

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

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

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

**REPLY BRIEF  
OF THE ADVISORS TO THE CITY COUNCIL OF NEW ORLEANS**

Jerry A. Beatmann, Jr. (Bar No. 26189)  
Dentons US LLP  
650 Poydras Street, Suite 2850  
New Orleans, LA 70130  
504-524-5446 (Office)  
504-256-6142 (Cell)  
jay.beatmann@dentons.com

Clinton A. Vince  
Emma F. Hand  
Presley R. Reed, Jr.  
Dentons US LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
202-408-6400 (Telephone)  
202-408-6399 (Facsimile)  
clinton.vince@dentons.com  
emma.hand@dentons.com  
presley.reedjr@dentons.com

Dated: August 9, 2019

## Table of Contents

	<b>Page</b>
<b>Table of Contents</b> .....	i
I. Introduction.....	1
II. Argument .....	4
A. Rate of Return and Related Issues .....	4
1. Return on Equity.....	4
2. Equity Ratio.....	11
3. Accumulated Deferred Income Tax .....	12
4. FASB Interpretation No. 48.....	13
5. The Council Should Adopt the Advisors’ Recommendation to Exclude Expenses Related to ENO’s Restricted Stock Incentive Plan.....	14
B. The Advisors’ Recommendations Provide ENO With Sufficient Timely Recovery Without the Excessive Reliance on Riders as Cost Recovery Mechanism .....	15
1. The Advisors’ Forward Looking FRP Recommendation Addresses ENO’s Regulatory Lag Concerns .....	15
2. Many of ENO’s Proposed Specific Cost Recovery Riders Constitute Inappropriate Single-Issue Ratemaking .....	17
3. Grid Modernization Rider .....	18
4. Advanced Metering Infrastructure Riders .....	19
5. Gas Infrastructure Replacement Program Rider.....	22
6. The Advisors’ Approach to Setting Revenue Requirements is Reasonable.....	22
7. Air Products Criticisms of the Advisors Cost Allocation are Self-Serving and Lack Substantive Support .....	25
C. Formula Rate Plans .....	31
1. ENO’s Proposed Electric and Gas Formula Rate Plans Should be Approved with the Modifications Proposed by the Advisors.....	31
D. ENO’s Green Pricing Option Should be Approved, With the Clarification that REC Should Meet the Council’s Definition of Renewable Resources.....	53
E. ENO’s Community Solar Option Should Not Be Approved by the Council as Filed.....	56

F. BSI’s Customer Lowered Electricity Price (“CLEP”) Proposal is too Complicated to Expect Ratepayers to be Able to Implement it Successfully, and Should be Rejected ..... 60

III. Conclusion ..... 61

## **I. Introduction**

ENO is requesting a new set of electric and gas base rates applicable to all of New Orleans. The Company's proposal includes a number of requests that could have a significant impact on customers. Entergy New Orleans, LLC ("ENO" or "Company") states that its proposed new rates represent a \$20.3 million overall reduction to its electric revenues. Despite overall stated revenue reduction, ENO's proposed rates have varying impacts by customer class. ENO states that its proposed new rates represent a \$142,000 overall reduction to its gas revenues. ENO's revised application reports that all gas ratepayer classes would enjoy a small rate reduction under ENO's proposal. ENO is requesting an initial Council-allowed Return on Equity ("ROE") of 10.75% with an opportunity to achieve enhanced returns with increases in service reliability under its proposed Reliability Incentive Mechanism ("RIM"). ENO's requested ROE is considerably higher than the most recent Council-allowed ROE of 9.95%, which was approved in 2014 and applicable to Algiers. ENO requests that the Council approve numerous new riders so that it may achieve exact recovery for certain prudently incurred costs. Unnecessary riders constitute a departure from sound regulatory principles favoring a fully-allocated cost of service study as a basis for rates and disfavoring single-issue ratemaking.

The Advisors have thoroughly reviewed ENO's filing and have made numerous recommendations addressing the Company's filing, which include but are not limited to, the following key issues. The Advisors calculate that the combined application of their recommendations will result in annual revenue reductions compared to present revenues of \$33.1 million and \$3.8 million for electric and gas respectively. The Advisors recommend that the Council reject ENO's requested 10.75% ROE and adopt a more reasonable ROE in the range of 8.93% to 9.35%, as proposed by the Advisors and Intervenors. The Advisors also urge the Council to approve a 3-year Gas and electric Formula Rate Plan ("FRP") with electric revenue

full decoupling, that evaluates all of ENO's costs and revenues when evaluating its earned-ROE. ENO's proposed RIM ROE enhancement mechanism and most of the Company's proposed riders should be rejected by the Council as unnecessary and inappropriate as discussed further below. The Advisors maintain that the Council should not approve ENO's proposal to exclude certain tax related items from its rate base that would have a negative impact on customers. The Council should allocate revenues among the rate classes according to the Advisors' recommendations, which would produce just and reasonable rates for all customers.

Crescent City Power Users Group ("CCPUG"), which includes as its members, the City of New Orleans, Sewerage & Water Board of New Orleans, New Orleans Cold Storage & Warehouse Co., Ltd., LCMC Health, and Tulane University Hospital & Clinic, are all commercial customers of ENO. In this proceeding, CCPUG identified several issues that could have a significant impact on its members, some of which can be summarized as follows.

CCPUG wishes to achieve the lowest reasonable cost for electricity for all customer classes by increasing ENO's proposed decrease in electric rates. According to CCPUG, ENO's proposed ROE should also be reduced to a reasonable level of 9.35%. CCPUG requests that the Council exclude future plant additions in ENO's rate base and reject the Company's request for certain unnecessary riders. Also included in CCPUG's request is a recommendation that the Council modify ENO's funding proposal for its Algiers Residential Rate Transition Plan ("ARRT") so that the plan does not have an unreasonably disproportionate effect on the members of CCPUG. Finally, CCPUG requests that the Council reject ENO's proposal to allocate capacity costs associated with certain purchase power agreements to all customers on an energy basis, as opposed to an equal percentage basis.

The Alliance for Affordable Energy (“AAE”) and Sierra Club, jointly referred to as “AAE,” also filed an initial brief in this proceeding, which addressed several specific issues to be considered by the Council. First, AAE proposes full revenue decoupling as opposed to ENO’s decoupling mechanism included as part of the Company’s proposed FRP. AAE also rejects any increase in ENO’s residential customer charge that would give New Orleans ratepayers the opportunity to achieve greater energy savings by reducing energy use. Finally, AAE asks that the Council reject several other items in ENO’s application, such as the Advanced Metering Infrastructure (“AMI”) Rider and the Company’s RIM proposal as unreasonable.

Air Products and Chemicals, Inc. (“Air Products” or “AP”) has significant concerns with ENO’s proposed ROE and use of a proposed RIM. Air Products also takes issue with certain Cost of Service (“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 Large Interruptible Service (“LIS”) Schedule 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.

Building Science Innovators (“BSI”) took a different approach. Instead of addressing ENO’s application, BSI introduced a new rate structure known as Customer Lowered Electricity Price (“CLEP”) to be implemented across all customer classes and all ratepayers. According to BSI, CLEP is an innovative, smart rate design. BSI asserts that CLEP is the most progressive way to lower the price of electricity for all customers while simultaneously increasing utility profits—using only non-subsidized, normal market forces.

## II. Argument

### A. Rate of Return and Related Issues

#### 1. Return on Equity

- a) *ENO's ROE Recommendation is Unreasonably High and Largely Unsupported Even by the Company's Own Analyses*

ENO criticizes the Advisors' recommended ROE as unreasonably low.<sup>1</sup> However, the Company's own testimony demonstrates that ENO's recommended ROE is higher than virtually every authorized ROE in the United States in the past five years.<sup>2</sup> Although the Company attempts to rely on numerous authorized ROEs in other jurisdictions to argue that the Advisors' and other Intervenors' recommendations are unreasonable, the ROEs cited in Mr. Hevert's testimony actually weakens ENO's argument for an authorized ROE of 10.75%.<sup>3</sup> As evidenced in his own chart, the overwhelming majority of authorized ROEs represented in Mr. Hevert's testimony are significantly lower than ENO's requested ROE of 10.75% in this proceeding.<sup>4</sup>

ENO's claims in its Initial Brief that witness Hevert's "analysis indicated a range of 10.25% to 11.25% for equity investors' required ROE for investment in integrated electric utilities."<sup>5</sup> This claim is largely untrue. In fact, in Mr. Hevert's Direct Testimony, he prepared no-less than five ROE analyses, of which only one supported an upper range of 10.75%.<sup>6</sup> Subsequently, in Mr. Hevert's Rebuttal Testimony, he prepared three updated ROE analyses, of which only one supported an upper range of 10.75%.<sup>7</sup> Clearly, the preponderance of Mr. Hevert's own analyses do not indicate a range of 10.25% to 11.25%, as ENO claims.

---

<sup>1</sup> ENO Initial Brief at 46.

<sup>2</sup> ENO-29 at 6, Chart 2.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> ENO Initial Brief at 44.

<sup>6</sup> ADV-8 at 19-20, Table 2.

<sup>7</sup> *Id.*

With respect to ENO's argument that the Federal Energy Regulatory Commission ("FERC") has changed the law as to which financial modeling should be used in setting an ROE, the Company plainly mischaracterizes FERC's statements on this issue. FERC does not, as ENO suggests, **require** the use of four financial models in setting an ROE that results in just and reasonable rates. FERC has simply **proposed** that more than one model be used as opposed to relying on only one model.<sup>8</sup> FERC has not issued any rule or requirement, but simply stated in that proceeding that it preferred to give consideration to the four financial models that were entered into the record of that case. In fact, FERC has requested briefs from the parties in that proceeding to consider its proposal as it relates to financial modeling that should be used in evaluating and setting a ROE.

The Advisors have submitted testimony from two expert witnesses in this case that do, in fact, include multiple sets of financial modeling data and results for the Council to consider. Advisors' witness Mr. Watson employed the Discounted Cash Flow ("DFC") analysis and Mr. Proctor used the Capital Asset Pricing Model ("CAPM") analysis. Both models are well accepted in the industry and they produce reliable results. Mr. Watson agreed with Mr. Proctor's CAPM modeling analyses and found that Mr. Proctor's results were reasonable.<sup>9</sup> Mr. Watson also recommends that the Council consider not only his DCF analysis, but also Mr. Proctor's analyses in making its decision to adopt a just and reasonable ROE.<sup>10</sup> Contrary to ENO's assertions, the Advisors utilized multiple models in conducting its ROE analyses and those modeling results fully support the Advisors' ROE recommendation. Importantly, and as explained above, Mr. Hevert's own modeling results largely do not support the ROE that ENO is

---

<sup>8</sup> Docket Nos. EL14-12 -003 and EL15-45-000, Order Directing Briefs, 165 FERC ¶ 61,118 (November 15, 2018) at 34.

<sup>9</sup> ADV-7 at 45.

<sup>10</sup> *Id.* at 49.



requesting. Accordingly, ENO's unreasonably high ROE recommendation should be rejected. There is more than enough evidence in this case submitted by four expert witnesses on behalf of the Advisors and Intervenors for the Council to adopt a just and reasonable ROE.

*b) ENO's Comparison of its Credit Ratings with Those of SCANA Corporation and PG&E Corporation is Wildly Inaccurate and Should be Ignored by the Council*

In its Initial Brief, ENO compares itself to two troubled utilities, SCANA Corporation ("SCANA") and PG&E Corp. ("PG&E");<sup>11</sup> this comparison is inappropriate and baseless. ENO's brief appears to rely on the Rejoinder Testimony of ENO witness Hevert to argue this strained analogy.<sup>12</sup>

Regarding SCANA, it had ceased to exist as an independent company at the time of Mr. Hevert's testimony having been acquired by Dominion Energy, Inc.<sup>13</sup> As such, it did not even have a valid credit rating to compare to ENO, but regardless of this fact SCANA was burdened by its participation in the abandoned VC Summer nuclear facility.<sup>14</sup> ENO's largest exposure to nuclear production assets is with Grand Gulf Nuclear Station ("Grand Gulf"), and, to the extent ENO seeks to compare its participation in Grand Gulf with SCANA's participation in the abandoned VC Summer nuclear facility, such a comparison is inapplicable and unpersuasive. The harm to ENO and its ratepayers from participating in Grand Gulf, which badly underperforms reasonable expectations and industry norms, is manifestly less severe than SCANA's participation in the failed and abandoned VC Summer project, as demonstrated by its rating downgrade.<sup>15</sup> Indeed, ENO's noting that SCANA's last authorized ROE was 10.75%,<sup>16</sup>

---

<sup>11</sup> ENO Initial Brief at 3.

<sup>12</sup> ENO-31 at 2:14:21.

<sup>13</sup> *Id.* at 2, FN 2.

<sup>14</sup> *Id.* at 2:19-21.

<sup>15</sup> ENO-31 at 2:19-21.

<sup>16</sup> *Id.* at 3:2-3.

equal to ENO's proposal to the Council, demonstrates that a 10.75% allowed ROE for ENO is excessive and inappropriate.

With respect to PG&E, the company filed for bankruptcy amid monetary claims related to California wildfires.<sup>17</sup> PG&E's ratings are not simply below investment-grade, as one of ENO's contractors (Moody's) claims is the case for ENO, rather PG&E's ratings are "D" for default, reflecting the non-servicing of its related obligations. Any comparisons of SCANA and PG&E to ENO, which timely services all of its obligations, is absurd and meaningless and therefore the Council should disregard any such comparisons in the context of evaluating the appropriate ROE for ENO.

Rather, Advisor and Intervenor witnesses have presented market-based and generally accepted ROE estimation analyses that demonstrate a reasonable return on investment that today's markets require for an investment in ENO would be 9.35% per the Intervenors' analyses, and also very reasonably equal to the Advisors' recommended allowed-ROE of 8.93%.

*c) ENO Mischaracterizes Advisor Witness Watson's Testimony Regarding Moody's*

ENO makes the false and baseless claim that Advisor witness Watson suggests that ENO should discontinue the use of Moody's for ratings related to its public debt.<sup>18</sup> This assertion is untrue, misleading, and unsupported in the record, although ENO witness Hevert makes this false claim in his final (and without a provision for rebuttal) round of testimony.<sup>19</sup> Neither Mr. Watson, nor any Advisor witness, has offered ENO advice or suggestions as to how it should act in raising capital. ENO also claims that should the Company use another reputable ratings firm

---

<sup>17</sup> *Id.* at 2:16-18.

<sup>18</sup> ENO Initial Brief at 40-41.

<sup>19</sup> ENO-31 at 38:14-15.

instead of Moody's, such a choice could "send a negative message to the capital markets."<sup>20</sup> This is a new opinion offered by ENO witness Hevert in his final (and without an opportunity for rebuttal) round of testimony,<sup>21</sup> and there is nothing in the record that substantiates this speculated investor reaction in the event Moody's were to be replaced with another qualified contractor.

The fact remains that ENO continues to raise long-term debt capital at reasonable rates, as evidenced by Schedule DD-1 in the Application, which shows this cost. As such, ENO's protestations regarding the effect of Moody's rating are unconvincing. ENO is and operates as an investment-grade company and the Company has not substantiated any reasonable connection between its ROE, (be it the Council's most recently authorized 9.95%,<sup>22</sup> ENO's proposed increase to 10.75%, or the current appropriate market rate of 8.93%), and its ability to continue to raise debt capital at market rates.

*d) ENO's Emphasis on ROEs Adopted by Other Regulators has Limited Value in this Proceeding*

A major theme of ENO's Initial Brief regarding the Advisors' and the Intervenors' ROE analyses is that they rely on market-based accepted methodologies such as DCF and CAPM and not on the recent ROEs as approved by regulators unrelated to the Council, and for utilities unrelated to ENO.<sup>23</sup> Without presenting any direct evidence, ENO claims that the Advisors' recommended 8.93% ROE is lower than all such authorized ROEs since 1980 and that the Intervenors' respective ROEs of 9.35% are below all but eight ROEs authorized since 2014. Assuming these unsubstantiated claims are true, they do not support the Company's contention that a ROE in the range of 8.93% - 9.35% is unreasonably low.

---

<sup>20</sup> *Id.* at 37:8-10.

<sup>21</sup> *Id.*

<sup>22</sup> Council Resolution R-14-278.

<sup>23</sup> ENO Initial Brief at 46.

Regarding ROEs authorized in 1980 lower than 8.93%, such authorizations in 1980 only serve to prove that market conditions can exist and have existed in the past supportive of an 8.93% ROE. ENO's claim that eight authorized ROEs since 2014 have been lower than 9.35% proves that market-based ROE methodologies such as those employed by the Intervenors are consistent with current regulatory trends and that a ROE of 9.35% is in the mainstream of current regulatory ratemaking decisions.

ENO fails to discuss how many of the rate cases it reviewed in making its claims were settled through negotiation (*i.e.*, a stipulated settlement or an agreement in principle). Such negotiated agreements necessarily involve a package of concessions, the allowed-ROE being only one of many, which as a whole satisfy the agreeing parties. ENO does discuss one rate case that was concluded in a negotiated settlement, North Carolina Utilities Commission ("NCUC") Docket No. E-7 Sub 1146. In that case, the same Mr. Hevert who serves as an ENO witness in the instant proceeding recommended a 10.75% ROE, the same as he recommends in the instant docket.<sup>24</sup> However, the negotiated settlement, whose terms are not publicly available for inspection, resulted in an allowed ROE of 9.9%. It is not possible for parties to evaluate the scope of any settlement terms that might tend to offset or counter-balance the benefits to the subject utility (Duke Energy Carolinas, LLC) of the stipulated 9.9% ROE.<sup>25</sup> Further, the allowed 9.9% ROE was the same as was ordered for the prior two such proceedings for the subject utility. Market conditions change daily, yet Duke Energy Carolinas, LLC's ROE remained the same across three rate proceedings, which suggests that ordered ROEs do not necessarily reflect market conditions. This example demonstrates that ROEs ordered by unrelated regulators, especially those resulting from negotiated settlement, are not probative in the instant proceeding.

---

<sup>24</sup> ADV-8 at 29:10-13.

<sup>25</sup> ADV-8 at 29:14-18.

e) *ENO's Characterization of the ROE as the "Cornerstone" for the Company's Financial Stability is Unfounded in the Law Governing the Setting of Just and Reasonable Returns on Equity*

In its initial Brief, ENO discusses a notably high allowed-ROE as being a “cornerstone” of a “large, aggressive capital program.”<sup>26</sup> ENO threatens that unless it is allowed its unreasonably high ROE and “mechanisms to provide timely cost recovery,”<sup>27</sup> then its “large, aggressive capital program...will be hindered and may not meet cost and pace expectations.”<sup>28</sup> ENO’s concept of a “cornerstone” was not introduced into evidence until the filing of ENO witness Thomas’ Rejoinder Testimony. The concept of “cornerstone” is not part of the body of evidence surrounding the *Hope* and *Bluefield* legal standard for a fair rate of return – the appropriate standard for Council consideration. It is unsupported by ENO or any party to the instant proceeding that overall capital-related costs will increase as a result of allowing ENO a market-based ROE such as the Advisors’ recommended 8.93%. Second, should ENO’s “large, aggressive capital program” be slowed, related revenue requirements would necessarily be reduced. However, ENO presented no analysis suggesting an allowed-ROE would raise ENO’s overall cost of capital, and indeed an ROE of 8.93% falls within or is above the range of most analyses presented in evidence in the instant docket, including two of witness Hevert’s Rebuttal testimony analyses.<sup>29</sup> ENO cannot hold much-needed capital spending, including investments in critical reliability improvements, hostage in exchange for an excessively high ROE. ENO’s self-serving statements regarding the pace of the Company’s aggressive capital program should be rejected by the Council.

---

<sup>26</sup> ENO Initial Brief at 3-4.

<sup>27</sup> *Id.* at 4.

<sup>28</sup> ENO Initial Brief at 4.

<sup>29</sup> ADV-8, Table 2 at p 19-20.

## 2. Equity Ratio

### a) *The Advisors' Equity Ratio Recommendation is Reasonable and Has Previously Been Proposed by ENO as Reasonable*

ENO makes statements in its Initial Brief that it should have reasonably known are false, specifically that Mr. Watson supports the Advisors' recommended 50% equity ratio cap based on a non-precedential agreement in principle.<sup>30</sup> While it is true that the Council adopted a non-precedential agreement in principle to resolve Docket No. UD-15-01 (Union PB1), Mr. Watson cited as an example **ENO's proposal** to cap its equity ratio at 50% in that proceeding.<sup>31</sup> The fact that, as part of a comprehensive agreement, ENO's proposal was accepted does not detract from the fact that ENO independently found a 50% equity cap to be appropriate in its application to purchase Union PB1. In another recent example, ENO utilized a 50% equity ratio in its prospective cost analysis for the Company's proposed Gas Infrastructure Rebuild Program when, in fact, ENO's actual equity ratio was not 50%.<sup>32</sup> Again, both of these instances cited referenced prior proposals **made by ENO** to the Advisors and the Council. In this proceeding, ENO disingenuously asserts that its previously reasonable equity ratio of 50% is now, according to the Company, unreasonable.

ENO claims that if the Council were to protect ratepayers by capping ENO's equity ratio at 50%, it "would be taking an arbitrary and capricious leap to make a financial planning assumption into an equity ratio cap without any valid reason to support such a leap."<sup>33</sup> ENO's bold claim is inaccurate and unsupported.

First, ENO misrepresents the record in falsely claiming that a 50% equity ratio cap is an effort to make a financial planning assumption into an actual ratemaking determination. As the

---

<sup>30</sup> ENO Initial Brief at 58.

<sup>31</sup> ADV-8 at 17:1-14.

<sup>32</sup> ADV-7 at 54:18-19 to 55:1-3.

<sup>33</sup> ENO Initial Brief at 58-59.

record clearly states, while ENO has used 50% equity for cost estimates presented to the Council, it has also proposed a 50% equity cap for actual ratemaking purposes.

More critically, by using the term “arbitrary and capricious”<sup>34</sup> ENO would appear to be threatening the Council with legal action for exceeding its regulatory authority and deference should it decide to protect ratepayers from ENO’s double leverage. Contrary to ENO’s apparent threat, there is a firm basis in the record for the Council to determine that a 52.2% equity ratio is unreasonable and that equity should be capped at 50%, including (1) the fact that Entergy and ENO engage in double-leverage at ratepayer expense, (2) that 52.2% is higher than the average equity ratio of the other EOCs, (3) that ENO has in the past proposed a 50% equity ratio cap for ratemaking purposes, and (4) that expert testimony in this proceeding by multiple witnesses demonstrates that ENO’s proposed 52.2% equity ratio is unreasonable. The Council should find that an equity ratio in this proceeding of 50% is reasonable and should be adopted.

3. Accumulated Deferred Income Tax

a) *ENO Mischaracterizes the Advisors’ Recommendation Regarding ADIT Related to Stranded Meters*

ENO misrepresents and misstates the Advisors testimony regarding ENO’s proposal to remove Accumulated Deferred Income Tax (“ADIT”) from its rate base and thereby keep the economic benefit of ADIT related to stranded meters. Specifically, ENO falsely states that “Mr. Watson then further explained that he recommended that ENO reclassify the ADIT as a regulatory liability to avoid the violation of the IRS normalization rules.”<sup>35</sup> This is completely untrue and a false characterization of the Advisors’ recommendation to the Council. Mr. Watson actually said, “ENO’s rates should reflect the economic benefit it enjoys due to cost-free capital.

---

<sup>34</sup> *Id.* at 58 and 60.

<sup>35</sup> ENO Initial Brief at 149.

An appropriate mechanism for such would be a regulatory liability.”<sup>36</sup> ENO goes on to egregiously claim that Mr. Watson endorses “subterfuge,”<sup>37</sup> which is wholly unsupported in the Administrative Record. ENO should refrain from baselessly maligning the intent and professionalism of witnesses before the Council, as it has done in its effort to improperly retain the economic benefits of the cost-free capital represented by stranded meter ADIT balances.

#### 4. FASB Interpretation No. 48

ENO has removed, from its rate base, the portion of various ADIT liabilities that is unlikely to produce cost-free capital due to the aggressive tax positions taken by the Company in its filings with federal and state taxing authorities.<sup>38</sup> The Company determined that those tax deductions are so unlikely to be realized that they must be disclosed for financial reporting.<sup>39</sup> The Advisors disagree with this approach from the perspective of setting rates. In its Initial Brief, ENO espouses about a “fair” resolution of this issue.<sup>40</sup> The Advisors’ recommended treatment is fair. ENO’s recording of Deferred Income Tax (“DIT”) expense and including it in the cost of service provides them a cost-free loan from the customers, which requires that the related FIN 48 ADIT liability also be included in rate base.<sup>41</sup> DIT expense and the related ADIT liability are recorded to comply with FIN 48 when the Company eliminates the FIN 48 ADIT liability (thereby increasing rate base) for ratemaking purposes, the risk of ENO not achieving the uncertain tax filing position is largely placed on the ratepayers,<sup>42</sup> which is entirely unfair.

---

<sup>36</sup> ADV-8 at 36:19-37:1-3.

<sup>37</sup> *Id.*

<sup>38</sup> ENO-51 at 16:20-17:6 (HSPM).

<sup>39</sup> *Id.*

<sup>40</sup> ENO Initial Brief at 147-148.

<sup>41</sup> ADV-10 at 83:13-15 (HSPM).

<sup>42</sup> *Id.* at 83:7-10 (HSPM).



Additionally, contrary to ENO's assertions in its Initial brief,<sup>43</sup> Advisor witness Mr. Proctor's position on this issue is not misleading. Mr. Proctor's testimony is clear. For ratemaking purposes in this proceeding, as FIN 48 ADIT Liabilities are not included in ENO's proposed rate base, ENO also should have credited DIT expense in equal amounts to its reversal of the FIN 48 ADIT Liabilities to synchronize ratemaking treatment.<sup>44</sup> Thus, this aspect of ENO's FIN 48 proposal, as stated in its Application, is unbalanced, unnecessarily risky to ratepayers, and therefore should be rejected by the Council.

5. The Council Should Adopt the Advisors' Recommendation to Exclude Expenses Related to ENO's Restricted Stock Incentive Plan

ENO argues that this adjustment is unwarranted because the Advisors have not demonstrated that ENO's Restrictive Stock Incentive Plan is unreasonable.<sup>45</sup> However, incentive compensation plans and stock options may only be recovered in rates to the extent that the company demonstrates that such plans benefit ratepayers.<sup>46</sup> Whether or not the compensation plan is reasonable, the purpose of the subject incentive plan is a plan tied to the long-term performance of Entergy Corporation common stock, therefore the benefit of the plan accrues solely to Entergy shareholders, and not to ratepayers. Therefore those costs should not be recovered through rates.<sup>47</sup> Other jurisdictions have disallowed these costs from being recovered from customers for the same reasons that Advisor witness Mr. Ferris cites in his testimony.<sup>48</sup>

The Company also asserts that the Advisors have not established that the plan is imprudent and therefore there is a presumption that the plan is a "legitimate, prudently incurred

---

<sup>43</sup> ENO Initial Brief at 147.

<sup>44</sup> ADV-10 at 84:12-16 (HSPM).

<sup>45</sup> ENO Initial Brief at 162; ENO-3 at 50:14-17.

<sup>46</sup> ADV-18 at 4:5-7.

<sup>47</sup> ADV-18 at 4:12-16; LPSC Order No. U-20925 (RRF 2004) dated May 18, 2005.

<sup>48</sup> LPSC Order No. U-20925 (RRF 2004) and attached Recommendation on Contested Proposed Stipulated Settlement at 16.

cost of service that should be recovered through rates.”<sup>49</sup> ENO provides no support for this position regarding the inclusion of the plan’s costs in rates. Additionally, ENO is well aware, that simply because a cost may be legitimate and prudent does not necessarily require those costs to be borne by ratepayers. ENO incurs costs routinely that may be legitimate and prudent, but not recoverable from ratepayers.

Mr. Thomas does not provide any rational justification for recovering the costs of ENO’s Restricted Stock Incentive Plan in rates. The Company has failed to meet its burden of showing that the Restricted Stock Incentive Plan benefits ratepayers.

**B. The Advisors’ Recommendations Provide ENO With Sufficient Timely Recovery Without the Excessive Reliance on Riders as Cost Recovery Mechanism**

1. The Advisors’ Forward Looking FRP Recommendation Addresses ENO’s Regulatory Lag Concerns

ENO submits that the Council should consider three factors when determining whether its proposed Specific Project Riders are appropriate as cost recovery mechanisms. First, the Council should consider whether the Council has effectively directed ENO to undertake the investment. ENO’s concern is largely irrelevant. While it is true that ENO customarily seeks Council pre-approval to make significant or noteworthy investments such as in NOPS or grid modernization, ENO’s costs are generally presumed to be prudently-incurred and therefore eligible for recovery through rates. Indeed, when seeking Council pre-approval for an investment, ENO therein has the opportunity to seek special cost-recovery treatment.

Second, ENO claims the Council must find that subjecting ENO to regulatory lag with respect to the recovery of the cost associated with the project presents significant cash flow and/or earnings concerns for ENO. Here ENO cites Mr. Rogers’ statement that “[t]he Advisors

---

<sup>49</sup> ENO Initial Brief at 162.

recognize that regulatory lag in the context of ENO's planned investment is a legitimate concern." In citing Mr. Rogers ENO goes far beyond the intent of that statement. Recognizing regulatory lag as a legitimate concern is vastly different from ENO providing the analysis to credibly support significant cash flow and/or earnings impacts, which would be necessary for a Council finding. In any event, the Advisors have demonstrated that regulatory lag is adequately addressed through ratemaking treatments recommended by the Advisors.<sup>50</sup>

ENO's third proposed factor for the Council to consider is that the rider must include an exact cost recovery mechanism. ENO's suggestion that the Council consider an exact cost recovery rider is confusing when ENO has stated that the Council can consider all of the Company's costs in its proposed FRP and avoid single issue ratemaking, which is one of the Advisors' primary concerns with exact cost recovery riders.

Notwithstanding ENO's lengthy and repetitive argument that it needs "contemporaneous cost recovery" because of the increased level of large investments that the Company is making, the Advisors have proposed recommendations that reasonably address regulatory lag without ENO's proposed excessive reliance on Riders. Specifically, the Advisors' recommend that FRPs include forward-looking adjustments to account for known and measurable changes in lieu of ENO's proposed riders. However, ENO contends that while the Advisor's recommendation may supplant the need for some of ENO's proposed riders, "the proposed GIRP Rider and PPCACR rider, however, would remain necessary." ENO is incorrect. FRPs with the Advisor-recommended forward looking adjustments would provide regulatory certainty for both investors and qualified contractors, and also provide the Council with sufficient time to consider GIRP cost recovery beyond the FRP's three year term.

---

<sup>50</sup> ADV-8 at 6:12:18.

It should be noted that ENO agrees that an FRP will address regulatory lag - “[t]he FRPs, which the Council has approved previously, are a cost-effective and efficient way of effecting timely adjustment of rate levels, as necessary, thereby reducing regulatory lag and better matching rate changes to the trends and events that are driving changes in costs.” Alternatively, ENO states that “[s]hould the Council not approve the Advisors’ recommendation to include forward-looking adjustments in the FRPs, then the Council should approve the Company’s proposed FRPs and all the Specific Project Riders.”

2. Many of ENO’s Proposed Specific Cost Recovery Riders Constitute Inappropriate Single-Issue Ratemaking

In response to the Advisors concerns regarding single-issue ratemaking, ENO claims that “. . . when the Tax Cut Act’s reduction to the federal corporate income tax rate became effective January 1, 2018, the Council embraced single-issue ratemaking.”<sup>51</sup> Notwithstanding ENO’s inappropriate introduction of new evidence in its Initial Brief, this is an improper characterization of the Council’s actions. In fact, the Council took action consistent with the actions of substantially all other regulators nationwide related to the Tax Cut Act. The Council acted to return to ratepayers ENO’s tax-related windfall that was entirely unrelated to ENO’s management of its utility. This windfall to ENO occurred during a period of a retail rate freeze, which could not reasonably have been anticipated at the time.

While instituting an immediate retail revenue requirement evaluation would have been appropriate, the Council undertook an equally appropriate overall evaluation of ENO’s tax-related costs and balance sheet reserves given the then-existing retail rate freeze. This did not constitute single-issue ratemaking and the Council certainly did not “embrace” single issue ratemaking as the Initial Brief falsely claims.

---

<sup>51</sup> ENO Initial Brief at 70.

Moreover, ENO's criticism of Mr. Watson regarding the use of riders for cost recovery<sup>52</sup> is misguided. ENO clearly understands that single issue ratemaking with riders is avoided if the riders are included in the periodic evaluation of all utility costs.<sup>53</sup> The decision to use riders as a contemporaneous cost recovery mechanism should include consideration of significant cost variability and costs not controlled by the utility, but these considerations are not dispositive in the Council's decision to approve the use of rider mechanisms. It was misleading for ENO to refer to Mr. Rogers' discussion regarding a situation in which cost recovery through a rider is appropriate and use that reference to describe Mr. Watson's view of the use of riders as "unreasonably narrow." The Advisors reiterate once again that single issue ratemaking is focusing on one cost rather than including all costs in a revenue requirement evaluation, while the use of riders are included in decisions regarding cost recovery mechanisms. These ratemaking concepts are separate and distinct. There may be valid reasons for recommending a contemporaneous rider for cost recovery, providing that the rider is included in each periodic evaluation of earned ROE and total utility revenue requirements.

### 3. Grid Modernization Rider

ENO's Initial Brief expounds on the prudence and importance of certain distribution plant investments it refers to as grid modernization. No party disputed this claim; however, ENO goes on to conflate the presumed prudence of these investments with the need for a special rider to ensure contemporaneous cost recovery. Without Rider DGM, ENO claims that its cash flow would deteriorate and capital will be lost. Despite its dire warnings, ENO proposes to recover all costs related to grid modernization investments through December 31, 2019 through the base rates that will be set in this proceeding. As such, ENO's own recommendations contradict its

---

<sup>52</sup> *Id.* at 73.

<sup>53</sup> *Id.* at 70.

claim that a rider is required for cost recovery. Rather, Rider DGM, along with all ENO's proposed Riders, is intended by ENO to serve as a mechanism to exclude grid modernization revenues and costs from ENO's proposed electric FRP, which ENO proposes should be designed to only consider base rate costs in the annual FRP evaluation of ENO's performance. As ENO has made clear, a substantial amount of money will be invested in grid modernization, as well as in AMI, new conventional and renewable generation and gas infrastructure.<sup>54</sup> Under ENO's FRP proposal, these activities will not be considered in determining whether rates need to be adjusted over the next three years. ENO's emphasis on the importance of these investments while ignoring them in its proposed FRP and ROE evaluation borders on hypocrisy. Unless ENO's costs and revenues are evaluated as a whole, the Council is deprived of a regulatory mechanism to ensure ENO's overall rates reflect a fair return on investment. The periodic reviews under ENO's proposal (annual and quarterly reviews in the GIRP and quarterly reviews of the DGM rider) may provide some customer protections, but GIRP and DGM costs and related revenue must be included in the FRP evaluation of ENO earned income every 12 months to ensure all costs and revenues are considered in any potential FRP rate adjustment.

#### 4. Advanced Metering Infrastructure Riders

The Company proposes that all AMI costs be excluded from the base revenue requirement and instead be recovered exclusively through an AMI Charge on a per-metered customer basis. However, consistent with its arguments regarding the Grid Modernization Rider, ENO states that "Electric and Gas FRPs that permit forward-looking adjustments, as suggested by the Advisors, could serve as a substitute for [ENO's proposed] AMI Charges for the duration of the FRPs, assuming ENO's other concerns regarding the Advisors' FRP proposal can be

---

<sup>54</sup> ENO Initial Brief at 21.

resolved. In general, ENO reasons that a per-customer charge is appropriate for AMI Rider cost recovery because “the number of customers ENO serves, in large part, drives the level of the costs associated with AMI.” In contrast, the Advisors’ proposed allocation of AMI cost responsibility is based on the net benefits identified in AMI Docket No. UD-16-04 including “greater grid resiliency in the distribution network, improved outage and reliability performance, improved grid planning for modifications and improvements, DSM programs, time differentiated pricing, and specially designed customer options, among other system and customer benefits.”

ENO’s approach could lead one to believe that AMI is simply a high cost replacement for ENO’s existing meters because ENO’s stated rationale ignores all the principal reasons for replacing existing meters with advanced meters. AMI benefits such as time-of-use rates are more likely to be used by and may provide greater benefits to commercial and industrial customers in comparison to residential customers. Therefore, a strict per-customer allocation as proposed by ENO does not reflect cost causation.

ENO is clearly more concerned with timely recovery of total AMI costs than on the cost responsibility by customer class, since ENO does not oppose the Advisors’ methodology for allocating AMI cost responsibility, yet after the rate case and 3 years of FRP, ENO proposes to implement its AMI fixed customer charge, which heavily weights AMI cost responsibility on the residential customer class.

ENO states that the “vast preponderance of the AMI costs is fixed,” supporting recovery of AMI costs through a fixed charge. Again ENO confuses the concept of allocating AMI cost responsibility with its AMI customer charge rider proposed for cost recovery. In this docket, the Advisors allocated AMI costs within the total cost of service, and recommended those costs be recovered with most other fixed costs of service through the base rate tariff. In the FRP’s, cost

changes, including those related to AMI, would be allocated using a methodology consistent with this docket and recovered with the FRP revenue adjustment.

As with other cost recovery beyond the three-year term of the anticipated FRPs, the Advisors believe that there will be sufficient time during this period to consider all possible rate actions and cost recovery issues.

CCPUG argues against the Advisors' recommended methodology for assigning responsibility among the rate classes for costs related to ENO's AMI deployment. CCPUG favors ENO's proposed per-customer methodology and labels the Advisors' recommended benefits-based allocation methodology as base rate "socialization."<sup>55</sup> To the extent CCPUG's argument implies the Advisors recommend any form of cross-subsidization, that would be incorrect. In fact, the Advisors' recommendation regarding the rate-class allocation of AMI-related costs is based on a careful analysis of resulting net-benefits.<sup>56</sup> The ENO/CCPUG proposal to recover AMI-related costs on a per-customer basis is flawed because AMI provides many functions and benefits beyond existing meters' sole function to generate billing information.<sup>57</sup> As ENO made clear, the approximately \$80 million AMI capital investment is more than just new meters, but includes "a secure and reliable communications network that supports two-way data communication, related and supporting systems, including a Meter Data Management System, an Outage Management System, and a Distribution Management System." As noted above, the benefits of AMI include greater resiliency in the distribution network, improved outage and reliability performance, improved grid planning for modifications and improvements, DSM programs, and time differentiated pricing. A per-customer allocation of

---

<sup>55</sup> CCPUG Initial Brief at 78.

<sup>56</sup> ADV-3at 28:10-12.

<sup>57</sup> *Id.* at 28:13-16.



AMI-related costs is actually the proposal that would result in cross-subsidization benefiting large and industrial customers at the expense of residential and small commercial customers.

5. Gas Infrastructure Replacement Program Rider

ENO's Initial Brief reiterates its desire for a special cost recovery rider, referred to as the Gas Infrastructure Replacement Program Rider, ("GIRP") related to its proposed gas distribution system investments. ENO discusses at length the benefits of this proposed plant investment, which is not disputed by any party to the instant proceeding, but ENO makes no new argument as to why a special rider is required. The GIRP Rider is not required to allow ENO contemporaneous recovery of its costs and the Council should reject ENO's proposal.

ENO's Initial Brief introduces a proposal for a ROE enhancement related to recovery on GIRP investments. ENO proposes that for its GIRP rider, "[t]he cost of equity initially will be the equity return approved by the Council in this rate case as adjusted by the RIM Plan."<sup>58</sup> ENO's RIM Plan is a ROE enhancement proposal applicable to ENO's proposed electric FRP, and nothing in the instant proceeding's record to date suggests it should apply to the return on gas investments. Unless ENO's proposal in its Initial Brief for a ROE adder to the GIRP Rider is a typo to be withdrawn by ENO, the Council should reject this proposal for a gas ROE adder as unsupported in the record.

6. The Advisors' Approach to Setting Revenue Requirements is Reasonable

ENO criticizes the Advisors' recommendations regarding customer class revenue requirements as being both misleading and distorted. Specifically, ENO states "[t]hough he claims that the allocations follow his class cost of service study, Mr. Prep, like the other cost allocation witnesses, departs from the cost of service in order to arrive at what he believes to be

---

<sup>58</sup> ENO Initial Brief at 34.

reasonable class revenue allocations.”<sup>59</sup> In fact, customer class revenue is not “allocated” based on a total utility revenue, rather it is the sum of the cost of service components of allocated expenses and class return on allocated rate base. The Advisors’ methodology using the cost of service study to determine reasonable class revenue requirements is certainly not a “claim”; the class cost of service study was an indispensable cornerstone linking the present revenues to existing rates of return, which vary significantly according to ENO’s cost of service study.

Unlike ENO, who spent a great deal of resources developing a class cost of service study, and yet abandoned that valuable analytical tool to propose an entirely non-cost-based approach, the Advisors used the class cost of service study (with a few necessary modifications supported by the Advisors) to provide the Council with important ratemaking information regarding the Advisors’ recommended changes to customer revenues and the related impact on customer class rates of return. The record in this proceeding includes numerous references to revenue subsidies among customer classes based on disparate relative rates of return and gradualism in adjusting present customer class revenues. However, ENO only used its class cost of service to show the customer class rates of return related to present revenues, as well as customer class revenues related to ENO’s proposed rate of return, which was not used or useful in determining prospective changes to customer class revenues. To deflect attention from ENO’s neglect to use its class cost of service as a means to develop customer class revenue requirements, ENO offered reasons that the Advisors view as meaningless. ENO refers to a discernible standard that could be accurately duplicated.<sup>60</sup>

Class cost of services studies always show significant variations in relative rates of return among customer classes, and there is no discernable standard to apply specific adjustments

---

<sup>59</sup> *Id.* at 82.

<sup>60</sup> *Id.* at 83.

among customer classes or to accurately duplicate revenue changes that derive from the unique circumstances of each rate action. ENO confuses the reproducible methodology to develop external allocation factors with the reasonable judgment necessarily applied to varying rates of return. The ratemaking process is unquestionably subjective in nature. ENO's own class cost of service showed wide ranges of rates of return among classes, to which the Advisors recommended only small changes. Yet, ENO describes Mr. Prep's approach as applying "wildly variable class returns".<sup>61</sup> On the contrary, ENO did not show any class rates of return related to their proposed customer class revenues. Since ENO claims that their proposed class revenues are reasonable and a gradual change, their own class cost of service study would most assuredly also show wildly variable class returns corresponding to their revenue proposal. The "bottom line" is that the Council will set new customer class revenue requirements based on reasonable and gradual revenue changes and in doing so the Council will benefit from knowing how those revenue changes impact the rates of returns from each customer class.

Further, there are many valid reasons why a class revenue requirement may not follow the results of the cost of service study, cost causation, or the total utility rate of return. Those reasons include: the need for "gradualism" when rates are increasing; cost allocations are subject to judgment, imprecision, and the methodologies selected; the relative risk of classes may vary; and the regulatory body may want to provide assistance to at-risk customers, e.g., low income customers.<sup>62</sup>

The existing class Rates of Return on Rate Base ("RORRB") in ENO's class cost of service study exhibit a large disparity among customer classes. These existing class RORRB, along with the rate base allocated to each customer class, define the return component of the

---

<sup>61</sup> *Id.*

<sup>62</sup> See, [Tariff Development I: The Basic Ratemaking Process](#) -- Darryl Tietjen, Public Utility Commission of Texas Briefing for the NARUC/INE Partnership.

class cost of service, aka the present revenue for each customer class. In re-setting the cost of service or revenue requirement for each customer class, the Council should know how any class revenue change impacts the return components of the class cost of service. The Advisors considered all of the above reasons for not setting class rates of return equal to the proposed total ENO rate of return, as well as fairness in recommending the changes in customer class revenue related to apportioning the proposed utility revenue requirement. The Advisors' exhibits clearly demonstrate the impact of recommended class revenue changes on the rates of return for each customer class. ENO's Application does not. In fact, ENO criticized this approach throughout their direct and rebuttal testimony and never acknowledged the impact on rates of return corresponding to their proposed changes to class revenue, which they conceded were not related in any way to their class cost of service study.

7. Air Products Criticisms of the Advisors Cost Allocation are Self-Serving and Lack Substantive Support

Air Products raises several criticisms of the Advisor's proposed cost allocation. Advisors maintain that their recommendations to the Council regarding revised revenues by customer class represents a fair approach among customer classes, which recognizes the rate of return disparity among customer classes as well as the various impacts of revenue changes to each customer class. Specifically, the Advisors noted the high rates of return associated with the LIS and other large customer classes and recommended larger percent revenue reductions to these classes. Other specific criticisms are addressed directly below.

a) *COS Allocation Differences*

Air Products points to the "unreasonableness of several COS methodologies proposed by the Advisors in this proceeding that would further shift costs to the LIS class..." [P. 21]. Apparently, Air Products categorized the Advisors' approach as a "shift" in costs implying a

movement away from some standard of cost allocation. The only specific cost allocations that the Advisors modified were the allocation of AMI costs based on net benefits and value of interruptible load in allocating production (generation) capacity costs. Air Products may consider these two changes “unreasonable”, but they did not alter the Advisors’ recommendation that LIS have the largest percent revenue reduction.

*b) Interruptible Cost Allocation Issue*

Air Products believes that the Advisors’ proposed “inequitable treatment of interruptible load” overstates cost responsibility to Air Products. The Advisors’ “inequitable treatment” was not inequitable, but rather is based on a credible study regarding the value of interruptible load which Air Products chose not to examine and refute. Instead of conducting an analysis to point out the flaws in the referenced study, Air Products simply stated that: “...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...” (emphasis added).<sup>63</sup> Advisor witness Prep uses an approach based on the referenced study that assesses the value of load interruption relative to peaking resources. If the referenced study did not provide a verifiable metric<sup>64</sup> then Air Products should have provided specific support refuting that reference. Air Products claims that the Advisors’ approach for allocating fixed generation-related capacity costs to Air Products would result “in the customer paying far more than justified under cost of service principles,”<sup>65</sup> but that was clearly not the case based on the Advisor’s recommended revenue reduction for LIS.

---

<sup>63</sup> Air Products Initial Brief at 23.

<sup>64</sup> *Id.* at 24.

<sup>65</sup> *Id.*

c) *Total Cost of Service Issue*

Clearly, Air Products is embracing single issue ratemaking by advocating that revenue requirements and ROE evaluation be accomplished in a segregated manner with the statement: "...since the revenue requirements for fuel and purchased power are not included in base rates (but are recovered through a separate rider)."<sup>66</sup>

By evaluating the total cost of service, rather than by single issues, Air Products believes a distortion is created, for some reason unknown to the Advisors: "...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 recovery will be part of the factor used to apportion any revenue changes, which will produce a *distorted* result."<sup>67</sup> As explained fully and repeatedly in Mr. Prep's testimony, decisions regarding cost recovery mechanisms follow the evaluation of the utility's total revenue requirement.

d) *Revenue Requirements by Customer Class*

Air Products claims that the Advisors proposed arbitrary and unreasonable assignment of rates of return by customer classes..."<sup>68</sup> The Advisor's approach was neither arbitrary or unreasonable compared to the proposals of ENO, Air Products, and CCPUG, which did not evaluate impacts of their revenue proposals on existing class rates of return. Air Products exaggerates and mischaracterizes the Advisors' approach: "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."<sup>69</sup> [P. 27]. That statement is pure hyperbole.

---

<sup>66</sup> *Id.* at 26.

<sup>67</sup> *Id.* (emphasis added).

<sup>68</sup> *Id.* at 21.

<sup>69</sup> *Id.* at 27.

Mr. Prep’s approach did not “establish widely divergent rates of return” as is evidenced by the following earned rate of return results from ENO’s filed class cost of service study (Minimum Filing Requirement Cost of Service Exhibit RR-1):

<b>Electric Rate Class</b>	<b>Class Rate of Return</b>
Residential	(7.74%)
Small Electric	(1.02%)
Large Electric	(3.43%)
Large Interruptible Service	8.91%
Large Electric High Load Factor	(3.81%)
High Voltage	(1.55%)
Municipal	6.06%
Master Metered Non-Residential	6.21%
Lighting	21.2%

Clearly, ENO’s class cost of service study results demonstrate that the earned rates of return by customer class corresponding to existing revenues are already “widely divergent” before any analysis by the Advisors. Mr. Prep’s approach is simply a straightforward process that provides the Council with recommended customer class revenues and the rates of return that correspond to the recommended revenues. It is therefore very plausible to expect that the rates of return based on the Advisors’ recommended moderate changes to customer class revenue would still exhibit variances. The Advisors approach is intended to provide the Council with information that neither ENO nor any of the Intervenors offered; that is to show the customer

class rates or return that result from an objective recommendation for revising customer classes revenues.

Air Products made other similar claims without merit: “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.”<sup>70</sup> Air Products implies that some “cookie-cutter” algorithm should be used by the Council to revise class revenues and rates of return. There is no such “specific algorithm” and, therefore, the Advisors’ approach provides the results of moderate revenue changes.

Air Products made another claim that is also misleading: “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.”<sup>71</sup> The Advisors examined and accepted the vast majority of ENO’s allocation of rate base and expenses. There was no such “overriding” of these cost allocations. The last component of the customer class revenue, the existing class rates of return, exhibited a large disparity among customer classes, as evidenced by ENO’s class cost of service study. The Advisors used the class cost of service to vary those disparate rates of return in developing the recommended revenue changes and revised customer class revenue requirements. It was misleading for Air Products to claim that costs were re-allocated. It was also misleading to refer to the class rates of return being “subjectively revised” by the Council each year. That claim implies a concern that the Council could negatively impact any customer class by action that may be viewed as inconsistent. On the contrary, the Advisors expect that the revised class

---

<sup>70</sup> *Id.* at 28.

<sup>71</sup> *Id.*



rates of return ensuing from this docket would be included in ENO's decoupling revenue proposals in the FRP (assuming the FRP and decoupling mechanism is approved by the Council in this Docket), with only slight adjustments necessary for the composite of class revenues to realize the total utility revenue.

The Advisors disagree in several aspects with Air Products' statement: "Moderating rate increases when moving toward cost of service should be a step that is **completely separate** from calculating the class cost of service."<sup>72</sup> Apparently, Air Products' Brubaker assumes that "cost of service" is a rigid definition applied to each customer class, which ignores the regulatory body's discretion to consider many factors other than the utility's allowed rate of return when setting revised revenue requirements by customer class. The revised revenue requirement by customer class is composed of allocated costs and a class rate of return, and it is the implied cost of serving each customer class ensuing from this rate action. It is difficult to follow the logic of Air Products' referenced statement when "moderating rate increases when moving toward" some average rate of return level clearly means evaluating potential changes in class revenues with the corresponding changes in class rates of return. If one chooses to use the average rate of return as a reference when moderating rates of return, the Advisors fail to see how it can be "completely separate" as Mr. Brubaker's statement claims. The bottom line is that the Advisors are satisfied that the Council has sufficient information with the class cost of service results to determine what revised revenue levels are appropriate for each customer class.

Air Products' disagreement to update the cost allocation factors during the next several years of FRP evaluations and decoupling is without merit: "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

---

<sup>72</sup> *Id.* at 29.

service outside of a full rate proceeding.”<sup>73</sup> During each year of FRP and decoupling revenue adjustments and decoupling significant impacts on customer loads could occur from energy efficiency, demand response, renewables, changes to commercial and industrial operations among many other factors. It is unreasonable to maintain the same cost allocation factors during these years when billing determinants will also be updated to apply the rate adjustments. Unnecessary risk would not be created by updating cost allocation factors consistent with current billing determinants and providing a credible update to the class cost of service. The Advisors also disagree with Air Products’ contention that “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.” Air Products has expressed concerns but has failed to demonstrate exactly how it would be treated unfairly relative to other customers in the proposed FRP and Decoupling revenue adjustments.

### **C. Formula Rate Plans**

#### **1. ENO’s Proposed Electric and Gas Formula Rate Plans Should be Approved with the Modifications Proposed by the Advisors**

ENO proposes an Electric Formula Rate Plan (“FRP”) and a Gas FRP based on the previous FRP Riders approved by the Council in Resolution R-09-136.<sup>74</sup> While no party to the case opposes the approval of Electric and Gas FRP mechanisms, the parties do have differing positions on how such mechanisms should be structured. The primary areas of contention center around whether total utility operating revenues and costs should be included in the mechanism (rather than be limited to base rate revenues), whether forward-looking adjustments for known and measurable changes should be made, whether ENO’s proposed Reliability Incentive

---

<sup>73</sup> *Id.* at 21.

<sup>74</sup> ENO Initial Brief at 19.

Mechanism (“RIM”) should be included, how rates are reset if the ROE is outside the FRP bandwidth, the structure of the Decoupling mechanism, and the proposed adjustment for the interim recovery of costs related to the New Orleans Power Station (“NOPS”).

*a) Total Costs and Revenues Should be Included in the FRP Mechanism*

ENO opposes the Advisors’ proposal that the electric FRP revenue adjustment for each customer class should be determined by comparing the evaluation period fixed and variable revenue by class with the FRP evaluation period allocation of total ENO fixed and variable revenue requirement.<sup>75</sup> ENO argues that no evidence has been offered to show that any other regulator in the country requires utilities to include rider revenues and costs recovered through those riders when setting base rates.<sup>76</sup> ENO appears to search for trends among other regulators rather than comply with Council Resolution R-17-504, which directs that rider revenues and costs be included in the evaluation of earned ROE. Furthermore, to avoid single issue ratemaking, the total cost of service should be examined to adjust total revenues not just to set base rates. ENO argues that the Advisors’ proposed method would not change the level of ENO’s base revenue requirement to be recovered in base rates, would not give the Council a better understanding of ENO’s financial performance, and could have the effect of shifting cost responsibility among the rate classes, although ENO’s base revenue requirement from a Total Company perspective would be unaffected.<sup>77</sup> ENO’s arguments are without merit: base revenue requirement is only a portion of the total cost of service; the Council should evaluate ENO’s financial performance and earned ROE based on its total cost of service; and a “shift” in cost responsibility is meaningless when the evaluation does not consider total costs.

---

<sup>75</sup> *Id.* at 102; ADV-3 at 78:6-8; Advisors’ Initial Brief at 106.

<sup>76</sup> ENO Initial Brief at 102.

<sup>77</sup> *Id.*

Air Products also urges the Council to reject the Advisors' proposal to use total revenues in FRP evaluations.<sup>78</sup> Air Products supports ENO's argument that only those costs that are to be collected through base rates should be included in the FRP,<sup>79</sup> regardless of the fact that Resolution R-16-103 directs that "all utility fixed costs should be included in the decoupling revenue adjustment, regardless of the revenue recovery mechanism used to recover any specific fixed (non-fuel) costs." Air Products argues that 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 many of ENO's riders, have nothing to do with whether ENO is under-earning or over-earning, and, therefore should not be included in FRP reviews.<sup>80</sup> However, without being included in a periodic total cost of service evaluation, Air Products' argument amounts to single issue ratemaking. Air Products expresses concern that the inclusion of FAC revenues, which are a much larger percentage of the total cost of serving industrial customers than for other classes, because it would use revenues that made no contribution to over- or under-recovery, would be part of the factor used to apportion any revenue changes.<sup>81</sup> Air Products argues that this would be a distorted result that could be particularly harmful to Air Products.<sup>82</sup> Air Products' concerns are unfounded. If total costs are evaluated with the revenues designed to recover such costs in an evaluation period, and the Council approves credible methods of allocating such costs, a fair and supportable allocated cost of service will result.

By evaluating the total cost of service, rather than by single issues, Air Products believes a distortion is created: "...by including FAC revenues in the base revenue requirement used to

---

<sup>78</sup> Air Products' Initial Brief at 32.

<sup>79</sup> *Id.* at 32.

<sup>80</sup> *Id.* at 32.

<sup>81</sup> *Id.* at 33.

<sup>82</sup> *Id.*

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 recovery will be part of the factor used to apportion any revenue changes, which will produce a *distorted* result.” [P.26] (emphasis added). As explained fully and repeatedly in Mr. Prep’s testimony, decisions regarding cost recovery mechanisms follow the evaluation of the utility’s total revenue requirement, therefore, no distortion is created. In any event, should FAC cost and revenues be equal in an FRP evaluation, the inclusion of such in a cost study would have no effect on ENO’s earned ROE. On the other hand, a “distortion” is clearly created with single issue ratemaking, as the Advisors have emphasized repeatedly.

In an FRP filing, a comprehensive evaluation of the earned ROE compared to the Council-approved ROE requires that all costs and revenues be included, anything less would be single-issue ratemaking.<sup>83</sup> As long as all costs and revenues are supported by the financial reports of the system accounts, and each program adjustment is supported with explanation and workpapers, double-counting of costs and revenues should be avoided.<sup>84</sup> In addition, Directive 6 of Resolution No. R-16-03 requires that all utility fixed costs should be included in the decoupling revenue adjustment, regardless of the revenue recovery mechanism used to recover any specific fixed (non-fuel) costs.<sup>85</sup> Failing to include all revenues could prevent the Council from seeing the totality of ENO’s financial picture and could allow for gamesmanship in the shifting of costs out of rate base and into riders when it is advantageous to ENO to do so.

---

<sup>83</sup> ADV-5 at 23:11-13; Advisors’ Initial Brief at 107.

<sup>84</sup> ADV-5 at 24:1-6; Advisors’ Initial Brief at 107.

<sup>85</sup> ADV-5 at 24:6-9; Advisors’ Initial Brief at 108.

b) *Forward Looking Adjustments Should be Incorporated into the FRP to Mitigate Regulatory Lag*

The Advisors recommend adding a provision under FRP Attachment C, Evaluation Period Adjustments, paragraph 8, Other, that would state “ENO may propose other known and measurable costs that are supportable and expected to be incurred in the prospective 12 months following the FRP Evaluation Period.”<sup>86</sup> This provision would include those prospective costs proposed by ENO to be recovered within the FRP revenue adjustment.<sup>87</sup>

ENO supports an FRP with forward-looking adjustments and acknowledges that it would address ENO’s concerns regarding regulatory lag to a great degree and eliminate the need for some riders, though ENO asserts that others would still be needed.<sup>88</sup> ENO agrees that such treatment would eliminate the need for the Electric and Gas AMI Charge, the Gas R&D Charge, and the DGM Rider during the term of the FRPs and assuming riders would be implemented after the FRPs terminate.<sup>89</sup>

CCPUG opposes the Advisors’ proposal to include projected costs in the FRP, arguing that the inclusion of projected costs – which may or may not ever be incurred – undermines a utility’s incentive to operate effectively and economically.<sup>90</sup> CCPUG argues that allowing ENO to include a “wish list” of investments it may make in the coming year in its current rates is fraught with peril and ripe for abuse.<sup>91</sup> This argument, however, ignores the requirement that projected costs be “known and measurable.” The Advisors contemplate that in order to be known and measurable,<sup>92</sup> such costs either (i) would have already been presented to and

---

<sup>86</sup> ADV-3 at 78:9-13; Advisors’ Initial Brief at 106.

<sup>87</sup> ADV-3 at 78:13-14; Advisors’ Initial Brief at 106.

<sup>88</sup> ENO Initial Brief at 67.

<sup>89</sup> *Id.*

<sup>90</sup> CCPUG Initial Brief at 69.

<sup>91</sup> *Id.* at 69.

<sup>92</sup> “Known and measurable” is discussed in the following testimony in this Docket: ENO-41 at 2; CCPUG-2 at 9.; ADV-1 at 2; ADV-2 at 11; and ENO-40 at 18.

approved by the Council prior to inclusion in an open and transparent proceeding that allows for public participation, such as ENO's projected AMI costs, or (ii) that such costs would be clearly supported in ENO's detailed budgeting process.<sup>93</sup> The Advisors' proposal is by no means a blank check for ENO to simply include projected costs it would like to incur for projects that have not been reviewed and approved by the Council in a proceeding that allows all interested parties to have input. As such, the Advisors recommend that the Council review such out-of-period proforma adjustments to ensure they were indeed accomplished.<sup>94</sup> If ENO were shown to have abused this ratemaking treatment, the Council could then take appropriate action. Thus, the concerns raised by CCPUG that ENO will be able to collect a return on a "wish list" of investments that are never made are unfounded. The Advisors recognize that ENO is undertaking a significant level of investment in its system and that regulatory lag could be a sufficient obstacle and believe that this proposal will sufficiently mitigate the impact of regulatory lag, without the need for unnecessary riders, while still providing ENO an incentive to be efficient and allowing the Council oversight of ENO's investments.

c) *ENO's Proposed Reliability Incentive Mechanism Should be Rejected*

ENO argues that its proposed RIM Plan is a transparent and straightforward approach towards achievement of certain reliability performance goals, making the earnings component of its rates contingent upon reliability performance.<sup>95</sup> ENO argues that a mechanism tying reliability performance to any financial outcome should be symmetrical and that if a financial value (*i.e.* penalty) can be ascribed to performance below the range, then a value exists for

---

<sup>93</sup> ADV-6 at 66:4-6.

<sup>94</sup> *Id.* at 66:15-18.

<sup>95</sup> ENO Initial Brief at 52.

performance above the range.<sup>96</sup> ENO also argues that similar mechanisms have been implemented by regulators in other jurisdictions.<sup>97</sup> ENO writes:

Reliable service is ENO's goal, but providing reliable service comes at a cost; the question becomes what is the appropriate balance between the two. This is a tradeoff that regulators must factor into their decision-making on just and reasonable rates.<sup>98</sup>

While ENO is correct that it is the job of the regulator to determine the point at which the incremental gains to be achieved by further increasing reliability are outweighed by the cost of doing so, reliable service is not merely a "goal" of the utility, rather, it is the fundamental purpose for which the utility exists. ENO's attempt to extract further profit from ratepayers for merely improving its reliability to an acceptable level is distasteful at best. When coupled with ENO's proposal to change Section 11 Continuity of Service of ENO's Service Regulations to excuse ENO from responsibility for loss or damages caused by the failure or other defects of service regardless of the cause,<sup>99</sup> and ENO witness Stewart's statement on the stand that she would not say ENO has a duty to provide safe and reliable electric service,<sup>100</sup> these arguments demonstrate a troubling attitude on ENO's part that reliability is somehow optional and the utility must be provided with an incentive to provide it.

ENO's earnings component of its rates should not be contingent upon its reliability performance, and the Advisors oppose ENO's RIM proposal to tie its ROE to its reliability performance. Rather than refute the logic of the Advisors' position that ENO is obligated to improve the reliability of its services, and will be so compensated with minimal regulatory lag, ENO relies on the repetition of statements that reliability mechanisms have been previously

---

<sup>96</sup> *Id.* at 53.

<sup>97</sup> *Id.* at 52.

<sup>98</sup> *Id.* at 54-55.

<sup>99</sup> ENO-6, at Ex. MPS-8, page 18.

<sup>100</sup> Council of the City of New Orleans Hearing Transcript at 114:17-18 (June 18, 2019).



approved by other regulatory agencies, that reliable service comes at a cost, and ENO needs to be provided an incentive. The Council is not faced with a “tradeoff” and is not required to provide ENO with an incentive to increase reliability just because reliability comes with a cost, all of which will be recovered from ratepayers in any event.

Air Products urges the Council to reject the proposed RIM, or in the alternative, to find that the mechanism should not be applied to transmission-level customers such as Air Products.<sup>101</sup> Air Products argues that its witness, Brubaker, testified that 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.<sup>102</sup> In apparent agreement with the Advisors testimony,<sup>103</sup> Air Products also notes that ENO is proposing, through its Distribution Grid Modernization Rider, to charge customers for the cost of upgrading its distribution grid, which would in turn be expected to improve reliability -- thus, customers (not ENO shareholders) would have already paid for the improved reliability of ENO’s distribution system.<sup>104</sup> Air Products also argues that to the extent the Council approves the RIM plan, it should not apply to customers who take service at the transmission level because they will not benefit from improvements in reliability on the distribution system since the entire focus of reliability improvement is at the distribution level.<sup>105</sup>

AAE and Sierra Club also oppose the RIM Plan, noting that ENO fails to even recognize its responsibility to provide reliable service to New Orleans ratepayers, and that ENO is effectively asking to be rewarded for operating its distribution system in the manner to which

---

<sup>101</sup> Air Products’ Initial Brief at 35.

<sup>102</sup> *Id.*; AP-3 at 20:16-21:3.

<sup>103</sup> ADV-1 at 15:10-19.

<sup>104</sup> Air Products’ Initial Brief at 35; AP-3 at 21:9-11.

<sup>105</sup> Air Products’ Initial Brief at 35; AP-3 at 21:11-13 and 22:3-4.

ratepayers are entitled, but have not been receiving for years.<sup>106</sup> AAE and Sierra Club argue that the Council should reject ENO's attempt to "do an end run" around the Council's ongoing investigation in UD-17-04.<sup>107</sup> Also in complete agreement with Advisor testimony,<sup>108</sup> they also argue that ENO's ROE affects its return on all investments, not just the distribution plant that is most closely related to many of ENO's reported service outages, and ROE is based on market performance of proxy companies, not SAIFI values, so the ROE is not the best mechanism to incentivize ENO's distribution-related performance given its broad impact on ENO's overall rates.<sup>109</sup> AAE and Sierra Club also allege that ENO has been overearning on its ROE for a number of years, and during that period had a dismal record regarding distribution system outages, so there is no reason to believe that allowing ENO to over-earn is the best way to incentivize the Company.<sup>110</sup> Finally, they note that FERC has declined incentives to utilities "for doing what it is supposed to do, *i.e.*, to adequately maintain its facilities in a prudent cost-effective manner," and argue that New Orleans ratepayers should not be required to pay extra for a service they are entitled to by virtue of ENO's status as the monopoly provider of electric service.<sup>111</sup>

ENO's proposed RIM Plan should be denied, and the issue of reliability standards and any penalties for failing to meet them should be taken up in Council Docket No. UD-17-04 rather than in this rate case.

---

<sup>106</sup> AAE/Sierra Club Initial Brief at 46-47.

<sup>107</sup> *Id.* at 48.

<sup>108</sup> ADV-1 at 15:10-19.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.* at 48-49, quoting *New England Power Pool*, 97 FERC ¶ 61,093 at 61,477 (Oct. 25, 2001), *order on reh'g*, 98 FERC ¶ 61, 249 (Mar. 4, 2002).

*d) Rates Should be Reset if the Earned 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 the rate.<sup>112</sup> However if the earned ROE is either below or above the bandwidth range, ENO has proposed a complete reset in rates such that rates would be recalculated to bring ENO's earnings to the EPCOE.<sup>113</sup> Air Products argues that this proposed mechanism reduces the incentive for the utility to improve its efficiency of operations, and, instead, if the earned ROE falls above or below the proposed bandwidth, the revenue adjustment should be only partially moved 60% of the way towards the upper or lower end of the bandwidth, respectively.<sup>114</sup>

The Advisors oppose CCPUG's proposal and support the complete reset of rates when the earned ROE falls outside the bandwidth. The bandwidth is set at a reasonable range to allow ENO to keep a reasonable amount of value from efficiencies while protecting ENO against incurring too much risk from investing in and/or supporting and promoting energy efficiency, demand response, rooftop solar and the like. Not allowing rates to be reset when they fall below the bandwidth would give ENO an incentive to oppose those programs and allowing ENO to keep more of the profits of above-bandwidth revenues would provide ENO with too much incentive to increase kWh sales rather than to promote conservation.

*e) The Decoupling Mechanism Should Consider Total Costs and Revenues*

ENO proposes that it not be required to meet the requirement of Resolution No. R-16-103 that it recalculate a fixed-cost customer rate class allocation factor or factors each year consistent with the cost allocation methodology used in this proceeding and use those factors to allocate the

---

<sup>112</sup> ENO-41 at 7:12-13; Air Products' Initial Brief at 36.

<sup>113</sup> ENO-41 at 7:14-17; Air Products' Initial Brief at 36-37.

<sup>114</sup> *Id.* at 37.

FRP evaluation period electric revenue requirement to each rate class.<sup>115</sup> ENO argues that (1) strictly following the rate class cost allocation from the cost of service study allocation factors would cause a disruptive increase in cost responsibility for the Residential Rate Class, and (2) the Council had not adopted such a rate class cost allocation in its last two rate cases.<sup>116</sup> Instead, ENO proposes that the FRP Evaluation Period electric revenue requirement be allocated consistent with the relative allocation of the base electric revenue among the rate classes approved by the Council, absent some material change that indicated that relative allocation should be modified.<sup>117</sup> ENO's claim regarding a "disruptive increase in cost responsibility for the Residential Rate Class" is not supported by any analysis. If the cost allocation methodologies accepted by the Council in this Docket are simply updated with current billing determinants, a disruptive increase in cost responsibility is implausible.

ENO also opposes the Advisors' proposal that ENO update the external allocation factors for each FRP Evaluation Period arguing that it is unreasonable because the Advisors disregarded our own external allocation factors when proposing rates in this proceeding, instead varying the required rates of return for each rate class, as opposed to applying the Total Company required rate of return to each rate class.<sup>118</sup> ENO's contention that the Advisors disregarded ENO's external allocation factors is incorrect. In fact, the Advisors reviewed and all of ENO's external allocation factors except the allocation of AMI costs and a modification of the production level demand allocation factor relative to interruptible load. ENO confused adjustments to the existing class rates of return (which was necessary to evaluate recommended revenue changes) with the cost allocation of rate base and expenses. ENO's argument to apply the total company required

---

<sup>115</sup> ENO Initial Brief at 100.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 100-101.

<sup>118</sup> *Id.* at 103.

rate of return to each rate class does not provide any useful information for the Council to consider the rate of return impact of any recommended changes to customer class revenues. ENO argues that no reason exists for ENO to be required to recalculate external allocation factors, but then disregard those factors by applying varying required rates of return by rate class that override the external allocation factors in each FRP filing.<sup>119</sup> As stated previously, the periodic updating of external cost allocation factors during the term of the FRPs is necessary to evaluate the various potential changes to customers usage patterns, and these updated factors are by no means disregarded. The existing rates of return by customer class are certainly varied, even disparate, as evidenced by ENO's minimum filing requirements Exhibit RR-1. To recommend revenue changes by class, the Advisors considered both revenue impacts by class with moderate changes to the existing disparate rates of return. The Advisors' straightforward proposal is that class rates of return corresponding to the Council's decision regarding customer class revenues will be incorporated in the FRP decoupling adjustment. For ENO to claim this necessary process was to "override the external allocation factors" is patently misleading. ENO argues that the more straightforward course of action is to simply allocate 44% of the FRP evaluation period electric revenue requirement to the Residential Rate Class, if that is what the Council decides in this proceeding.<sup>120</sup> The Advisors see that course of action as not "straightforward" but as a "back of the envelope" shortcut not acceptable for an FRP with a Decoupling revenue adjustment. ENO also argues that the Advisors' approach is not consistent with Ordering Paragraph 5 of Resolution No. R-16-103, because the varying before-tax rates of return for each rate class override the allocation from the external allocation factors and the redetermination of those varying before-tax rates of return is not based on a replicable

---

<sup>119</sup> *Id.* at 104.

<sup>120</sup> *Id.* at 104.

methodology.<sup>121</sup> Again, ENO continues to use misguided statements, because there is no “overriding” of updated allocation factors, as discussed previously. ENO also argues that Advisor witness Prep has taken inconsistent positions and, at hearing, changes his testimony to support ENO’s position.<sup>122</sup> The Advisors disagree that Mr. Prep has taken inconsistent positions. From his Direct Testimony and Exhibit VP-9 demonstrating the results of cost allocations and class rates of return to support the Advisors’ recommendations regarding changes to customer class revenue, to his Surrebuttal Testimony and Exhibit VP-20, which amended the previous class revenue recommendations, Mr. Prep has maintained the very same approach to provide credible cost and rate of return information to support the Council’s consideration in setting new customer class revenues. ENO’s arguments demonstrate a failure to understand the Advisors’ position, witness Prep’s testimony has been consistent throughout the proceeding.<sup>123</sup>

The Advisors’ approach was neither arbitrary or unreasonable. The proposals of ENO, Air Products, and CCPUG, which did not evaluate impacts of revenue proposals on existing class rates of return are not reasonable. Air Products exaggerates and mischaracterizes the Advisors’ approach: “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.”<sup>124</sup> Mr. Prep’s approach did not “establish widely divergent rates of return” as is evidenced by the earned rate of return results from ENO’s filed class cost of service study (Minimum Filing Requirement Cost of Service Exhibit RR-1).<sup>125</sup>

ENO’s class cost of service study results demonstrate that the earned rates of return by customer class corresponding to existing revenues are already “widely divergent” before any

---

<sup>121</sup> *Id.* at 105.

<sup>122</sup> *Id.* at 107.

<sup>123</sup> *Id.* at 107.

<sup>124</sup> ADV-5 at 27.

<sup>125</sup> See table at page 28 above.

analysis by the Advisors. Mr. Prep’s approach is simply a straightforward process that provides the Council with recommended customer class revenues and the rates of return that correspond to the recommended revenues. It is therefore very plausible to expect that the rates of return based on recommended moderate changes to customer class revenue would still exhibit variances. The Advisors’ approach is intended to provide the Council with information that neither ENO nor any of the Intervenors offered; that is, to show the customer class rates or return that result from an objective recommendation for revising customer classes revenues.

Air Products made other similar claims without merit: “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.” [P. 28] Air Products implies that some “cookie-cutter” algorithm should be used by the Council to revise class revenues and rates of return. No such “specific algorithm” has been proposed by any party in this case, and therefore the Advisors’ approach provides the results of moderate revenue changes.

Air Products made another claim that is also misleading: “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.”<sup>126</sup> The Advisors examined and accepted the vast majority of ENO’s allocation of rate base and expenses. There was no such “overriding” of these cost allocations. The last component of the customer class revenue, the existing class rates of return, exhibited a large disparity among customer classes, as evidenced by ENO’s class cost of service study. The Advisors used the class cost of service to vary those disparate rates of return in

---

<sup>126</sup> ADV-5 at 28.

developing the recommended revenue changes and revised customer class revenue requirements. It was misleading for Air Products to claim that costs were “re-allocated.” It was also misleading to refer to the class rates of return being “subjectively revised” by the Council each year. That claim implies a concern that the Council could negatively impact any customer class by action that may be viewed as inconsistent. On the contrary, the Advisors expect that the revised class rates of return ensuing from this docket would be included in ENO’s decoupling revenue proposals in the FRP (assuming the FRP and decoupling mechanism is approved by the Council in this Docket), with only slight adjustments necessary for the composite of class revenues to realize the total utility revenue.

The Advisors disagree in several aspects with Air Products’ statement: “Moderating rate increases when moving toward cost of service should be a step that is **completely separate** from calculating the class cost of service.”<sup>127</sup> Apparently, Air Products’ witness Brubaker assumes that “cost of service” is a rigid definition applied to each customer class, which ignores the regulatory body’s discretion to consider many factors other than the utility’s allowed rate of return when setting revised revenue requirements by customer class. The revised revenue requirement by customer class is composed of allocated costs and a class rate of return, and it is the implied cost of serving each customer class ensuing from this rate action. It is difficult to follow the logic of Air Products’ referenced statement when “moderating rate increases when moving toward” some average rate of return level clearly means evaluating potential changes in class revenues with the corresponding changes in class rates of return. If one chooses to use the average rate of return as a reference when moderating rates of return, the Advisors fail to see how it can be “completely separate” as Mr. Brubaker’s statement claims. The Advisors are

---

<sup>127</sup> *Id.* at 29.



satisfied that the Council has sufficient information with the class cost of service results to determine what revised revenue levels are appropriate for each customer class.

Air Products' disagreement to update the cost allocation factors during the next several years of FRP evaluations and decoupling is without merit: "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."<sup>128</sup> During each year of FRP revenue adjustments and decoupling significant impacts on customer loads could occur from energy efficiency, demand response, renewables, changes to commercial and industrial operations among many other factors. It is unreasonable to maintain the same cost allocation factors during these years when billing determinants will also be updated to apply the rate adjustments. Unnecessary risk would not be created by updating cost allocation factors consistent with current billing determinants and providing a credible update to the class cost of service. The Advisors also disagree with Air Products' contention that "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." Air Products' has expressed concerns, but has failed to demonstrate exactly how it would be treated unfairly relative to other customers in the proposed FRP and decoupling.

Air Products argues that the Advisors' proposal would essentially convert the FRP process into a "mini" rate case every year, which would make the process unnecessarily complex, expensive, contentious, and inefficient.<sup>129</sup> Air Products opposes the 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

---

<sup>128</sup> *Id.* at 21.

<sup>129</sup> Air Products' Initial Brief at 39-40.

the formula for accomplishing rate adjustments in FRPs.<sup>130</sup> It is an exaggeration to argue that the Advisors' proposal requires a "mini" rate case every year. Contentious issues such as ROE, WACC, methods of cost allocation, updating of allocation factors, and class rates of return established in this Docket will not encumber the proposed FRP and the process will not be complex or inefficient

AAE and Sierra Club argue that two of the decoupling parameters set forth by the Council in Resolution No. R-16-103 should be modified by the Council in order to achieve full revenue decoupling.<sup>131</sup> First, AAE and Sierra Club recommend modifying the directive that the revenue decoupling mechanism consider all fixed cost revenues. AAE and Sierra Club agree with ENO that the mechanism need not consider any costs recovered through a tariff rider that includes a reconciliation mechanism, such as the FAC Rider.<sup>132</sup> They argue that use of such a mechanism in a rider ensures that the utility does not benefit from selling more or less electricity, thus, customers already have the protection afforded by decoupling as to such riders.<sup>133</sup> In addition, AAE and Sierra Club argue that a utility should maintain some degree of financial risk with respect to revenues associated with charges that are not usage driven, such as the customer charge and the minimum bill, and that to the extent a revenue decoupling mechanism is subject to any dead band, ENO remains financially interested in encouraging energy use and demands to exceed rate case assumptions.<sup>134</sup> AAE and Sierra Club also argue that it is clear that ENO does not believe its proposed FRP modifications accomplish revenue decoupling because its proposed DSMCR Rider includes lost revenues related to fixed costs, and that a standard backward-looking revenue decoupling mechanism would naturally pick up any such "lost revenues," and

---

<sup>130</sup> *Id.* at 40.

<sup>131</sup> AAE/Sierra Club Initial Brief at 12.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.*

<sup>134</sup> *Id.* at 14-15.

unless sales/revenue gains offset them, allows ENO to collect them from customers.<sup>135</sup> AAE and Sierra Club propose two modifications to the decoupling mechanism:

- (a) The tariff for revenue decoupling – whether included in the FRP tariff or not – makes clear that revenue decoupling will operate only on revenues ENO receives from energy – and demand – driven billing determinants, and not on either (1) Revenues from customer charge billing determinants; or (2) Revenues collected under tariff riders that are subject to full reconciliation.<sup>136</sup>
- (b) The tariff for revenue decoupling – whether included in the FRP tariff or not – makes clear that the revenue decoupling comparison is between the most recent approved revenues and the actual revenues for a given period allocated to rate classes/schedules per approved allocation factors, and not to a calculation of going-forward allocated revenues that combine cost and revenue charges during a given test period.<sup>137</sup>

ENO argues that AAE is recommending fundamental changes to the decoupling methodology prescribed in Resolution No. R-16-103, long past the time that a decoupling mechanism was collaboratively developed and ultimately implemented by the Council.<sup>138</sup> ENO argues that AAE's arguments should be rejected as untimely and an attempt to do an end-run around the Council's process.<sup>139</sup>

As Advisor witness Prep noted, the updating of external allocation factors is necessary to reflect the change in usage patterns related to increased energy efficiency, distributed energy resources, renewables including solar, new products and equipment, and other current impacts affecting usage that were not as much of a concern in years previous.<sup>140</sup> The Advisors proposal is not a new cost of service study each year, but rather an update using the same methodologies and models, including updating the allocation factors with current customer billing data and that provide the full decoupling adjustment. With the implementation of AMI, increasing energy

---

<sup>135</sup> *Id.* at 15.

<sup>136</sup> *Id.* at 16.

<sup>137</sup> *Id.* at 16.

<sup>138</sup> ENO Initial Brief at 108-109.

<sup>139</sup> *Id.* at 109.

<sup>140</sup> ADV-5 at 27.

efficiency and demand response, growth in renewables, storage and distributed generation, allocation factors will need updating in order to ensure that costs are fairly allocated, which should not be left until the next general rate case. In addition, the efficiencies of an FRP will not be undermined, because there will be no requirement for two test periods, weather normalization would not be used, weighting factors would not require much updating, and the use of external and internal allocation factors in the cost of service model would not be changed.<sup>141</sup>

With respect to AAE's recommendations, Air Products notes that such a change would result in decoupling adjustments for each rate class in each year of the FRP term regardless of ENO's overall earned ROE.<sup>142</sup> Air Products recommends that the decoupling mechanism adopted by the Council only result in an adjustment of ENO's overall earned ROE that is outside the bandwidth of the FRP.<sup>143</sup> The Advisors agree. Requiring annual decoupling adjustments with no bandwidth would result in an unnecessary litigation burden on all parties for adjustments that may be so small as to be unnoticeable by customers. Because rates are established based on estimates of future costs and revenues, including assumptions as to weather, a utility never earns its exact revenue requirement and some reasonable degree of over- or under-earning is to be expected every year. Establishing a bandwidth is a reasonable measure to ensure a degree of rate stability and administrative efficiency while ensuring that ENO's earned ROE does not go too far in either direction.

Air Products also raises concerns that the decoupling adjustment creates significant risk for customers in rate classes with only a few customers, such as Air Products' rate class LIS, because relatively small changes in required revenue contributions of the class can have significant impact on the rates of the customers in the class, which could affect the customers'

---

<sup>141</sup> ADV-5 at 26:18-27:1.

<sup>142</sup> Air Products' Initial Brief at 40.

<sup>143</sup> *Id.*

demand ratchets.<sup>144</sup> Conversely, Air Products argues, for customers that are part of larger classes with hundreds of millions of dollars in total revenue, the impact would be considerably diluted and would not likely disrupt the customers' overall rates since the percentage change in total class revenue would be quite small.<sup>145</sup> Air Products argues that the unintended effect is compounded by the Advisors' and AAE's recommendations.<sup>146</sup> Air Products argues that one of two potential solutions be applied, that the Council either (1) exclude from the decoupling mechanism those classes with only a few customers, whose revenues amount to less than 3% and thus, would not materially impact the operation of a decoupling mechanism; or (2) 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.<sup>147</sup> Air Products' concern is unwarranted. If there are changes in required revenue contributions of the class, there will be corresponding changes to the allocation of cost responsibility for the class, since the Advisors propose that cost allocation factors be updated with current billing determinants. For example, if the circumstances of the LIS class (with one customer) change such that the revenue from the LIS rate tariff has a substantial change, then those same circumstances will be reflected in the updated cost allocation factor and allocated cost responsibility/revenue required for that class. On the other hand, if the cost allocation factors from the instant proceeding are not updated as ENO and Air Products propose, there will be a "disconnect" between allocated costs and revenues, which the Advisors are attempting to avoid with their recommendation.

---

<sup>144</sup> *Id.* at 40-41.

<sup>145</sup> *Id.* at 41.

<sup>146</sup> *Id.*

<sup>147</sup> *Id.* at 41-42.

f) *ENO's Recovery of NOPS Costs Should Be Included in the ROE Evaluation and Subject to Final Council Ruling on NOPS*

With respect to the NOPS facility, ENO seeks recovery of the associated revenue requirement through an interim rate adjustment as specified in its Electric FRP, based on the first year NOPS revenue requirement, and that this adjustment take place outside of the bandwidth.<sup>148</sup> ENO's proposed in-service adjustment would cease once the NOPS non-fuel revenue requirement was reflected in a subsequent September FRP Rate Adjustment.<sup>149</sup> ENO does not propose any subsequent reduction in this interim adjustment as the plan investment is depreciated for book and tax purposes.<sup>150</sup>

CCPUG argues that this proposal will lead to excessive recovery in the first year and every year thereafter until base rates are reset, because the rate of return (ENO's proposed 10.50%) is excessive, the depreciation rate and depreciation expense are excessive (they assume a service life of only 30 years for NOPS), and the revenue requirement is generally at the maximum for the first year and then declines due to the accumulation of book depreciation and the tax savings from accelerated tax depreciation, but ENO does not propose to reduce the revenue requirement.<sup>151</sup> CCPUG argues that plants similar to NOPS have been in operation for nearly 50 years or more, and that ENO should use a 50-year service life assumption for the revenue requirement, rather than a 30-year assumption.<sup>152</sup> CCPUG recommends ENO apply a 9.35% ROE to the Electric FRP, that the first year revenue requirement for NOPS be reduced to reflect a 50-year service life, and that ENO be ordered to reduce the revenue requirement for NOPS each year to reflect an additional year of depreciation and deferred income tax expense,

---

<sup>148</sup> ENO Initial Brief at 171.

<sup>149</sup> *Id.*

<sup>150</sup> *Id.*

<sup>151</sup> CCPUG Initial Brief at 68; CCPUG-1 at 46:8-48:4.

<sup>152</sup> CCPUG Initial Brief at 68-69; Council for the City of New Orleans Hearing Transcript at 10:18-11:3 (June 21, 2019).

which would result in a reduction to the first-year revenue requirement for NOPS of \$4.073 million.<sup>153</sup> ENO argues that the depreciation issue should be resolved in conjunction with the updated estimated non-fuel revenue requirement.<sup>154</sup>

AAE and Sierra Club oppose the NOPS adjustment in its entirety, arguing that because the District Court issued a bench ruling voiding Resolution No. R-18-65, the construction of NOPS does not have the approval of the Council.<sup>155</sup> As AAE and Sierra Club are aware, the Council intends to appeal this ruling, and thus, the matter is not yet final. To the extent that the matter has not yet become final at the time that the Council issues a resolution in this rate case, the Advisors suggest that any NOPS adjustment approved by the Council be conditioned upon the construction of NOPS and associated costs having been approved through a final judgment of the Council.

As described in the Advisors' Initial Brief, the Advisors have proposed that proforma adjustments be included in the FRP for the 12-month period subsequent to the FRP evaluation period, which would encompass calendar year 2020 for the first FRP.<sup>156</sup> If the NOPS updated revenue requirement is included as a prospective proforma adjustment in the bandwidth evaluation of the proposed FRP filed in April 2020, the NOPS in-service rate adjustment, beginning with the month following COD, would be effective until NOPS cost recovery is included in the FRP revenue adjustment of the first FRP. If the NOPS updated revenue requirement filing is not included as a prospective proforma adjustment in the proposed FRP filed in April 2020, the NOPS in-service rate adjustment, beginning with the month following COD, would be effective until NOPS costs are included in the ROE bandwidth evaluation of the

---

<sup>153</sup> CCPUG Initial Brief at 69; CCPUG-1 at 48:15-20.

<sup>154</sup> ENO Initial Brief at 171.

<sup>155</sup> AAE/Sierra Club Initial Brief at 53.

<sup>156</sup> Advisors' Initial Brief at 43-44; ADV-5 at 24:18-25:2.

following FRP.<sup>157</sup> Consistent with the approach to evaluate the total utility cost of service and avoid single issue ratemaking, the Advisors disagree with ENO's argument that it should be permitted to recover the initial year of NOPS costs without being included in an ROE evaluation.

**D. ENO's Green Pricing Option Should be Approved, With the Clarification that REC Should Meet the Council's Definition of Renewable Resources**

AAE and the Sierra Club argue that ENO's Green Pricing Option should be modified in two ways: (1) rather than using Green-e certified RECs to verify that green power is used, the Council should direct ENO to define explicitly green energy as actual clean resources, *i.e.* solar, wind, and battery storage; and (2) the Council should direct ENO to include language in the Green Power Option tariff that expressly states that any costs or expenses not recovered from participants may not be recovered from ratepayers.<sup>158</sup>

With respect to the first point, AAE and Sierra Club argue that Green-e is not regulated by the Council and the Council has no control over what resources are designated as green resources.<sup>159</sup> They argue that this is a problem because some states may include energy generated from black liquor or waste to energy facilities in their renewables portfolio standards that ultimately determine whether a resource is "green" within that state or not. AAE and Sierra Club view these types of resources "unclean" and only want solar, wind, and battery storage resources to be included.<sup>160</sup> The Advisors note that the Council currently has an RPS rulemaking docket open, Council Docket No. UD-19-01, where the issue of what energy resources the Council would deem as eligible to be considered renewable resources is being actively considered. Therefore, the Advisors believe it is premature for the Council to rule in this rate

---

<sup>157</sup> Advisors' Initial Brief at 44; ADV-5 at 25:3-6.

<sup>158</sup> AAE/Sierra Club Initial Brief at 52-53.

<sup>159</sup> *Id.* at 52.

<sup>160</sup> *Id.*



case what should and should not be considered an “eligible” resource for the Green Power Tariff. The Advisors also recommend that it would be unnecessarily burdensome for ENO to comply with and the Council to enforce two separate definitions of “renewable energy,” one for the Green Power Option and different one for the RPS. The Advisors agree, however, that only RECs that would otherwise satisfy the Council’s definition of renewable resources are appropriate for inclusion in the program.

The Advisors do believe, nevertheless, that any program based upon RECs must utilize some method of certifying the RECs as green resources to ensure that the source of the REC is known and that the REC is not double-counted (i.e. both sold to ENO and used to satisfy the RPS requirement in the state in which it was generated, or sold to more than one customer). Green-e is a nationally known and widely used service that performs such tracking and certification. Therefore, the Advisors believe that use of Green-e certification for any RECs purchased by ENO for the Green Power Option is appropriate. Therefore, the Advisors recommend that the Council put in a requirement that RECs used for the Green Power Option must both (1) be certified by Green-e; and (2) conform to the definition of renewable resources ultimately adopted by the Council in Docket No. UD-19-01. To the extent that there is not a final Council decision in Docket NO. UD-19-01 prior to the implementation of the Green Power Option, the Advisors recommend that ENO be allowed to utilize any Green-e certified RECs until such time as the Council renders a decision in UD-19-01, at which point, ENO must conform its use of RECs to the Council’s definition of renewable resources on a going forward basis.

The Advisors are concerned about the proposal to include storage as a renewable resource because storage is not inherently a renewable form of electricity. First, storage does not actually generate any electricity, it merely stores electricity generated by a generator until a more

advantageous time to utilize that electricity. Second, the electricity from any given storage battery may or may not have originally been generated by a renewable resource. A storage battery can be charged as easily by a natural gas or coal-fired generator as by a renewable facility. For example, although many home batteries are coupled with a rooftop solar unit, there is no requirement that they be, and homeowners can easily install a home battery that is simply charged with electricity from the local utility, which is a mix of any number of renewable and non-renewable resources. Therefore, while the Advisors would not exclude from eligibility any RECs originally from an energy source that has passed through a storage battery, the Advisors recommend that any such REC be able to demonstrate that the original source from which the electricity was generated was in fact a renewable resource and that the REC be Green-e certified so that the renewable properties of the electricity cannot be double-counted.

With respect to AAE and Sierra Club's second proposed modification, that ENO be required to include express language in the Green Power Option tariff that expressly states that any costs or expenses not recovered from participants may not be recovered from ratepayers, the Advisors find this recommendation to be inconsistent with the regulatory doctrine that the utility must be allowed sufficient revenues to meet its operating expenses, provide its shareholders with a reasonable rate of return, and attract new capital.<sup>161</sup> Such costs must be recovered from the utility's customers, either the customers participating in the program or the non-participating customers. It is the Advisors expectation that there will be enough interest in the program that there will be a sufficient number of participating customers to cover the program's costs, and if there are not, the costs would be *de minimis* as testified to by ENO witness Owens.<sup>162</sup> Because there is value to customers in being given an option, such as the Green Power Option, even if

---

<sup>161</sup> *Central Louisiana Electric Co. v. Louisiana Public Service Comm'n*, 508 So.2d 1361,1364-65 (la. 1987) (citing, *So. Central Bell Telephone Co. v. Louisiana Public Service Comm'n*, 352 So.2d 964,967 (La. 1977)).

<sup>162</sup> Council of the City of New Orleans Hearing Transcript at 118:22-23 (June 19, 2019).

those customers do not take advantage of it, the Advisors believe it would be reasonable for non-participating customers to bear such *de minimis* costs in the event the program does not prove to be popular. However, the Advisors would not endorse a blank check to ENO to pass through any and all costs, whether reasonable or not, because it would provide ENO with no incentive to design the program well, negotiate for reasonably priced RECs, etc. Therefore, the Advisors recommend that the Council require that, in the instance where there are not enough customers participating in the Green Power Option to bear the costs of the program fully, ENO should be allowed to recover costs from non-participating ratepayers, but only after submitting such costs to the Council for review and demonstrating to the Council's satisfaction that the costs were prudently incurred. This solution would uphold the requirements of *Hope* and *Bluefield*, while preserving the Council's ability to protect ratepayers from having to bear imprudently incurred expenses and providing ENO with an incentive to run the program well.

**E. ENO's Community Solar Option Should Not Be Approved by the Council as Filed**

ENO's Reply brief argues that the Council should approve ENO's proposed Community Solar Offering in this proceeding.<sup>163</sup> ENO suggests that the Advisors' main concern seems to be that ENO's proposed Rider CSO would not comply with the rules being developed in Docket UD-18-03. ENO argues that this is unfair because the Resolution had not yet been adopted at the time that ENO filed its Community Solar proposal. However, ENO misrepresents the Advisors primary concern. The Council must find that ENO's community solar proposal is just and reasonable. Compliance with the Council's Community Solar Rules would create a presumption that it is just and reasonable; however, the fact that formal community solar rules were not in place prior to ENO's proposal does not mean that the Council is obligated to accept whatever

---

<sup>163</sup> ENO Initial Brief at 166.

community solar project ENO proposes. The Council must still review ENO's proposal and make sure it is just and reasonable.

One of the Council's key policy goals for community solar, as was formalized by the Council in Resolution No. R-18-223, is the desire to create a "level playing field" between ENO and other solar developers with respect to community solar. The overarching concern expressed by Advisor Witness Rogers is with respect to ensuring a level playing field for all developers of community solar,<sup>164</sup> not whether ENO's Community Solar Offering complies with the rules being developed in Docket UD-18-03.

AAE and the Sierra Club argue that the Council should reject ENO's specific community solar tariff because the Company failed to establish that the proposal would bring greater benefits.<sup>165</sup> They argue that both of the benefits ENO claims its proposed structure would bring — being able to be in service more quickly and being able to offer it on a "pay-as-you-go" basis without long-term commitments — stem from ENO's status as a regulated utility, and its ability to provide the offering from solar projects that are fully supported by all ratepayers in ENO's rates.<sup>166</sup> They argue that this advantage places other solar developers at a clear and substantial disadvantage and, as a result, such developers may choose not to participate in the New Orleans market.<sup>167</sup> Thus, AAE and Sierra Club argue, ENO's community solar offering does not meet the standard established by the Council in Resolution No. R-19-11 of demonstrating that the offering provides greater benefits than would a proposal conforming to the Council's recently adopted Community Solar Rules.<sup>168</sup> To the contrary, they argue, ENO's proposal creates the risk

---

<sup>164</sup> ADV-1 at 44.

<sup>165</sup> AAE/Sierra Club Initial Brief at 49.

<sup>166</sup> *Id.* at 49-51.

<sup>167</sup> *Id.* at 51.

<sup>168</sup> *Id.*

of real harm to the nascent community solar market without presenting any real benefits to New Orleans ratepayers, and should therefore be rejected.<sup>169</sup>

In Council Resolution R-18-223 the Council expressed its policy with respect to a level playing field, stating that:

In order to ensure a level playing field, to the extent that ENO chooses to become a community solar developer, it must offer the same privileges it allows itself to all other developers. ENO may not give itself preferential treatment as a developer of a community solar project, and may not use ratepayer funding for its community solar projects in any manner not available to other developers.<sup>170</sup>

In his direct testimony, Advisor witness Rogers elaborates that ENO's Community Solar Offering may result in preferential treatment for ENO and it may discourage other Community Solar developers from developing projects in New Orleans under the Council's Community Solar Rules.<sup>171</sup> ENO's community solar proposal, while included in its Combined Rate Case Application rather than the Community Solar Docket No. UD-18-03, ensures that ENO will recover the costs of the solar projects included in its proposal, regardless of the number of subscribers, or whether the fees and credits for its participants fully offset the costs of the projects.<sup>172</sup> This will give ENO a distinct advantage over all other potential community solar developers. Specifically, other community solar developers will have no guarantee that they will fully recover their costs if they are not able to attract a sufficient number of subscribers or charge a high enough price.

Moreover, ENO's proposed community solar rate is limited in design to only cover the incremental costs associated with using an outside vendor to assist implementation, as well as the monthly bill credits that customers receive for participating — ENO's upfront and ongoing costs

---

<sup>169</sup> *Id.*

<sup>170</sup> See Resolution R-18-233 at 3.

<sup>171</sup> ADV-1 at 44.

<sup>172</sup> *Id.*

of the solar assets that underpin the offering will be reflected in overall rates that all of ENO's customers pay. This means that ENO is able to use its other customers to subsidize the community solar project in a manner that other community solar developers cannot. ENO also proposes a different subscriber credit than the one that has already been reviewed and approved in the Council's community solar rules without sufficient evidence supporting the proposed credit as just and reasonable to both participants and non-participants.

Approving ENO's Community Solar Offering may or may not bring community solar to New Orleans faster than a market conforming to the Council's Community Solar Rules. However, it very well could permanently impair the community solar market in New Orleans by preventing other developers from being able to compete with ENO. The "undisputed evidence" of potential benefits that ENO attributes to its proposal may or may not be sufficient to counter a potentially permanent impairment of the community solar market in New Orleans.

ENO claims that the Advisors' recommendation expresses a general concern<sup>173</sup> that is unsubstantiated by any analyses, however, with significant concerns having been raised by the Advisors, AAE and Sierra Club, ENO bears the burden of demonstrating that its proposal is just and reasonable. Had the proposal been in conformance with the Community Solar Rules, a presumption of reasonableness would have been in place, but it is not in conformance, and the Advisors do not believe that ENO has demonstrated that the benefits it claims from bringing community solar to New Orleans faster and allowing a "pay-as-you-go" model (which others may or may not also be able to offer) would outweigh the damage caused to the development of a competitive market for community solar in New Orleans.

ENO has not made its case in this proceeding that its proposed community solar program is just and reasonable or in the public interest. Nevertheless, the Advisors recommend that the

---

<sup>173</sup> ENO Initial Brief at 167.

Council reject ENO's proposal in this proceeding without prejudice to ENO and being permitted to re-file either the same proposal or a modified proposal in the Community Solar docket with more support as to the issue of whether ENO's proposed structure would bring greater benefits than would a proposal that conforms to the Council's Community Solar Rules. While ENO argues that requiring an additional filing would create "administrative waste,"<sup>174</sup> the Advisors disagree, since the Council needs more information to consider the potential benefits and adverse impacts of ENO's proposal, apart from the focus of the ratemaking decisions of the instant docket.

**F. BSI's Customer Lowered Electricity Price ("CLEP") Proposal is too Complicated to Expect Ratepayers to be Able to Implement it Successfully, and Should be Rejected**

Upon review of BSI's Post-Hearing Brief, the Advisors' concerns about CLEP, as articulated in the Advisors' Initial Brief remain and the Advisors reiterate them here.<sup>175</sup> The Advisors remain concerned that CLEP is extremely complicated and will be difficult for consumers to implement at this time and with technology commonly available to consumers today. Moreover, customers that attempt CLEP and fail to implement it successfully could see large increases on their electricity bills. As BSI notes, there are two primary ways that a customer can benefit from CLEP, the first would be by investing in programmable appliances and programming those appliances to run in a manner that takes advantage of CLEP pricing.<sup>176</sup> The second would be by hiring an aggregator to assist them.<sup>177</sup> As BSI notes, at least initially there will be few, if any, aggregators able to provide such a service,<sup>178</sup> and the Advisors note that it will take an extensive level of expertise in both ENO's pricing structure and MISO markets

---

<sup>174</sup> *Id.*

<sup>175</sup> Advisors' Initial Brief at 121-123 and 130-131.

<sup>176</sup> BSI Initial Brief at 36.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.*

and will require access to real-time information about the price differentials between the two, in five-minute increments, as well as fairly extensive control over the consumer's consumption of electricity in five-minute increments, for an aggregator to effectively help customers make money by participating in CLEP. These skills and knowledge do not come easy.

As to option one, use of programmable appliances, BSI posits that programming them to always run at the same time of day would be sufficient to allow a customer to profit from CLEP. However, while this may generally work under average circumstances, it may not be able to shield customers from being penalized under CLEP when there are unexpected developments in the MISO market, such as unanticipated generator outages or capacity shortages. Thus, there is no guarantee that a customer will only get payments from CLEP and not incur occasional penalties. As BSI notes, the electricity bill of a customer participating in CLEP could either go up, go down, or hardly change.<sup>179</sup> The Advisors note that as homes become increasingly automated over time and the grid becomes modernized and smarter, it is possible that at some point in the future a CLEP-like model could be adopted that allows smart devices and Artificial Intelligence to effectively manage energy use for the customer so that customers can benefit from CLEP with much less effort and investment, and at such time, it may make sense for the Council to consider such a model. However, that time has not yet come, as matters stand today, the CLEP model is impractical to implement, and should be rejected by the Council.

### **III. Conclusion**

In conclusion, the Advisors ask the Council to adopt each of the Advisors' recommendations as set forth in their Initial Brief and in this Reply Brief, the highlights of which

---

<sup>179</sup> *Id.* at 35.



are presented below. All arguments set forth by the Advisors in their pre-filed testimony in this case are re-urged and should be considered and adopted by the Council.<sup>180</sup> The Advisors Calculate that the combined application of these recommendations will result in annual revenue reductions compared to present revenues of \$33.1 million and \$3.8 million for electric and gas respectively:

- Allow ENO a ROE of 8.93% for both electric and gas.
- In the calculation of ENO's WACC for ratemaking purposes, employ an equity ratio equal to the lesser of ENO's actual equity ratio or 50%.
- Approve a 3-year Gas and Electric FRP with electric revenue full decoupling, based on the Advisors' proposal that evaluates all of ENO's costs and revenues when evaluating its earned-ROE.
  - In each FRP evaluation, allow ENO to proform known and measurable cost adjustments through the twelve-months following the evaluation's test year, and billing determinants adjusted based on approved Energy Smart reduction targets.
  - Upon NOPS' COD, an interim rate adjustment is approved as part of the electric FRP.
- Direct ENO to employ its then current WACC when setting Rider SSCO's rates, as was agreed to by ENO.<sup>181</sup>
- Approve a \$10.00 electric residential customer charge.
- Maintain the current \$12.50 gas residential customer charge.

---

<sup>180</sup> Since ENO provided information relevant to the Company's request for inclusion of costs associated with its Prepaid Pension Asset after the Advisors filed their direct testimony, the Advisors have modified their position on this issue.

<sup>181</sup> ENO-4 at 28:6-9.

- Approve the Advisors recommendations regarding NJ gas customers that provide for normalization of their regulatory treatment.
- Do not approve ENO's proposed RIM ROE enhancement mechanism.
- Do not approve ENO's proposal to exclude Stranded Plant ADIT (AMI deployment) from rate base, but rather reflect this cost-free capital as a regulatory liability in ENO's rate base.
- Do not approve ENO's proposal to exclude FIN 48 ADIT from its rate base.
- Do not approve ENO's proposal to increase its rate base through the inclusion of NOLCF ADIT assets.
- Do not approve ENO's proposed ARRT, but rather approve the Advisors' Algiers mitigation plan that avoids any Algiers revenue increase in the instant proceeding.
- Do not approve ENO's proposed AMI customer charges.
- Do not approve ENO's proposed GIRP rider.
- Do not approve ENO's proposed DGM rider.
- Do not approve ENO's proposed DSMCR rider, but rather approve a permanent EECR rider as recommended by the Advisors.
- Do not approve ENO's proposed PPCACR rider, but rather approve Rider PPCR as recommended by the Advisors.
- Do not approve ENO's proposed Community Solar Option in the instant proceeding.
- Do not approve ENO's proposal to change Section 11 Continuity of Service of ENO's Service Regulations.
- Approve ENO's proposed realignment of rate structures, including the reduction in the number of rate classes and the harmonization of rates between Legacy ENO and Algiers.

- Allocate revenues among the rate classes according to the Advisors' recommendations.
- Approve ENO' proposed depreciation rates, as corrected by ENO.
- Approve riders FAC and PGA with corrections as noted by the Advisors
- Approve a combined MISO rider.
- Approve ENO's proposed Green Power Option.
- Approve ENO's proposed EVCR rider.



---

Jerry A. Beatmann, Jr. (Bar No. 26189)  
Dentons US LLP  
650 Poydras Street, Suite 2850  
New Orleans, LA 70130  
504-524-5446 (Office)  
504-256-6142 (Cell)  
[jay.beatmann@dentons.com](mailto:jay.beatmann@dentons.com)

Clinton A. Vince  
Emma F. Hand  
Presley R. Reed, Jr.  
Dentons US LLP  
1900 K Street, N.W.  
Washington, D.C. 20006  
202-408-6400 (Telephone)  
202-408-6399 (Facsimile)  
[clinton.vince@dentons.com](mailto:clinton.vince@dentons.com)  
[emma.hand@dentons.com](mailto:emma.hand@dentons.com)  
[presley.reedjr@dentons.com](mailto:presley.reedjr@dentons.com)

**Certificate of Service**

I hereby certify that a copy of the foregoing has been served upon “The Official Service List” via electronic mail and/or U.S. Mail, postage properly affixed this 9th day of August, 2019.

A handwritten signature in blue ink, appearing to read "Jerry A. Beatmann, Jr.", is positioned above a horizontal line.

---

Jerry A. Beatmann, Jr.