KEAN | MILLER LLP

CARRIE R. TOURNILLON, PARTNER
PH 504.585.3056 DIRECT FAX 504.620.3385
CARRIE.TOURNILLON@KEANMILLER.COM

July 21, 2023

VIA ELECTRONIC MAIL (lwjohnson@nola.gov)
Ms. Lora W. Johnson, CMC
Clerk of Council
City Hall, Room 1E09
1300 Perdido Street
New Orleans, LA 70112

Re: In Re: System Resiliency and Storm Hardening
CNO Docket UD-21-03
File No. 7717-50

Dear Ms. Johnson:

Enclosed please find attached for electronic filing, Air Products and Chemicals, Inc.'s ("Air Products") Final Comments on Resilience Proposals and Memorandum of Maurice Brubaker in the referenced docket. As confirmed with your office, the requisite original and hard copies are not mandatory to formalize this filing in the docket.

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

Very truly yours,

C- R.T

Carrie R. Tournillon

CRT/tp
Enclosure

cc: Official Service List UD-21-03 (via electronic mail)

BEFORE THE

NEW ORLEANS CITY COUNCIL

IN RE: SYSTEM RESILIENCY AND STORM HARDENING.	**DOCKET NO. UD-21-03** **July 21, 2023**

AIR PRODUCTS AND CHEMICALS, INC.
FINAL COMMENTS

Air Products and Chemicals, Inc. ("Air Products") appreciates the opportunity to submit final comments on the proposal of Entergy New Orleans, LLC ("ENO") for a Future Ready Resilience Plan (Phase I) ("Resilience Plan") and the request of Together New Orleans ("TNO") for ENO ratepayer's to fund its Community Lighthouse project. Air Products takes no position on the potential benefits of the projects included in ENO's proposed Resilience Plan or TNO's Community Lighthouse projects because the proposed projects of ENO and TNO have little to nothing to do with ENO's electric service to Air Products. However, because of that lack of connection and benefit to ENO's electric service to Air Products, Air Products strongly objects to recovery of ENO/TNO's project costs from Air Products and other transmission level customers.

Air Products also has concern with "approval" or "acceptance" of ENO's Resilience Plan by the Council of the City of New Orleans ("Council"), as discussed herein - - versus acknowledgement that ENO complied with the requirements of Resolution R-23-74, with the filing of its Resilience Plan.

Further, with respect to TNO's Community Lighthouse program, Air Products urges the Council not to include costs of a community support program in electric rates of

ENO customers that are designed to recover the cost of electric service of ENO (the utility) and not the costs of a private organization for a distributed solar system - - particularly considering that TNO also expects ENO customers to pay for excess power generated by the solar system for which they partially paid.

Moreover, Air Products questions why TNO would not be considered to be operating as a public utility by owning power generation infrastructure that provides power to others, *i.e.*, the civic and community organizations receiving solar power from the TNO-owned solar panels.

Air Products' objections and recommendations relating to the cost allocation and recovery of costs of ENO's Resilience Plan and TNO's Community Lighthouse project are supported by the attached memorandum of Mr. Maurice Brubaker, Air Products' expert consultant in this proceeding who has more than 50 years of consulting practice in the utility industry. Mr. Brubaker's education and experience are set forth in the Appendix to his Memorandum.

DISCUSSION

Council Should Only "Acknowledge" ENO's Resilience Plan

Air Products urges the Council not to accept or approve ENO's Resilience Plan. Rather the Council should only acknowledge[1] that ENO's Resilience Plan has complied with its Resolution R-23-74. Further, any Master System Resiliency and Storm Hardening Plan developed by the Council should not replace evaluation of individual projects in separate proceedings. ENO should still be required to seek certification of

[1] While

individual projects in separate dockets to ensure the projects are prudent and necessary. Such analysis has not occurred in this proceeding that is rulemaking in nature.

Cost Causation Principles Need to be Followed

As more thoroughly explained in the attached memorandum of Mr. Maurice Brubaker, with respect to ENO's Resilience Plan and TNO's Community Light (and any other revenue requirement of ENO), allocation of costs should follow receipt of benefits. Requiring one set of customers to pay for the cost of programs that benefit other customers violates cost causation principles. ENO's Resilience Plan mainly includes projects to benefit the ENO distribution system - - approximately 90% of total Resilience Plan costs are for ENO's distribution system. Those costs should be allocated only to the customers of ENO who use the distribution system.

Regulatory agencies regularly follow the principle of cost causation to ensure that one set of customers do not subsidize cost of service to another set of customers.[2] The Council should not depart from following the principle of cost causation by requiring transmission level customers to subsidize costs of distribution level customers.

Employee Benefits are Not Government Mandates

Air Products takes particular objection to TNO's statement in the third technical conference of this proceeding that companies, such as Air Products, are benefitted from

[2] *See e.g., In re Entergy Gulf States, Inc.*, Order U-21453 (January 17, 2007), in which the LPSC approved the jurisdictional separation of EGS into two vertically integrated utilities, EGS-LA and EGS-TX, pursuant to separation plan based on three principles, including the principle of cost causation - - "That is, EGS's Louisiana customers and Texas customers should each bear the costs of providing electric service to them." *Id*. at 2. *See* also, *e.g*., Louisiana Public Service Commission, ex parte. *In re: Discussion and possible vote to ratify the votes taken by Commissioner Boissiere acting as the Commission's representative on the Board of Directors of the Organization of MISO States*, Order 89-2018 at *1 (December 18, 2018), in which the LPSC voted in favor of a particular MISO proposal for allocation of cost of transmission projects because it "better aligns the costs with the beneficiaries of the projects."

community resilience projects because their employees benefit and thus, should be required to fund Community Lighthouse projects. This suggests that funding of Community Lighthouse hubs should be a benefit that the Council mandates Air Products and other companies provide to their employees - - which is absurd at best and illegal at worst. With the exception of certain benefits mandated by legislation (*e.g.*, social security, workers compensation, Medicare), the government cannot mandate companies, such as Air Products, to provide any particular benefits plan to their employees.

TNO Operating As Public Utility

Air Products questions why TNO would not be considered to be operating as a public utility if it owns the solar system providing electricity to the civic and community organization under its Community Lighthouse program. From technical conference materials and discussions and from TNO's responses to discovery, Air Products understands that TNO will own the solar panels and battery storage, and the civic and community organization (host) at which the equipment will be installed and which will receive the power will pay TNO a fee to operate and maintenance the equipment.[3] However, the organization (host) will not have an ownership or leasehold interest in the power generation source (*i.e.*, solar panels). Thus, TNO will be supplying solar power to the civic or community organization. The fact that the organization is not paying for the power is not determinative of whether TNO is acting as a public utility.

[3] *See, e.g.,* Attachment 1-7E (Host Site Services Agreement) provided by TNO in response to Advisors' Data Request 1-7.

CONCLUSION

Air Products urges the Council to follow cost causation principles in allocating the costs of resilience projects to ENO ratepayers. Further, Air Products urges the Council not to force ENO ratepayers to fund a community support program (Community Lighthouse) through their electric rates, but to follow cost causation principles to the extent the Council nevertheless mandates such funding. Finally, Air Products questions the ability of TNO to implement its Community Lighthouse program without being considered to operate as an electric public utility.

RESPECTFULLY SUBMITTED:

Randy Young (#21958)
Carrie R. Tournillon (#30093)
KEAN MILLER LLP
Post Office Box 3513
Baton Rouge, LA 70821
(225) 387-0999
Attorneys for Air Products and Chemicals, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served by electronic delivery to the Clerk of Council and all known parties of record on the Official Service List.

New Orleans, Louisiana this 21st day of July, 2023.

Carrie R. Tournillon

July 21, 2023

M E M O R A N D U M

Re: Application of Entergy New Orleans, LLC for Approval of Future Ready Resilience Plan (Phase I), CNO Docket No. UD-21-03

This report was prepared at the request of counsel for Air Products and Chemicals, Inc. ("Air Products"). It contains my findings concerning: (i) the proposal of Entergy New Orleans, LLC ("ENO") for recovery of revenue requirements associated with Phase I of its proposed Resilience Plan, and (ii) the proposal of Together New Orleans ("TNO") to fund its proposed Community Lighthouse projects through electric rates of ENO's customers. This report does not address the appropriateness of the projects that ENO and TNO propose to construct, or the cost and timing of that construction. It is focused on the propriety of the manner in which ENO and TNO each propose to collect from ENO's retail electric customers revenue requirements associated with their respective plans.

The Appendix provides a summary of my education and experience.

Proposed Cost Recovery Method and Allocation

ENO

In order to collect the cost associated with the Resilience Plan, ENO proposes to implement a new rate rider called the Resilience Rider. As presented at pages 13-15 of its April 17, 2023 filing, the Resilience Rider would collect revenue requirements associated with ENO's resiliency investments in the form of a uniform percentage increase applied to the base rate revenues of each retail electric rate class. The percentage would be the same for each rate class.

TNO

TNO is proposing to develop a network of 86 hubs at civic and community institutions in New Orleans' neighborhoods, at which solar panels, back-up batteries and real-time load management systems would be installed.[1] TNO has proposed for about 32% of project costs (about $11.3 million) to be funded through the electric rates of ENO's customers.[2] TNO explained during a technical conference in this proceeding that it will own the infrastructure, the civic and community institutions where the infrastructure is installed would get net metering associated with the solar power generated during "blue sky days," and either the institution would be a net metering customer to receive payment for excess power produced by the system or TNO would want to sell excess power to ENO through a purchased power agreement ("PPA"). TNO has not proposed a specific cost recovery mechanism for the amount requested to be funded by ENO's customers, but has indicated that it believes all of ENO's customers (including transmission customers) should have to participate.

Findings, Conclusions and Recommendations

My findings, conclusions and recommendations are as follows:

- I find that over 90% of ENO's contemplated investment is for the distribution system and only about 10% for the transmission system.
- I find that 100% of TNO's contemplated investment is for customers taking service at the distribution system level (residential and small commercial) and 0% is for customers taking service at the transmission system level.
- I find that some of ENO's customers take service from the transmission system and do not need or utilize the distribution system to provide them with electricity.
- I find that customers who take service at the distribution level use both the transmission system and the distribution system.

[1] UD-21-03, TNO Filing at 1 (April 24, 2023)
[2] *Id*. at 11.

- I conclude that ENO's approach (equal percent) is an inappropriate way of recovering costs because it charges both transmission customers and distribution customers the same percentage of their base rate revenues, which results in transmission customers being charged excessively because they would be paying for projects on the distribution system which they do not utilize.

- I conclude that it is inappropriate to require ENO's customers to fund TNO's Community Lighthouse project through their electric rates. ENO's customers should not be forced to donate money to a private organization for what is a community support project. ENO's captive customers should only be required to pay electric rates commensurate with the cost of the utility to provide reliable service to them at the lowest reasonable cost.

- I recommend that if the Council requires ENO's customers to pay for TNO's community support program, that any excess power produced by the solar systems go to the grid without any compensation to either the institution where the system is located or TNO.

- I recommend that if the Council approves a cost recovery mechanism for recovery of costs of ENO's Resilience Plan and/or TNO's Community Lighthouse project, it distinguish between customers served at the transmission level and those served at the distribution level. Because customers at the distribution level utilize both the distribution system and the transmission system, distribution level customers should support 100% of the cost of the distribution system plus an appropriate share of the costs associated with the transmission system. Customers taking service from the transmission system should only be required to pay for a reasonable share of the costs of the transmission system, and none of the costs of the distribution system.

Analysis

Most customers receive service at the distribution level, which requires the use of both the transmission system and the distribution system in order to provide service to these distribution-level customers. On the other hand, customers served at the transmission level do not need, and do not make use of, the distribution system. This is an important fact because to follow cost-causation and appropriate cost recovery principles, there must be a distinction between customers served at the distribution level and customers served at the transmission level. Customers served at the transmission level should not be charged any costs associated with the distribution level.

From a cost-based standpoint, all of the distribution costs should be recovered only from customers taking service at the distribution level. Costs associated with generation and transmission systems should be recovered from customers taking service at the distribution level and customers taking service at the transmission level.

As indicated previously, the fundamental reason is that customers served at the transmission level do not need the distribution system in order to receive service, and do not use the distribution system. The distribution system is utilized by customers at lower voltage levels who require both the transmission system and the distribution system in order to receive electric service. Requiring transmission level customers to pay part of the costs associated with repairing the distribution system is not consistent with cost-causation principles because transmission level customers do not cause distribution system costs to be incurred.

ENO's proposal would result in a substantially skewed recovery mechanism. Customers who do not use the distribution system and who are not responsible for any part of the investments that occur on the distribution system would be required to proportionately contribute to those costs the same as those customers who do take service at the distribution level.

In essence, transmission level customers would be required to pay more than eight times as much as they should on a cost of service basis. When it performs a class cost of service study, ENO follows an industry standard approach of not allocating any distribution system costs to transmission customers. The same approach is applicable here.

It is true that rates are not set precisely on cost of service; however, the rates do embody cost of service principles in that rates charged to large customers who take service at the transmission level are lower than rates charged to customers who take service at the distribution level. One of the main reasons for the difference is the fact that customers taking service at the transmission level do not utilize the distribution system and are not responsible for distribution system costs.

Recovery of resiliency investments is different from the recovery of costs in general rate case and Formula Rate Plan ("FRP") proceedings, when a more uniform percentage on base rate revenues may be applied. In general, in rate cases and FRPs it is typical that a variety of costs are being addressed, and most of the costs that are being passed through are associated with facilities that are utilized to provide service to all customers. Thus, without a class cost of service study, and absent other evidence, it generally is appropriate to apply the same percentage increase to the base rates of all customers.

In this case, there is clear other evidence about the nature of the costs for which increased revenues are sought. It is clear that most of the costs are related to the distribution system, so it is appropriate to allocate all of these costs only to customers who use these facilities to receive service. That is why this functionalization approach I have suggested is appropriate.

To elaborate, in the case of resiliency investments that are the subject of this proceeding, there is other specific evidence that the vast majority (over 90%) of the costs are associated with facilities that are not used to supply service to high voltage transmission customers. Fundamental cost of service and cost-causation principles require that costs be allocated in a manner that recognizes the actual use of the facilities by the various customers, in order to reflect appropriate cost responsibility. Customers should not be allocated the costs of facilities that are not used, and cannot be used, to serve them.

Based on the revenue requirements for transmission investments and distribution investments as set forth in ENO's response to Advisors' Data Request No. 4-6, and class-based rate revenues as set forth in response to Air Products Data Request No. 1-3, I have calculated that the appropriate cost recovery percentage for transmission customers is 1.10% and for distribution customers is 9.78%.[3] It is noted that there are no revenue requirements associated with transmission investment during the period 2024-2026 because of the timing of transmission investment. I have prepared the analysis to calculate the appropriate surcharge percentage using the year 2027 because that is the first year in which there are revenue requirements associated with the transmission system investment. The same consideration and approach would apply each time that the Rider is adjusted to recognize new revenue requirements.

In some of its responses to data requests, ENO has asserted that transmission level customers benefit from investments on the distribution system and attempts to argue that transmission level customers should share equally with distribution level customers in the cost of distribution level resiliency investments. For example, in the third paragraph of ENO's response to Air Products' Data Request No. 4-1, ENO argues that transmission level customers depend on certain products and services provided by customers served at the distribution level and erroneously concludes this means that transmission level customers should pay part of the costs of resiliency investments on the distribution system.

This argument departs materially from cost of service and would require transmission level customers to pay for costs incurred to provide service to distribution level customers. It is inappropriate to require some customers (transmission level customers) to pay the utility for the cost of investments needed by distribution level customers. To assume that they should, if taken to its logical conclusion, would make residential customers pay for all repair costs since these repairs are necessary to return service to commercial and industrial customers so they can continue to pay wages to their employees, who are residential customers.

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[3] See HSPM workpaper for derivation of the transmission and distribution factors.

While it is true that some transmission customers may depend on products and services from distribution level customers, distribution level customers should be required to pay the costs associated with their own operations and delivery service costs, because to do otherwise would create a subsidy of the distribution customers by the transmission level customers, which is inappropriate.

ENO also states that the coordinated restoration of service after a storm requires some parts of the distribution system to be restored before transmission level service can be restored. While it is true that restoration of parts of the distribution system may precede restoration of the transmission system, no customers can receive service without the transmission system. While in actual practice it may be true that parts of the distribution system are restored first, that may be for a number of reasons including the priority of critical loads. The restoration process is based on system configuration as it exists; and the existence of distribution level customers is not necessary to provide or restore service to transmission level customers.

Similarly, while projects such as the TNO's Community Lighthouse project may be a great idea and a great benefit to the citizens of New Orleans, it is clear that these investments are not utility property. They are community support projects and the funding should be something other than charges on the utility bills of ENO's customers. ENO's customers should not be forced to donate money to a private organization, regardless of the cause. ENO's captive customers should only be required to pay electric rates commensurate with the cost of the utility to provide reliable service to them at the lowest reasonable cost.

Moreover, as I understand the potential structure, TNO is asking ENO's ratepayers to pay for solar panels and batteries that it will own, and that TNO would also want ENO's ratepayers to pay for excess power generated by the solar panels through either the net metering program or a PPA between TNO and ENO. Thus, ratepayers would not only be paying for the infrastructure but then also paying for the power produced by the infrastructure it funded, which is not only inappropriate for reasons stated above but is also illogical and unreasonable.

To the extent the Council requires ENO's customers to pay for the TNO community support projects through their electric rates, despite such rates not being designed or authorized for capital investment in non-utility property, then the same cost causation principles as discussed above should apply, and transmission level customers should be allocated zero. ENO's rate schedules and class revenue requirements are designed to collect the revenue requirement of the customers who take electric service within a certain customer lass and under a particular rate schedule. Further, ratepayers should not be required to both fund TNO's privately owned solar and battery infrastructure and then purchase excess power generated by it.

BRUBAKER & ASSOCIATES, INC.

Maurice Brubaker

Maurice Brubaker

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Maurice Brubaker

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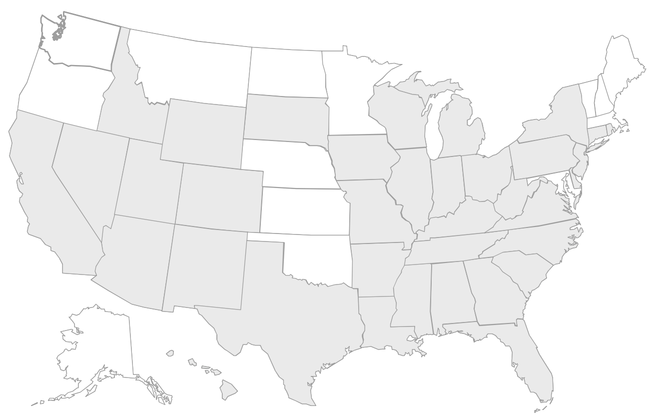
Mr. Brubaker is a Managing Principal and President of BAI. He received the Degrees of Bachelor of Science in Electrical Engineering from the University of Missouri at Rolla; Master of Business Administration (with a Major in Finance) and Master of Science in Engineering from Washington University in St. Louis.

Prior to entering the utility consulting practice in 1970, Mr. Brubaker was employed by Emerson Electric Company.

Recent engagements have concentrated on development of energy strategies and competitive sourcing of power for customers, utility fuel and purchased power cost recovery, resource planning and utility rate cases.

He has extensive experience in virtually all aspects of regulated and competitive electricity and natural gas, and has presented testimony on more than 400 occasions before over 30 state regulating commissions, the Federal Energy Regulatory Commission, and before various state courts, municipal regulatory bodies and state legislatures.

Project Work



Other Project Work

- Federal Energy Regulatory Commission (FERC)
- Guam
- Iceland
- Italy

Principal Advisor to:

- Illinois Industrial Energy Consumers
- Louisiana Energy Users Group
- Missouri Industrial Energy Consumers
- United States Navy
- Utah Industrial Energy Consumers