequences") a decoupling mechanism can create for certain rate categories due to either the small number of customers included within the category or due to the changes within the rate category over a six-year historical period.¹⁷⁸ While ENO raised its concerns in the Docket No. UD-18-02, in which the Decoupling Pilot was adopted by the Council, Mr. Owens points out that ENO's concerns were not captured in the Advisors report summarizing the proceeding and making recommendations to the Council to be considered by the Council.¹⁷⁹ Moreover, as Mr. Brubaker testified, with respect to his proposed cap on the percentage change in the rates that result from the application of the decoupling mechanism to individual customers in rate classes Master Metered Non-Residential, High Voltage and Large Interruptible Service, there is no indication in Resolution R-16-103 that there was any discussion of the need for rate caps on changes for individual

¹⁷⁶ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 18:11-20 (April 26, 2019).

¹⁷⁷ Hearing Exhibit ENO-13, Adopting and Rejoinder Testimony of D. Andrew Owens, pages 2:8 – 3:3 and 3:17 - 4:2 (May 2019).

¹⁷⁸ Hearing Exhibit ENO-13, Adopting and Rejoinder Testimony of D. Andrew Owens, pages 2:8 – 3:3 and 3:17 - 4:2 and Exhibit DAO-9 at p. 41 of 73 (May 2019). ENO's calculation over a six year historical period indicates that a decoupling adjustment could result in a 58.1% increase to LIS' percent of actual base revenues (approximately \$1,886,859 increase in year 6). *Id.* at DAO-9, page 41 of 73.

¹⁷⁹ Hearing Exhibit ENO-13, Adopting and Rejoinder Testimony of D. Andrew Owens, page 4:8-13 (May 2019).

customers in classes containing only a few customers.¹⁸⁰ Rather, the only rate cap discussion in the resolution was with respect to total ENO changes.¹⁸¹

Thus, for the reasons discussed above and fully supported by the evidentiary record in this proceeding, Air Products respectfully requests that the Council not adopt in any decoupling mechanism the Advisors proposed annual updates to external allocation factors or the Alliance’s proposal for decoupling adjustments to apply regardless of ENO’s overall earnings in a FRP evaluation period. Further Air Products requests that customer classes with few customers, including rate classes Master Metered Non-Residential, High Voltage and Large Interruptible Service, either be exempt from the decoupling adjustment or have their exposure to changes in rates between rate cases resulting from the decoupling adjustment capped at 10%.

D. ENO Service Regulations

ENO witness Ms. Stewart has proposed several changes to ENO’s Service Regulations applicable to both electric and gas service.¹⁸² A redline of the proposed changes were attached to Ms. Stewart’s testimony as Exhibit MPS-8.¹⁸³ As supported by the testimony of Air Products witness Mr. Brubaker, Air Products urges the Council to reject Ms. Stewart’s proposed change to the “Continuity of Service” provision of its Service Regulations and to retain the current language.

As Mr. Brubaker testified, the proposed change (provided below) amounts to ENO seeking to exempt itself from any responsibility for loss or damages cause by the failure or

¹⁸⁰ Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, page 19:1-5 (April 26, 2019).

¹⁸¹ Hearing Exhibit ENO-57, Resolution R-16-103 at Section 11, pages 18-20 (April 7, 2016); *see also*, Hearing Exhibit AP-4, Surrebuttal and Cross-Answering Testimony & Schedules of Maurice Brubaker, Air Products witness, pages 18:18 – 19:2 (April 26, 2019).

¹⁸² Hearing Exhibit ENO-6, Revised Direct Testimony of Melonia Stewart, ENO witness, pages 59:1 – 62:6 and Exhibit MPS-8 (September 2018).

¹⁸³ Hearing Exhibit ENO-6, Revised Direct Testimony of Melonia Stewart, ENO witness, at Exhibit MPS-8 (September 2018).

defects of Service - - even if the loss or damage was occasioned by something within its control.¹⁸⁴

“**1011. Continuity of Service.** The Company shall use Prudent Utility Practice to provide safe, adequate and continuous Service but shall not be responsible for loss or damage caused by the failure or other defects of Service when such failure is not reasonably avoidable or due to unforeseen difficulties ~~or causes beyond its control~~, however caused.”¹⁸⁵

The above proposed change is wholly inappropriate and should be rejected.¹⁸⁶ Further, no party (including ENO) has objected to or contested Mr. Brubaker’s recommendation that ENO’s proposed change should be rejected. Thus, Air Products urges the Council to reject ENO’s proposed change to the Continuity of Service provision of its Service Regulations.

IV. Conclusion

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

¹⁸⁴ Hearing Exhibit ENO-6, Revised Direct Testimony of Melonia Stewart, ENO witness, at Exhibit MPS-8, page 18 (September 2018).

¹⁸⁵ Hearing Exhibit AP-3, Direct Testimony & Schedules of Maurice Brubaker, Air Products witness, page 25:18-19 (February 1, 2019).

¹⁸⁶

CERTIFICATE OF SERVICE

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

New Orleans, Louisiana this 26th day July, 2019.



Carrie R. Tournillon