

IN RE:

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

Hearing - Public

December 20, 2017

CURREN COURT REPORTERS

504-833-3330

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BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS

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

PUBLIC

Continuation of the evidentiary hearing
in the above-entitled matter before Honorable
Jeffrey S. Gulin, held at 601 Poydras Street,
11th Floor, Bayou Rooms 1 and 2, New Orleans,
Louisiana 70130, commencing at {8:30 A.M., on
Wednesday, the 20th day of December, 2017.

APPEARANCES:

ENTERGY SERVICES, INC.
(By: Brian F. Guillot, Esquire
- and -
Tim Cragin, Esquire
- and -
Harry M. Barton, Esquire
- and -
Alyssa Maurice-Anderson, Esquire)
639 Loyola Avenue
Suite 2600
New Orleans, Louisiana 70113

- and -

1 APPEARANCES (continued):
2

3 STANLEY, REUTER, ROSS, THORNTON
& ALFORD, L.L.C.
(By: W. Raley Alford, III, Esquire)
4 909 Poydras Street
Suite 2500
5 New Orleans, Louisiana 70112

6 - and -

7 DUGGINS WREN MANN & ROMERO, LLP
(By: Scott Olsen, Esquire)
8 600 Congress
Suite 1900
9 Austin, Texas 78701
(Attorneys for Entergy New Orleans)
10 Bguill1@entergy.com
Wra@stanleyreuter.com
11 Solsen@dwmrlaw.com
12

DENTONS, US LLP
13 (By: Clint Vince, Esquire
- and -
14 Emma Hand, Esquire
- and -
15 Presley Reed, Esquire
- and -
16 Jay Beatmann, Esquire)
650 Poydras Street
17 Suite 2850
New Orleans, Louisiana 70130-6132

18 - and -
19

20 WILKERSON AND ASSOCIATES, PLC
(By: Walter J. Wilkerson, Esquire)
650 Poydras Street
21 Suite 1913
New Orleans, Louisiana 70130
22 (Attorneys for City Council Of
New Orleans)
23 Emma.hand@dentons.com
wwilkerson@wilkersonplc.com
24
25

1 APPEARANCES (continued):

2 EARTHJUSTICE

3 (By: Susan Stevens Miller, Esquire

4 - and -

5 Chinyere A. Osuala, Esquire

6 - and -

7 Jill Tauber, Esquire)

8 1625 Massachusetts Avenue, NW

9 Suite 702

10 Washington, DC 20036

11 (Attorneys for Alliance for

12 Affordable Energy and 350.org

13 smiller@earthjustice.org

14 SIERRA CLUB

15 (By: Joshua Smith, Esquire)

16 2101 Webster Street

17 Suite 1300

18 Oakland, California 94612

19 - and -

20 WALTZER WIYGUL GARSIDE

21 (By: Michael Brown, Esquire

22 - and -

23 Robert Wiygul, Esquire)

24 1000 Behrman Highway

25 Gretna, Louisiana 70056

(Attorneys for Sierra Club)

michael@wwglaw.com

joshua.smith@sierraclub.org

DEEP SOUTH CENTER FOR ENVIRONMENTAL

JUSTICE, INC.

(By: Monique Harden, Esquire)

3157 Gentilly Boulevard

Suite 145

New Orleans, Louisiana 70122

(Attorney for Deep South Center

for Environmental Justice, Inc.)

MoniqueCovHarden@gmail.com

1 APPEARANCES (continued):

2

3 THE LAW OFFICES OF ERNEST L. EDWARDS,
4 JR., APLC
5 (By: Ernest L. Edwards, Jr., Esquire)
6 300 Lake Marina Avenue
7 Unit 5BE
8 New Orleans, Louisiana 70124
9 (Attorney for Air Products and
10 Chemicals, Inc.)
11 ledwards0526@gmail.com

7

8 ROEDEL, PARSONS, KOCH, BLACHE,
9 BALHOFF & MCCOLLISTER
10 (By: Luke F. Piontek, Esquire)
11 8440 Jefferson Highway

10

11 Suite 301
12 Baton Rouge, Louisiana 70809
13 (Attorneys for New Orleans Cold Storage
14 & Warehouse Co., Ltd.)
15 lpiontek@roedelparsons.com

12

13

14

15

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

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P R O C E E D I N G S

JUDGE GULIN:

Good morning, everyone.

EVERYONE:

Good morning.

JUDGE GULIN:

And welcome to the fourth day of our hearing. I believe our schedule this morning is we are hearing from Lovorn-Marriage then Rice then Kolker then Brubaker; is that right?

MR. GUILLOT:

Brubaker.

JUDGE GULIN:

Brubaker.

MR. GUILLOT:

Yeah.

JUDGE GULIN:

I was going to ask that. Okay.
Very good.

Anything preliminarily before we start with Ms. Lovorn-Marriage?

(No response.)

JUDGE GULIN:

1 Then I'll ask that she please come
2 and take the stand.

3 MR. SMITH:

4 Your Honor, I'm sorry. Just the one
5 quick preliminary matter. Joshua Smith
6 on behalf Sierra Club.

7 We did have the rest of that exhibit
8 that we spoke about the other day and we
9 can submit that now and complete that
10 exhibit.

11 JUDGE GULIN:

12 Okay. And you received a copy?

13 MR. GUILLOT:

14 I have not, Judge.

15 JUDGE GULIN:

16 I'm assuming that there's not going
17 to be an issue with that, so just make
18 sure that the court reporter gets it so
19 she can combine it with the proper
20 exhibit.

21 What was the exhibit?

22 MR. SMITH:

23 Sierra Club 6.

24 JUDGE GULIN:

25 Sierra Club 6. And I'm assuming

1 Judge, before we start,
2 Ms. Lovorn-Marriage did have two
3 corrections to her testimony.

4 JUDGE GULIN:

5 Okay.

6 MS. LOVORN-MARRIAGE:

7 Page 11, line 20 refers to --

8 MS. MILLER:

9 I'm sorry. Which testimony? Your
10 direct or rebuttal?

11 JUDGE GULIN:

12 Which testimony?

13 MS. LOVORN-MARRIAGE:

14 Sorry. This is to my rebuttal
15 testimony.

16 These are corrections to some of the
17 references. At page 11, line 20 refers
18 to Exhibit SLM-4, but it should refer to
19 Exhibit SLM-3. And at page 18, line 13
20 refers to Exhibit SLM-3, but should refer
21 to Exhibit SLM-4.

22 JUDGE GULIN:

23 Whenever you're ready.

24 MS. MILLER:

25 Thank you.

1 {EXAMINATION BY MS. MILLER:

2 Q. Good morning.

3 A. Good morning.

4 Q. Could you tell me what your current
5 position is at Entergy is?

6 A. I am the vice president of
7 regulatory services for ESI.

8 Q. And what are your responsibilities
9 in that position?

10 A. In my role, I'm responsible for
11 preparing and supporting regulatory filings
12 for -- I have oversight of preparing and
13 supporting regulatory filings for each of
14 Entergy's operating companies in addition to
15 regulatory analysis to support the operating
16 companies.

17 Q. Do you have a law degree?

18 A. No, I do not.

19 Q. On page 3 of your direct testimony,
20 you state that the project is consistent with
21 all applicable Council requirements. Is it
22 your view that that statement that was in your
23 direct testimony, do you agree that that
24 statement applies to both projects?

25 A. Sorry. Can you point to where in my

1 testimony?

2 Q. Direct, page 3.

3 A. Okay.

4 Q. Right at the very top, line 1 and 2,
5 The approval of ENO's request to commence
6 construction of the project is consistent with
7 all applicable Council requirements. (As
8 read.)

9 A. That's correct.

10 Q. And your statement now is that's
11 true for both projects?

12 A. That is correct.

13 Q. And then starting on line 8 of your
14 direct testimony, you state that ENO's
15 activities complied with Council
16 Resolution 15-524; is that correct?

17 A. That's correct.

18 MS. MILLER:

19 May I approach, Your Honor?

20 JUDGE GULIN:

21 Please.

22 EXAMINATION BY MS. MILLER:

23 Q. This is a copy of Resolution 15-524,
24 and I believe in your testimony, you are
25 referencing page 12 where it starts, ENO will

1 use reasonably diligent efforts; is that
2 correct? (As read.)

3 A. That's correct.

4 Q. It also states that ENO will fully
5 evaluate Michoud or Patterson along with any
6 other appropriate sites as potential sites for
7 the combustion turbine or will evaluate a third
8 party with an agreed to PPA to ENO. Is that
9 correct? (As read.)

10 A. That's correct.

11 Q. Mr. Cureington has stated that he
12 actually determined that there were -- not to
13 fully evaluate other sites for a PPA because he
14 determined that those could not meet the same
15 requirements as Michoud or Patterson; is that
16 correct?

17 MR. GUILLOT:

18 Objection, Your Honor.

19 Mischaracterization of testimony.

20 I mean, just ask the question.

21 MS. MILLER:

22 Okay.

23 JUDGE GULIN:

24 How is it a mischaracterization?

25 MR. GUILLOT:

1 Well, I mean, she's testifying about
2 what Mr. Cureington --

3 Well, go ahead and ask the question.

4 EXAMINATION BY MS. MILLER:

5 Q. Mr. Cureington previously testified
6 that he did not fully evaluate the Michoud --
7 any other sites but Michoud and Patterson and
8 did not fully evaluate the opportunity for PPAs
9 because he determined that they would not meet
10 the requirements to the extent that Michoud or
11 Patterson did.

12 MR. GUILLOT:

13 And so that's what I'm objecting to.
14 I'm not sure that Mr. Cureington
15 testified he did not fully evaluate those
16 options. He simply testified that those
17 options wouldn't meet our need.

18 MS. MILLER:

19 Well, he said he determined not to
20 look into those because they wouldn't --
21 he decided that they wouldn't meet the
22 need. That's what he testified to.

23 JUDGE GULIN:

24 I have to confess, I don't recall
25 his precise language. Is there any way

1 you can ask the question in a more
2 general way? Otherwise, we'll have to go
3 back and look at his testimony. And I'm
4 happy to do that if you want.

5 MS. MILLER:

6 That's all right.

7 JUDGE GULIN:

8 Okay.

9 EXAMINATION BY MS. MILLER:

10 Q. As far as you are aware, did
11 Mr. Cureington actually fully evaluate other
12 sites or the opportunity for a PPA?

13 A. It is my understanding from
14 Mr. Cureington's direct testimony that he
15 evaluated sites that were consistent with what
16 we needed to serve our customers from a
17 reliability perspective. And it is my
18 understanding that Michoud ultimately was the
19 site that provided the best reliability under
20 the circumstances that New Orleans has with
21 respect to reliability issues.

22 Q. In your review, this resolution,
23 15-524, actually is the approval of a FERC
24 settlement agreement which incorporates by
25 reference those provisions. Did you look at

1 that settlement agreement as well in your
2 review of whether both projects met all Council
3 requirements?

4 A. I reviewed the settlement agreement
5 in addition to the resolution of the Council.

6 MS. MILLER:

7 May I approach, Your Honor?

8 JUDGE GULIN:

9 Please.

10 MS. MILLER:

11 Your Honor, I don't know if we want
12 to label these or not. They're all just
13 for the purpose of cross and they're all
14 essentially public documents at this
15 point.

16 JUDGE GULIN:

17 It's up to you, if you want to. For
18 ease of the Council to review the cross,
19 it might be helpful to just mark them as
20 exhibits, but it's your call.

21 MS. MILLER:

22 That's fine. So if we could mark
23 Resolution 15-524, I think we're on
24 AAE/350-3, and then if we could mark the
25 one I just handed out, the excerpt of the

1 settlement agreement, AAE/350-4.

2 JUDGE GULIN:

3 Very well.

4 MS. HAND:

5 Your Honor, to the extent that
6 AAE/350-4 is going to be moved in, we
7 would object subject to completion of
8 that document.

9 JUDGE GULIN:

10 Okay. And at this point, it's only
11 for cross, purposes of cross, but you
12 still would like it to be completed?

13 MS. HAND:

14 Yes, Your Honor.

15 JUDGE GULIN:

16 Okay. All right. Could you provide
17 the complete?

18 MS. MILLER:

19 Yes, Your Honor. I'll provide it
20 tomorrow.

21 JUDGE GULIN:

22 Okay. So with that condition,
23 they're both admitted for cross purposes
24 only.

25 EXAMINATION BY MS. MILLER:

1 Q. If you could look at the excerpt
2 that starts on page 13, I believe the first
3 paragraph of that labeled B-1 essentially
4 mimics the paragraph in the Resolution 15-524
5 if you want to look at it for a second and see
6 if you agree.

7 A. I'm sorry. Can you clarify which
8 paragraph you're asking me to cross reference?

9 Q. The paragraph we just read at
10 15-524, the paragraph that states that they'll
11 look at Michoud and other sites and things like
12 that.

13 A. Oh, yes. Yes.

14 Q. So they just mirror each other; is
15 that correct?

16 A. Yes.

17 Q. And then if you go over to the next
18 page, which is page 14 of the document, No. 3,
19 it states that The commitments set forth in
20 this section are subject to a mutually
21 satisfactory resolution of all material
22 considerations, including without limitation,
23 and it lists a number of factors there, one
24 being economic feasibility in comparison to
25 other potential projects, locations, or

1 alternatives. I'll give you a minute to read
2 the whole paragraph. (As read.)

3 A. I see it.

4 Q. Now, there's been evidence in this
5 case, particularly from Mr. Rogers and the
6 advisors and others, that there are projects
7 that are more economically feasible at least
8 than the projects proposed by ENO. So is it
9 fair to say that it is at least a debatable
10 proposition at this point whether ENO has
11 actually met the requirements of this section?

12 A. I don't agree with that. I think
13 that it is the testimony of Mr. Cureington and
14 Mr. Long that they evaluated all of the
15 economic opportunities and alternatives that
16 are referenced by this particular paragraph.
17 But those opportunities didn't meet the
18 specific needs that New Orleans has with
19 respect to the reliability constraints that we
20 are faced with in New Orleans. And so it's not
21 a question --

22 Q. But this specific sentence does not
23 refer to reliability. It only refers to
24 economic feasibility; isn't that correct?

25 A. Right. And Mr. Cureington testifies

1 to the economic feasibility with respect to
2 what the needs are and his testimony supports
3 the economic feasibility of the New Orleans
4 Power Station.

5 Q. But there are actually other
6 witnesses in this case that dispute that it is
7 the most economically feasible. So at this
8 point, it is at least debatable whether ENO has
9 met that provision or not?

10 MR. GUILLOT:

11 Objection; counsel is testifying.

12 EXAMINATION BY MS. MILLER:

13 Q. Mr. Rogers said it was not the
14 least-cost --

15 JUDGE GULIN:

16 The question is, is it debatable?

17 MS. MILLER:

18 Yeah.

19 JUDGE GULIN:

20 That's a rather vague question. I'm
21 not even sure how to ask that question,
22 but you can try making it a little more
23 answerable.

24 MS. MILLER:

25 Okay.

1 MR. REED:

2 Your Honor, I further object that
3 Mr. Rogers' testimony was that of the
4 various options for addressing the
5 reliability need, it was not a comparison
6 of other sites.

7 JUDGE GULIN:

8 Okay.

9 MS. MILLER:

10 I agree. I was not clear that I'm
11 not saying that Mr. Rogers compared other
12 sites. I'm saying that Mr. Rogers
13 disputes Mr. Cureington's contention that
14 the projects are the least-cost option.

15 JUDGE GULIN:

16 Okay. Try your question again.

17 MS. MILLER:

18 Okay.

19 EXAMINATION BY MS. MILLER:

20 Q. With regard to other testimony filed
21 in this case, there are experts who dispute
22 ENO's conclusion that the projects are the
23 least-cost option; is that correct?

24 A. Yes, there are other parties that
25 dispute the outcome of the economic analysis

1 that ENO has submitted. That said, my
2 responsibility was to evaluate all of the
3 public interest analysis that was presented and
4 that included the reliability concerns. I
5 can't look at the economic analysis in
6 isolation of the other things that we're trying
7 to resolve with respect to the New Orleans
8 Power Station.

9 Q. I recognize that. My only question
10 was with regard to this one specific paragraph,
11 which does not mention reliability, it only
12 mentions economic considerations. So with
13 regard to that paragraph, whether ENO has met
14 the requirements of that paragraph is at least
15 an issue in this proceeding?

16 A. I believe that based on the analysis
17 that Mr. Cureington presented, he evaluated all
18 the other alternatives that meet the need from
19 an economic perspective. So I believe we've
20 complied with this particular item.

21 Q. Now, on page 9 of your testimony,
22 you also contend that your project was
23 consistent -- the projects were consistent with
24 the IRP; is that correct?

25 A. That's correct.

1 MS. MILLER:

2 May I approach, Your Honor?

3 JUDGE GULIN:

4 Please.

5 EXAMINATION BY MS. MILLER:

6 Q. What I've just handed you is
7 Resolution R-17-100, which is the order
8 considering the final -- the 2015 final
9 integrated resource plan of Entergy New
10 Orleans. It is an excerpt and I would ask you
11 to turn to what's marked as page 94.

12 A. (Witness complies.)

13 Q. These are the conclusions of the
14 City Council. They are on page 94, and for
15 some reason, the City Council's certified order
16 has two 95s, but they're actually two different
17 pages. So 94 through 95 and what should be
18 marked 96. I'm only going to ask you about the
19 first two paragraphs, but I'll certainly wait
20 if you would like to read through all the --

21 A. The first two paragraphs on page 94?

22 Q. Yeah, the ones marked Paragraph
23 No. 1 and Paragraph No. 2.

24 A. Okay. Give me a moment, please.

25 JUDGE GULIN:

1 And while the witness is doing that,
2 why don't we have it marked as Exhibit
3 No. 5. You want it admitted for cross?

4 MS. MILLER:

5 Yes, sir.

6 JUDGE GULIN:

7 Very well.

8 MR. EDWARDS:

9 Your Honor, would you please ask
10 both the witness and the lawyer doing the
11 cross to speak up or to get closer to the
12 microphone? I can't hear either one of
13 them this far back.

14 JUDGE GULIN:

15 The request has been made.

16 EXAMINATION BY MS. MILLER:

17 Q. So the first paragraph there states
18 that ENO's 2015 final IRP is accepted for the
19 purpose of Energy Smart implementation; is that
20 correct?

21 A. That's correct.

22 Q. But the second paragraph addresses
23 ENO's NOPS CT proposal and states that All
24 issues related to that proposal should be fully
25 vetted in this proceeding, including, but not

1 limited to, need for CT size, timing,
2 environmental concerns, social justice, cost,
3 transmission, and reliability considerations;
4 is that correct? (As read.)

5 A. That's correct.

6 Q. And it also says, Acceptance of this
7 IRP shall have no precedential effect with
8 respect to the Council's evaluation of ENO's
9 NOPS CT application; is that correct? (As
10 read.)

11 A. That's correct.

12 Q. So the Council in the IRP was
13 specifically stating that the CT decisions were
14 not made in this IRP proceeding and, thus,
15 there's nothing in the IRP proceeding for the
16 CT to be consistent with; is that correct?

17 A. I would agree that the IRP decision
18 did not set an approval for the CT.

19 Q. Did you review any other resolutions
20 or ordinances in your determination that the
21 project met all the requirements of the City
22 Council?

23 A. I'm not sure I understand the
24 question.

25 Q. We've discussed two resolutions that

1 you reviewed to reach your conclusions that the
2 projects meet all of the requirements of the
3 City Council. Were there any other resolutions
4 or ordinance or things of that nature that you
5 looked at to make sure that the projects met
6 those requirements?

7 A. I reviewed the IRP. I reviewed the
8 Nine Mile resolution, and I reviewed the
9 resolution, the System Agreement termination
10 resolution.

11 MS. MILLER:

12 May I approach, Your Honor?

13 JUDGE GULIN:

14 Uh-huh (indicating affirmatively).

15 MS. MILLER:

16 I believe this should be AAE/350

17 Exhibit --

18 JUDGE GULIN:

19 Six.

20 MS. MILLER:

21 Six, thank you.

22 EXAMINATION BY MS. MILLER:

23 Q. This is resolution R-16-506, which
24 is a resolution that was issued actually in
25 this proceeding. Can I ask you to turn to page

1 9, or you can certainly read as much of the
2 resolution as you would like to.

3 JUDGE GULIN:

4 And it's admitted for cross.

5 MS. MILLER:

6 Thank you.

7 MS. LOVORN-MARRIAGE:

8 I did review this as well, but it's
9 been awhile and I had not committed it to
10 memory, so --

11 MS. MILLER:

12 That's fine.

13 MS. LOVORN-MARRIAGE:

14 Okay.

15 JUDGE GULIN:

16 Did you want some more time to
17 review it?

18 MS. LOVORN-MARRIAGE:

19 No. I think it depends --

20 MS. MILLER:

21 Oh, I'm sorry. You can have as much
22 time as you want. That's fine.

23 MS. LOVORN-MARRIAGE:

24 Go ahead and ask the question.

25 EXAMINATION BY MS. MILLER:

1 Q. Okay. In the paragraph on page 9
2 that begins, Be it resolved, it states that the
3 company is ordered to make a filing on or
4 before November 18th, which, among other
5 things, includes any and all analysis, data
6 sources, assumptions or results, including
7 calculating and supporting work papers related
8 to the values presented therein for each of the
9 four proposed Aurora modeling production runs
10 requested by the Council advisors. (As read.)

11 Do you see that statement? I
12 believe it's --

13 A. I do.

14 Q. Is it your understanding that ENO
15 actually ran the four runs requested by the
16 advisors?

17 A. It is my understanding that we
18 responded to this through supplemental
19 testimony of Mr. Cureington.

20 Q. But with -- specifically with regard
21 to the runs, is it your understanding that they
22 actually did the four runs requested by the
23 advisors?

24 A. I'm not sure if it was four runs or
25 how many runs it was. I would have to refer

1 back to Mr. Cureington's testimony for that.

2 Q. But however many runs it was, did
3 ENO do all the runs requested?

4 A. It's my understanding from way back
5 when I read Mr. Cureington's supplemental
6 testimony, that we did do some analysis to
7 comply with this request. I don't know what
8 runs were or how many there were.

9 Q. So you don't know if -- Based on
10 your reading of Mr. Cureington's testimony, you
11 simply can't tell whether he actually did the
12 four runs requested?

13 A. I rely on Mr. Cureington's analysis
14 and he did present supplemental testimony that
15 responded to this request with the analysis
16 that was requested.

17 MS. MILLER:

18 Can I approach again, Your Honor?

19 JUDGE GULIN:

20 Yes. I believe that this should be
21 AAE/350 Exhibit 7.

22 JUDGE GULIN:

23 Yes, ma'am.

24 MS. MILLER:

25 I would like it admitted for

1 purposes of cross.

2 JUDGE GULIN:

3 Admitted for cross.

4 EXAMINATION BY MS. MILLER:

5 Q. This is an ordinance adopted by the
6 Council, which is the flood damage prevention
7 ordinance. Can I ask you to look at the page
8 marked page 22 of that ordinance?

9 A. I've not reviewed this ordinance and
10 so --

11 Q. So you didn't make a determination
12 as to whether ENO projects actually met the
13 requirements of this ordinance because you've
14 never reviewed it before; is that correct?

15 A. I've never reviewed this particular
16 ordinance.

17 Q. Okay. Next I'd like to ask you a
18 little bit about your testimony concerning the
19 public interest standard. The public interest
20 standard is the legal standard that the Council
21 applies to determine whether a utility request
22 such as the project here should be approved; is
23 that correct?

24 A. Can you --

25 Q. Sure. I can state it again.

1 A. Thank you.

2 Q. The public interest standard is
3 actually the legal standard that the City
4 Council will apply to determine whether a
5 utility request such as the projects at issue
6 here should be approved; is that correct?

7 A. I generally agree with that, yes.

8 JUDGE GULIN:

9 I'm sorry. Say again.

10 MS. LOVORN-MARRIAGE:

11 I generally agree with that
12 statement, yes.

13 EXAMINATION BY MS. MILLER:

14 Q. And in all the cases you discuss
15 regarding the public interest standard, those
16 cases were all rate cases; is that correct?

17 A. With respect to what I discuss, are
18 you referring to --

19 Q. The cases you cite to support your
20 public interest standard discussion.

21 A. They were Appellate Court decisions
22 with respect to complaints filed from like the
23 City of Plaquemine, which is one case that I'm
24 referencing in my testimony around the LPSC's
25 allowing an increase to a gas contract rate on

1 a city, which then the city ultimately
2 calculates the cost of service for its
3 customers.

4 Q. But none of those cases actually
5 address application of the public interest
6 standard when the City Council or other
7 Commission was approving a project; is that
8 correct?

9 A. I'm not sure I understand your
10 question. Sorry.

11 Q. That's fine.
12 Did any of the cases that you looked
13 at, was the issue involved whether the
14 Commission or the Council should approve a
15 project request of the utility rather than
16 approve a rate request of the utility?

17 A. My interpretation of those Appellate
18 decisions are guidance for how regulatory
19 policy matters should be decided when
20 requesting for approval of anything from a
21 Council or from a Commission. And so I'm not
22 really sure I'm understanding your line of
23 questioning.

24 Q. That's fine.
25 Could I ask you to look again at the

1 IRP order I gave you, the Resolution R-17-100?

2 JUDGE GULIN:

3 And that's Exhibit 5.

4 MS. LOVORN-MARRIAGE:

5 Okay.

6 EXAMINATION BY MS. MILLER:

7 Q. Once again, at Paragraph 2 on the
8 bottom of page 94, it lists a number of factors
9 the Council says should be considered in order
10 to determine whether the CT should be approved,
11 that includes need, size, timing, environmental
12 concerns, social justice, costs, transmission,
13 and reliability considerations. So is it
14 reasonable to interpret that this -- among
15 possible other things, I'm not saying that this
16 is the universe -- is what the Council feels
17 would comprise the public interest standard in
18 this case?

19 A. I would agree with that.

20 Q. Next, I'd like to ask you some
21 questions about your competitive procurement
22 testimony. On page 19 of your rebuttal, you
23 describe competitive procurement as costly.
24 How much does a competitive procurement
25 actually cost?

1 A. It depends on the particular
2 procurement process that you're undergoing, and
3 so it can range in price anywhere from, you
4 know, a couple hundred thousand to a million.

5 Q. ENO recently did an RFP seeking some
6 renewable generation; isn't that correct?

7 A. That's correct.

8 Q. And in that RFP, they actually
9 charged each bidder \$5,000 to put forth a
10 proposal. As a matter of fact, if a bidder
11 wanted to put forth more than one proposal,
12 they had to pay \$5,000 for each proposal; is
13 that correct?

14 A. I'm not familiar with the specifics
15 of the RFP. Sorry.

16 MS. MILLER:

17 May I approach, Your Honor?

18 JUDGE GULIN:

19 Yes.

20 MS. MILLER:

21 This should be AAE/350 --

22 JUDGE GULIN:

23 Eight.

24 MS. MILLER:

25 -- Exhibit 8 for purposes of cross.

1 JUDGE GULIN:

2 Admitted.

3 EXAMINATION BY MS. MILLER:

4 Q. And this is an excerpt of the RFP.

5 If you look at page 33 --

6 MR. GUILLOT:

7 I'm going to object, Your Honor.

8 Council has not laid a foundation that
9 the witness is familiar with this
10 document.

11 JUDGE GULIN:

12 Why don't you do that first?

13 EXAMINATION BY MS. MILLER:

14 Q. This document is the RFP posted on
15 ENO's website which requested proposals for the
16 long-term reliable renewable resources, and I'm
17 asking you to look at page 33 to see if I am
18 correct that ENO required bidders to pay a
19 \$5,000 fee in order to --

20 JUDGE GULIN:

21 Are you familiar with this document,
22 Ms. Lovorn-Marriage?

23 MS. LOVORN-MARRIAGE:

24 No, sir. I am not.

25 JUDGE GULIN:

1 You've never seen it before?

2 MS. LOVORN-MARRIAGE:

3 No.

4 JUDGE GULIN:

5 And in looking at it, does it
6 refresh your recollection of something
7 you once knew?

8 MS. LOVORN-MARRIAGE:

9 No. I have never seen this document
10 or participated in the RFP process.

11 JUDGE GULIN:

12 I'm happy to have her read the
13 section that you're interested in to
14 herself.

15 MS. MILLER:

16 That's fine.

17 MS. LOVORN-MARRIAGE:

18 I see where you're saying.

19 MS. MILLER:

20 Okay.

21 JUDGE GULIN:

22 Okay. Now that you've read it to
23 yourself, does that refresh your
24 recollection of something you once knew?

25 MS. LOVORN-MARRIAGE:

1 No.

2 JUDGE GULIN:

3 What would be your question?

4 EXAMINATION BY MS. MILLER:

5 Q. Establishing that ENO has charged
6 bidders fees for participating in RFPs, isn't
7 it correct that the cost of the RFP won't
8 necessarily be borne by the ratepayers? They
9 will be borne by people who want to participate
10 in the RFP process?

11 A. I don't agree with that. That would
12 imply that the \$5,000 was enough or sufficient
13 enough to cover the entire cost of all of the
14 RFP process, which includes independent
15 monitoring, as well as all the analysis that
16 goes along with it. So I don't necessarily
17 agree with that statement.

18 Q. If you go to your rebuttal testimony
19 again, on page 20, lines 1 and 2, you state
20 that a competitive process would be useless to
21 address ENO's need for peaking capacity, that
22 this need cannot be met through demand-side
23 management or intermittent supply-side
24 resources. (As read.)

25 Is that a correct reading of that?

1 A. That is a correct reading.

2 Q. Yet further on in the same page, you
3 contend that Entergy did use a competitive
4 process to pick both the CT and the RICE unit
5 contractors; is that correct?

6 A. That's correct. The reason that we
7 didn't see the need for an RFP process with
8 respect to the New Orleans Power Station is
9 that the needs that we have for New Orleans
10 Power Station are unique in the circumstance,
11 therefore, reliability purposes, we have a
12 specific need for local dispatchable generation
13 resources in this city to mitigate reliability
14 constraints on the system. And my
15 understanding of the testimonies of Mr. Long
16 and Mr. Cureington are that those types of
17 resources, the DSM and the supply-side
18 resources, would not be sufficient to mitigate
19 those concerns.

20 In addition, we have, you know, a
21 significant advantage with respect to the
22 placement of that resource at Michoud, which
23 would necessarily indicate that any other
24 developmental resource, which it would
25 necessarily have to be to be located in the

1 City of New Orleans would not be -- would not
2 have that advantage. And so under the
3 circumstances, an RFP just doesn't make sense
4 because it would just increase the cost and
5 increase the time.

6 Q. Let me unpack that a little bit.
7 Are you distinguishing between an RFP and a
8 competitive process because I believe you just
9 said you didn't do competitive process?

10 A. We did not do an RFP.

11 Q. Now, an RFP wouldn't necessarily be
12 for a location; is that correct? An RFP, you
13 know, could designate the location and ask for
14 proposals to be built at that location?

15 A. Yes.

16 Q. And putting aside whether your
17 statement is correct that the need could not be
18 met through demand-side management or
19 intermittent supply resources, ENO could have
20 done an RFP simply seeking a peaker unit?

21 A. Yes. But as I said, you know, the
22 specific needs that New Orleans has is to have
23 it located in the City of New Orleans, and
24 Michoud, given its location and its
25 interconnection to the system and its existing

1 infrastructure, would put it at a significant
2 advantage over any other peaker that could
3 necessarily bid in.

4 Q. Even accepting that, what you're
5 asking for is for someone to build a generation
6 plant, so your RFP could specifically state
7 that your proposal has to be for building a
8 generation plant at the Michoud site. So they
9 could have done an RFP with those constraints,
10 couldn't they?

11 A. You know, I guess I'm not
12 understanding your question. ENO selected
13 Michoud. It owns Michoud. It has existing
14 infrastructure at Michoud. It did do a
15 competitive bid process with respect to the EPC
16 contract on -- to ensure the lowest reasonable
17 cost for the construction of the plant at
18 Michoud.

19 Q. Now, I'd like to look at whether
20 that was actually a competitive process. Part
21 of a competitive process, the purpose of a
22 competitive process is transparency so everyone
23 can see how the selection was made. In this
24 instance, ENO did not open the selection of the
25 contractor to a wider audience. Essentially

1 ENO decided internally which four companies
2 would be allowed to bid on this contract; is
3 that correct?

4 A. Under Mr. Jon long's testimony, he
5 covers that specific process. My understanding
6 is that the competitive bid process was
7 surrounding the specifics of the technology
8 that we were looking to deploy at that site.

9 Q. But my question was only four people
10 were allowed to even present proposals to ENO;
11 is that correct? Four companies?

12 A. I would have to defer back to
13 Mr. Long's testimony. I'm not --

14 Q. So on the same page, page 9, you
15 concluded that it was very unlikely --

16 A. On page 9 of -- I'm sorry.

17 Q. Of your rebuttal.

18 A. You're on 20. Sorry.

19 Q. Wait a minute. Maybe I've confused
20 myself. Yeah. Page 20. I'm sorry.

21 JUDGE GULIN:

22 Page 20 of rebuttal?

23 MS. MILLER:

24 Page 20 of rebuttal.

25 EXAMINATION BY MS. MILLER:

1 Q. You concluded that it was very
2 unlikely that a third party could build
3 incremental generation to meet ENO's needs at a
4 lower cost than NOPS. That a correct statement
5 of your conclusion?

6 A. Yes, and it's also what I stated
7 previously.

8 Q. But a third party actually is
9 building the NOPS, isn't that correct? They
10 procured CBI and B&M to actually build these
11 units?

12 A. I'm sorry. I think we're getting
13 confused on the notion of a third party. In an
14 RFP process to select a specific asset to serve
15 our customers, bidding in they would
16 necessarily have to have their own site. They
17 would have to have their own technology to
18 deploy. Whereas, in comparing that to a
19 self-build option at Michoud, which ENO owns
20 the site and is selecting that site based on
21 the reliability that it brings to the system,
22 and as well -- and as a result of that site and
23 ENO owning that site, it has the necessary -- a
24 price advantage or a cost advantage over any
25 other generator that could bid into the

1 process. So I'm not really understanding.

2 Q. Well, I think you're talking about
3 two different kinds of RFPs. The company could
4 do an RFP which just says, "We just want a
5 project. Give us proposals. And where would
6 you build it?"

7 A. Which is what this testimony here is
8 referring to.

9 Q. Well, no. What they actually did
10 here is they said, "We want a peaker. We want
11 it at Michoud. You four companies, give us
12 your best price on building it."

13 So they could have opened that
14 process up to more than the four companies they
15 self selected is my point?

16 A. It is my understanding from
17 Mr. Long's testimony that he had a competitive
18 bid process for the selection of the contractor
19 to build the asset at Michoud. If you have
20 further questions regarding the specifics of
21 that process, I would have to defer to
22 Mr. Long.

23 Q. Will you accept subject to check
24 that Mr. Long stated that that process involved
25 ENO approaching four companies, not actually

1 opening it to market on people who build
2 generation?

3 A. Subject to check.

4 Q. You also indicate in your testimony
5 that you didn't do a wide research on what
6 other states do with the competitive
7 procurement; is that correct?

8 A. Can you point to the testimony,
9 please?

10 Q. To your rebuttal on page 21,
11 Question 19.

12 A. Okay.

13 Q. According to your testimony, you did
14 not do a survey of the states to see which
15 states required competitive procurement and
16 which didn't; is that correct?

17 A. That's correct.

18 Q. You just looked at the states that
19 the Entergy operating companies are working in;
20 is that correct?

21 A. That's correct.

22 Q. What states do the Entergy operating
23 companies work in?

24 A. Arkansas, Mississippi, Louisiana,
25 and Texas.

1 Q. And of those states, Louisiana
2 actually does require Entergy to do a
3 competitive procurement; is that correct?

4 A. It does, yes.

5 Q. And so essentially 25 percent of the
6 states that ENO operates in do require
7 competitive procurement, including the state
8 that ENO is located in?

9 A. Yes, but if you also look at my
10 testimony, I point to instances where even in
11 the state that does require a competitive bid
12 process, there are exceptions to that.

13 Q. Absolutely. We don't disagree that
14 there could be exceptions to the need for a
15 competitive bid process. I think -- But in
16 order to have exception to a competitive bid
17 process, you would have to have a competitive
18 bid process structure to begin with; isn't that
19 correct?

20 A. That's correct.

21 MS. MILLER:

22 I think that's all I have, Your
23 Honor.

24 JUDGE GULIN:

25 Okay. Thank you.

1 Mr. Edwards, when you're ready.

2 MR. EDWARDS:

3 Yes, Your Honor, I am.

4 EXAMINATION BY MR. EDWARDS:

5 Q. Ms. Lovorn-Marriage, can you hear
6 me?

7 A. Yes, I can.

8 Q. Good. I'd appreciate it if you
9 would speak up.

10 A. I will try.

11 Q. I have a hard time hearing the
12 person.

13 A. I'll put this really close to my
14 mouth.

15 Q. There you go. Thank you very much.
16 Are you supporting Mr. Todd's
17 testimony that he gave in this case?

18 A. I'm supporting cost recovery in this
19 case.

20 Q. His testimony on cost recovery
21 mechanisms, do you support that?

22 A. I'm supporting my own testimony and
23 the results of Mr. Todd's output.

24 Q. Well, much of your testimony is
25 referencing that of other people?

1 A. That's correct.

2 Q. So you reference Mr. Todd's
3 testimony?

4 A. That's correct.

5 Q. And I assume that you are adopting
6 the positions that he took in his rebuttal
7 testimony and --

8 A. Absolutely. I agree with the
9 recommendations that Mr. Todd has put in his
10 testimony.

11 Q. Were you here for his
12 cross-examination?

13 A. I was.

14 Q. You were?

15 A. Yes.

16 Q. And were you satisfied with the
17 answers he gave to my questions?

18 A. Yes, I was.

19 Q. Thank you.

20 On pages 16 of your rebuttal
21 testimony and 17, if you would just read the
22 statements of questions and answers on line 13
23 on page 16 through 9 of page 17, please.

24 A. So you would like for me to read the
25 Q. and A.?

1 Q. I'm sorry?

2 A. You would like me to read the
3 question and answer?

4 Q. Yes, please.

5 A. Okay.

6 Q. Read it to yourself. You don't have
7 to read it out loud.

8 A. I'm familiar with my Q/A, so --

9 Q. Okay. Do you agree with
10 Mr. Brubaker's position that in the absence of
11 a class cost-of-service study, the appropriate
12 approach for the PPCACR, P-P-C-A-C-R, rider
13 would be to apply a uniform percentage factor
14 to base rate revenues for all customer classes?

15 A. I believe my testimony is suggesting
16 that. To the extent that the Council agrees
17 with that approach, it is an appropriate
18 approach for the allocation of NOPS and I would
19 agree with that.

20 Q. Well, are you only agreeing with it
21 if the Council approves it? Is that what
22 you're saying?

23 A. I'm agreeing with it based on the
24 fact that the Council -- that typically you
25 would allocate costs consistent with a base

1 rate and so I agree with them on that.

2 Q. And if the Council approves
3 construction of NOPS and adopts that approach
4 to recovery -- cost recovery, you're
5 representing that the company has no problem
6 with that?

7 A. That's correct. That's my
8 testimony.

9 Q. Okay. Thank you.

10 I believe you also stated on page 4
11 of your rebuttal testimony that if after
12 consideration of the testimony on the docket,
13 the City Council approves construction of NOPS,
14 but does it in the context of a two-phase rate
15 case, as I read your testimony, that's
16 acceptable to the company?

17 A. That's correct. The company is
18 interested in contemporaneous recovery at
19 in-service, and if we understand Mr. Prep's
20 testimony correctly, it would accomplish that.

21 Q. Thank you.

22 Your preference -- You have no
23 problem if that's what the Council says do as
24 we go forward with the rate case, 2018 rate
25 case, and then the second phase of it would be

1 how to get a return of the costs that ENO has
2 incurred in the construction of NOPS; right?

3 A. That's correct. On the assumption
4 that we would have contemporaneous recovery at
5 in-service if it's through the base rate and a
6 second phase in of that rate, that that would
7 be acceptable.

8 Q. Now, your preference, as I read your
9 testimony, however, is that there be a modified
10 purchase power and capacity acquisition cost or
11 PPCACR; correct?

12 A. The preference is on the basis of
13 depending on which specific asset is approved
14 by the Council and the timing of which that
15 asset would be in service. You know, the
16 PPCACR rider provides that opportunity for
17 contemporaneous recovery in the absence of
18 another mechanism to get it.

19 Q. You realize and you talk about the
20 two PPCACRs that were issued for recovery of
21 cost from purchase of the Union plant and the
22 building of Nine Mile 6?

23 A. Yes. I do recognize that those
24 riders were implemented as a temporary means to
25 get the recovery of those two costs, and it's

1 my testimony that we would request to renew
2 that PPCACR rider as part of the rate case such
3 that we could recover the costs of New Orleans
4 Power Station.

5 Q. I just want to make sure we have the
6 facts straight. There was a temporary PPCACR
7 allowed to go into effect, but even it said
8 subject to effectively an immediate rate case
9 in order to move it into the base rates. Does
10 that fit your recollection?

11 A. Yeah, that's my recollection.

12 Q. But, in fact, those rate cases never
13 occurred, did they?

14 A. No.

15 Q. And would you accept that they
16 didn't occur because another docket separate
17 and apart from Air Products, Entergy Louisiana
18 and ENO entered into a settlement relating to
19 Algiers? Part of that settlement was you'd
20 defer any rate cases until 2018; is that
21 correct?

22 A. That's my general understanding,
23 yes.

24 Q. I'm a little confused by your
25 testimony on -- I'm with you -- I think we're

1 on the same page on all of this until I keep
2 reading this, quote, modified PPCACR rider,
3 which would be addressed in the rate case.
4 What modification? How is it to be modified to
5 be satisfactory to you from your perspective?

6 A. I believe that as Mr. Todd
7 explained, we would request to renew the PPCACR
8 rider as part of the combined rate case and any
9 modifications to that rider, such that it would
10 include, for example, Algiers customers, being
11 allocated costs in addition to any
12 apportionment of costs that are, you know,
13 changing the allocation to, for example, what
14 Mr. Brubaker described. That kind of
15 modification, I think, is what we're referring
16 to.

17 Q. I'm not quite sure I understood what
18 you said, but you're not making the position,
19 are you, that the PPCACR would be collected on
20 a kWh volumetric basis?

21 A. I'm not. I'm stating that the
22 Council would determine what the appropriate
23 apportionment of cost is through that rider as
24 a result of the rate case.

25 Q. But do you agree with Mr. Brubaker's

1 testimony that if you're not going to do it on
2 a cost-of-service basis, you certainly don't do
3 it on the kWh? You've got to go look at it as
4 a part of base rates so that every class is
5 treated the same based upon what percentage of
6 the base rates they're responsible for?

7 A. I'm not disagreeing with the idea of
8 reevaluating the correct allocation on the
9 PPCACR rider as a part of the rate case for the
10 recovery of New Orleans Power Station.

11 Q. And just to make sure that I can
12 skip over a lot of questions, you're suggesting
13 that whatever -- if the Council was willing to
14 do a new PPCACR, it would be part of the rate
15 case and then it would be determined in
16 accordance with how they wanted to create it?

17 A. That's what I'm saying, yes.

18 Q. Okay. Thank you.

19 And you know who Mr. Prep is? He's
20 a witness in this case for the advisors to the
21 City Council.

22 A. I did review his testimony, yes.

23 Q. Have you read his testimony?

24 A. Yes.

25 Q. And he indicates that if a two-step

1 rate increase is not fashioned -- Strike that
2 and I'll start over.

3 His testimony states that if a
4 two-step rate increase is not fashioned for
5 purpose of creating the new PPCACR, that the
6 non-fuel requirements should be allocated among
7 customer classes as an actual percentage of
8 base rate revenues. Is that correct?

9 A. Can you point to the page you're
10 reading? I apologize.

11 Q. I don't have it in front of me at
12 the moment. You've been handed a cheat sheet
13 by your counsel.

14 A. I know, but I need to view it to
15 see. I don't have his testimony committed to
16 memory and I don't want to mischaracterize what
17 he might have said.

18 Q. Well, I'm actually taking it off of
19 your testimony about Mr. Prep.

20 A. Can you point to my testimony then?

21 Q. Look at page 4 --

22 A. Okay.

23 Q. -- beginning on line 14 through
24 line 3 on page 5. And then also look at your
25 testimony on page 5, lines 8 through 13.

1 A. Okay.

2 Q. Does that refresh your memory on
3 what Mr. -- There are other references in here
4 to Mr. Prep's testimony, but I read Mr. Prep as
5 adopting what I thought you were saying and
6 what I know Mr. Brubaker is saying or going to
7 say this afternoon, which is that if you don't
8 do the two-step process, then if you're going
9 to do a rider, it should be associated with and
10 allocated among customer classes as an equal
11 percentage of base rate revenue?

12 A. In my testimony, I think I'm saying
13 that I agree with Mr. Brubaker that the
14 allocation of the costs should be examined as
15 part of the rate case. And so that's what I'm
16 agreeing with.

17 Q. And it would not be -- The rider
18 that you're seeking would not be based on a kWh
19 volumetric basis?

20 A. My testimony is saying I'm not
21 endorsing any particular way to allocate the
22 cost, that I would defer to the rate case and
23 the outcome of that rate case to determine the
24 appropriate cost for allocation.

25 Q. But you're a person that is educated

1 in rate matters, aren't you?

2 A. Certainly.

3 Q. And I thought you had stated in
4 earlier questions that, in fact, you wouldn't
5 allocate in a rate case. You wouldn't get a
6 new PPCACR based on volumetric consumption,
7 kWh?

8 A. I think we would propose to allocate
9 that based on a percentage of base rate, for
10 example.

11 Q. That's fine. Thank you.

12 You got any other ways because you
13 said "just for example"? You got any other
14 proposals?

15 A. Not at this time.

16 Q. Thank you.

17 Would you agree with me that
18 non-fuel requirements associated with
19 generation facilities as a matter of general
20 ratemaking are allocated to customer classes
21 given some measure of contribution of the peak
22 demand as a rate case or is it equal percentage
23 of base rate revenues if they're not?

24 A. I would agree that typically
25 capacity related costs on an embedded class

1 cost-of-service study would be allocated using
2 a demand allocator.

3 Q. Because the idea is you assign the
4 cost to the person who needed it, who caused
5 it; right?

6 A. That's correct, but that doesn't
7 necessarily translate into how the ultimate
8 rates would fall out. Generally regulatory
9 bodies take into consideration a lot of things
10 when we set the actual rate and it could vary
11 when compared to the actual cost that was
12 allocated to them based on an embedded basis.

13 Q. I think that's called settlement
14 process?

15 A. Or litigation process. It depends
16 on how lucky you are.

17 MR. EDWARDS:

18 I thank you for your time. I
19 appreciate it.

20 JUDGE GULIN:

21 Thank you, Mr. Edwards.

22 MR. EDWARDS:

23 I have no further questions.

24 JUDGE GULIN:

25 Who will be crossing for advisors?

1 MS. HAND:

2 I will, Your Honor.

3 JUDGE GULIN:

4 Ms. Hand.

5 EXAMINATION BY MS. HAND:

6 Q. Good morning, Ms. Lovorn-Marriage.
7 I'm Emma Hand with the Council's utility
8 advisors.

9 And do you have in front of you a
10 copy of all your testimony?

11 A. Yes, I do.

12 Q. Great.

13 Turning to your rebuttal testimony
14 at page 3, lines 12 through 14, you state that
15 The direct testimony of the Council's advisors
16 recognizes that the principles of sound
17 regulation dictate that ENO has a right to a
18 reasonable opportunity to recover its
19 investment in a fair return; is that correct?
20 (As read.)

21 A. That's correct. I believe I'm
22 citing Mr. Vumbaco's testimony in that
23 statement.

24 MR. GUILLOT:

25 Give me one second. I'll swap out.

1 MS. HAND:

2 Sure.

3 (Whereupon a pause occurred in the
4 proceedings.)

5 EXAMINATION BY MS. HAND:

6 Q. And isn't it true that a reasonable
7 opportunity to recover your investment and a
8 fair return is not the same thing as a
9 guarantee of a dollar-for-dollar recovery?

10 A. That's fair.

11 Q. It simply means, doesn't it, that
12 the regulator sets a rate that should have a
13 reasonable chance of producing the revenue
14 needed to meet the revenue requirement?

15 A. Yes.

16 Q. And isn't it true that utilities
17 with regulated rates typically either over
18 collect or under collect on their revenue
19 requirement in any given year?

20 A. That's correct.

21 Q. Turning to page 4 of your testimony,
22 lines 18 through 22, you state that If the
23 proposed recovery mechanism does not allow for
24 contemporaneous in-service implementation,
25 regulatory lag on a 211 to \$240 million

1 investment will greatly reduce ENO's
2 opportunity to earn its allowed fair return on
3 that investment creating unacceptable financial
4 uncertainly for ENO. (As read.)

5 Did I read that correctly?

6 A. Yes, you did.

7 Q. Okay. And then also on page 4 at
8 lines 6 through 9, you state that If I have
9 correctly restated the manner in which the
10 advisors' two-step cost recovery proposal would
11 work, the company agrees it could provide a
12 sound mechanism for the recovery of the revenue
13 requirements associated with the alternative
14 peaker; is that correct? (As read.)

15 A. That's correct.

16 Q. So it is not your position, then,
17 that the advisors' two-step proposal would
18 create regulatory lag and unacceptable
19 financial uncertainly for ENO, is it?

20 A. That is my position. I agree with
21 that statement.

22 Q. That the two-step proposal does not
23 create regulatory lag?

24 A. That's right.

25 Q. Great.

1 MS. HAND:

2 That's all I have, Your Honor.

3 Thank you.

4 JUDGE GULIN:

5 Thank you.

6 Any redirect?

7 EXAMINATION BY MR. GUILLOT.

8 Q. Ms. Lovorn-Marriage, does a rider
9 translate into guaranteed recovery for the
10 utility?

11 A. Not necessarily.

12 Q. Can you explain that a little more?

13 A. The rider allows you to get recovery
14 of the specific cost in which you're asking
15 recovery through the rider. It doesn't take
16 into consideration all the other costs that
17 might be occurring through normal operation of
18 the business.

19 Q. Can we turn back to the FERC
20 settlement agreement. I think it was
21 Alliance/350 -- What was it, 350-4?

22 JUDGE GULIN:

23 Four, yes.

24 EXAMINATION BY MR. GUILLOT:

25 Q. And Ms. Miller directed you to

1 page 14, Paragraph 3, and she was asking you
2 some questions about whether reliability was
3 considered in these elements. Can you read
4 Subpart F into the record?

5 A. The whole section?

6 Q. Just Subpart F.

7 A. Oh. Consistent with sound utility
8 practices and planning principles. (As read.)

9 Q. In your experience,
10 Ms. Lovorn-Marriage, is the consideration of
11 reliability consistent with sound utility
12 practice and planning principles?

13 A. Absolutely.

14 MR. GUILLOT:

15 No more questions.

16 JUDGE GULIN:

17 Ms. Stevens-Miller, any questions?

18 MS. MILLER:

19 No, Your Honor.

20 JUDGE GULIN:

21 Mr. Edwards?

22 MR. EDWARDS:

23 No, Your Honor.

24 JUDGE GULIN:

25 Ms. Hand?

1 MS. HAND:

2 No, Your Honor.

3 JUDGE GULIN:

4 Thank you very much,

5 Ms. Lovorn-Marriage.

6 And then let's take about a ten-,
7 12-minute break. Come back at -- let's
8 make it about 18 minutes after the hour.

9 (Whereupon a recess was taken.)

10 JUDGE GULIN:

11 Back on the record.

12 Mr. Rice, I'm going to ask you to
13 stand, face the court reporter, and take
14 the oath.

15 CHARLES L. RICE, JR.,
16 after having been duly sworn by the
17 above-mentioned Certified Court Reporter, was
18 examined and testified as follows:

19 JUDGE GULIN:

20 Who is crossing for --

21 MR. WIYGUL:

22 Sierra Club?

23 JUDGE GULIN:

24 -- Sierra Club?

25 MR. WIYGUL:

1 That would be me.

2 JUDGE GULIN:

3 Okay, Mr. Wiygul.

4 EXAMINATION BY MR. WIYGUL:

5 Q. Good morning, Mr. Rice.

6 A. Good morning.

7 Q. I'm Robert Wiygul here on behalf of
8 the Sierra Club. Hoping you can help me out
9 understanding a few things this morning.

10 A. Sure.

11 Q. So, now, I want to make sure I'm
12 correct in understanding this. Entergy is
13 telling the City Council what they should
14 approve in this docket in this case is what you
15 call the NOPS; right?

16 A. I don't think we're telling the City
17 Council anything. We have made a request of
18 the City Council that they approve a peaking
19 unit at our Michoud location, but we're not
20 telling them anything.

21 Q. Well, let me -- What you're saying
22 is that this is what the City Council should
23 approve is the 226 megawatt combustion turbine;
24 is that correct?

25 A. If your question is what is our

1 desire that they approve, yes, we would prefer
2 that they approve the 226 megawatt unit.
3 However, if they choose not to, we have also
4 put on the table the option of approving a
5 hundred and twenty-eight megawatt unit.

6 Q. Right. So I'm just saying what
7 Entergy is saying, this is what the Council
8 should approve is the 226 megawatts, the big
9 one?

10 A. We have made a request that they
11 approve the 226 megawatt unit, but we have also
12 put forth an alternative of a hundred and
13 twenty-eight megawatt unit.

14 Q. All right. Did you say in your
15 testimony that that's the one that should be
16 constructed, the NOPS unit?

17 A. Is there a particular page in my
18 testimony you're referring to?

19 Q. I think -- Yeah, I think there
20 probably is. I'm not sure I can locate that
21 right this minute, but subject to check, we
22 might come back to that.

23 Now, based on your most recent load
24 forecast looking at the year 2026, the Council
25 says yes to the New Orleans Power Station, then

1 that's going to leave Entergy with about
2 hundred and twenty-six megawatts roughly of
3 generating capacity more than your peak load.
4 That's according to your last load forecast.

5 MR. CRAGIN:

6 Your Honor, I'm going to object to
7 the extent that it's vague. He referred
8 to the New Orleans Power Station, and
9 we've used that term to the refer to
10 either/or the 226 megawatt or the 128.

11 MR. WIYGUL:

12 I wasn't aware of that, but let's
13 say the combustion turbine, the big one.

14 MR. CHARLES RICE:

15 I mean, I can't do the math in my
16 head. Or I could, but I think right now,
17 the total deficit is about 324 megawatts.
18 There's on the table a 226 megawatt unit.
19 So if you do the math, whatever that
20 works out to, kind of is what it is.

21 MR. WIYGUL:

22 Right.

23 EXAMINATION BY MR. WIYGUL:

24 Q. I think the time frame I was talking
25 about was, say, that first ten years to 2026.

1 Let's look at your supplemental and amending
2 testimony, I believe at 3-4. I don't think we
3 need to argue about this. I just think you
4 stated you've got about a hundred megawatt
5 capacity need for the first ten years?

6 A. What page are you referring to?

7 Q. I believe I was looking at your
8 supplemental and amending testimony.

9 A. Page number, please.

10 Q. Three-four.

11 A. I don't see a page 3-4 there.

12 Q. Three to 4.

13 A. I'm sorry?

14 Q. Three to 4.

15 JUDGE GULIN:

16 Pages 3 through 4.

17 MR. CHARLES RICE:

18 I'm sorry. I thought you meant
19 page 3.4 or 3-4.

20 EXAMINATION BY MR. WIYGUL:

21 Q. I was just looking at the bottom of
22 the page there, the last sentence on page 3.

23 A. So I'm looking at my supplemental
24 and amending direct testimony of Charles L.
25 Rice, Jr., on behalf of Entergy New Orleans,

1 July 2017, page 3, the last sentence reads,
2 That e-mail previewed some of the benefits for
3 customers that the alternate peaker will offer.
4 (As read.)

5 Q. I'm sorry. I may have misdirected
6 you on which testimony that we're talking about
7 here. Let me ask this. It's just a sentence
8 from your testimony. As Mr. Cureington
9 explains, the company has an overall capacity
10 need of approximately 100 megawatts for the
11 first ten years of the planning process. (As
12 read.)

13 I mean; is that correct? I don't
14 want to argue about this. I'm just looking at
15 your testimony. That's what I thought it said.

16 A. What page are you referring to?

17 Q. You know, I'm sorry. I do not have
18 this one marked here.

19 MR. CRAGIN:

20 Your Honor, I may be able to speed
21 this up. I think he's looking at page 4,
22 line 23, is where it starts.

23 MR. CHARLES RICE:

24 Of the direct?

25 MR. CRAGIN:

1 It states, As Mr. Cureington
2 explains, the company has an overall
3 capacity need of approximately
4 100 megawatts for the first ten years of
5 the planning horizon, which grows to
6 248 megawatts in the second ten years of
7 the planning horizon. (As read.)

8 MR. WIYGUL:

9 That's right.

10 EXAMINATION BY MR. WIYGUL:

11 Q. So I was asking about that first ten
12 years through 2026, and I think we can agree,
13 now, your testimony says you've got a hundred
14 megawatt capacity need during that time period
15 according to your latest forecast that you got
16 in January 2017?

17 A. That's what the testimony says.

18 Q. That's right. And so the CT unit,
19 the big one, is 226 megawatts, so you would
20 have about hundred and twenty-six megawatts of
21 surplus there; is that correct?

22 A. I don't know if you can call it
23 surplus because what we have -- not only do we
24 have to have capacity, we also need to have
25 peaking capacity along with reserve capacity.

1 So for you to say that there's a hundred and
2 twenty-six megawatt surplus, I don't think
3 that's totally accurate.

4 And let me also caveat that by
5 saying that I'm not an expert in that area nor
6 am I an engineer, but I am pretty familiar with
7 the fact that it's about a total of
8 324 megawatts if you take into account our
9 capacity need, our peaking capacity need, as
10 well as our reserve capacity need.

11 Q. I was just -- I was using capacity
12 need the way that you used it in your
13 testimony, which I figured you would know about
14 that. Okay? That's all I was trying to
15 accomplish there.

16 So the big plant, the 226, that's
17 going to run about -- based on your estimate,
18 about \$230 million; correct?

19 A. Roughly.

20 Q. And Entergy is going to expect that
21 the ratepayers are going to be the ultimate
22 backstop to pay that \$230 million over time
23 after you have rate cases and all that sort of
24 thing; correct?

25 A. I'm not sure what you mean by the

1 term "backstop," but under the regulatory
2 compact, ratepayers are typically tasked with
3 paying the regulatory requirement.

4 Q. That's right. So if, for example,
5 that construction costs went over \$230 million,
6 Entergy is still going to expect the ratepayer
7 to pay whatever it costs?

8 A. I believe that would depend on
9 whether or not the City Council approves that
10 overrun because they have the right to review
11 all costs that we incur. So if they determine
12 that it's not prudently incurred, then we
13 wouldn't recover those costs.

14 Q. That's right. But I was just asking
15 you what Entergy is going to expect?

16 A. I mean, of course, we would ask the
17 City Council to approve those costs, but,
18 again, they have the right to approve whether
19 or not we actually get to recover those costs.

20 Q. That's right. Would Entergy be
21 willing to offer the ratepayer a cap on the
22 cost of these proceedings, this generating
23 plant, so that the ratepayer wouldn't be at
24 risk more than 230 million?

25 A. What we are required to do and what

1 we are willing to do is to comply with the
2 regulatory compact as it is written.

3 Q. So you would not be willing to offer
4 the ratepayer a cap on that construction cost?

5 A. Again, we operate under the terms of
6 the regulatory compact and what that sets forth
7 is what we will comply with.

8 Q. It's fair to say now that the
9 combustion turbine, the big one, is more
10 expensive than the smaller unit, what we've
11 heard called the RICE units; is that correct?

12 A. It's fair to say that it costs more.

13 Q. It does cost more. And so that
14 Entergy's shareholders would make more money
15 off of that larger unit; would they not?

16 A. I don't think that's accurate.

17 Q. It's fair to say you're going to
18 have more capital costs in that unit, aren't
19 you?

20 A. It is more capital, but that doesn't
21 necessarily mean that we're going to actually
22 make a profit on that. We're not guaranteed a
23 profit.

24 Q. You would be expecting to get a
25 return on equity on the capital investment,

1 wouldn't you?

2 A. I think we expect to receive a fair
3 return on our investment.

4 Q. Let's talk about this now. Entergy
5 had a new load forecast in January of 2017, if
6 I remember that correctly?

7 A. Yes.

8 Q. And that forecast showed that your
9 projections to customer demand have moderated,
10 let's say, an average of 40 megawatts per year
11 over that projection; is that correct?

12 A. That sounds accurate.

13 Q. And that's because customer use went
14 down?

15 A. Well, that's a forecast, meaning
16 that we're projecting that customer usage will
17 not be what we anticipated it to be previously.

18 Q. One of the reasons that that
19 forecast went down is because your use per
20 customer went down, didn't it?

21 A. Well, you're talking in a manner
22 that it actually occurred. Again, it's a
23 forecast, so we're forecasting that there is
24 the potential for customer usage to decrease.

25 Q. All right. And so this proceeding

1 was staged so that you could look at things
2 again based on that information that your load
3 forecast was going down; correct?

4 A. Yeah. We had the desire to be
5 transparent, which we always are, and based
6 upon that, we thought it was in the best
7 interest of the customers that we take a look
8 as to whether or not -- or make a determination
9 of what would be in their best interest.

10 Q. Now, the City Council has given
11 Entergy some goals to try to reach for
12 demand-side management. Do you recall that?

13 A. Yes.

14 Q. And demand-side management, I mean,
15 broadly speaking, it's about getting customers
16 to use electricity or time their use of
17 electricity and things of that nature; correct?

18 A. I don't know if I'd necessarily
19 agree with your definition, but --

20 Q. Broadly speaking?

21 A. If you would allow me to finish my
22 answer before you --

23 Q. I'm sorry.

24 A. -- interject, that would be nice.

25 Demand-side management is really

1 designed to encourage customers to use less
2 electricity. Sometimes they're compensated for
3 that, sometimes they're not. Companies put in
4 place various programs to encourage customers
5 to use less electricity.

6 Q. Gotcha.

7 Now, I don't know if you were here
8 for Mr. Cureington's testimony or not --

9 A. Parts of it.

10 Q. -- Mr. Rice.

11 A. Parts of it.

12 Q. Yeah. Fair to say, I think,
13 Mr. Cureington is pretty skeptical about
14 meeting the City Council's goals on demand-side
15 management. That would be fair to say,
16 wouldn't it?

17 A. Which goal are you talking about?

18 Q. I'm talking about the 2 percent
19 demand-side management goal.

20 A. Well, I personally have reviewed a
21 report, and it was some time ago, prepared
22 by -- I believe it was Navigant, which
23 indicated that the 2 percent goal, one, would
24 be very difficult to reach and, two, would be
25 extremely expensive to meet and would seriously

1 cost our customers significantly more than it
2 would cost us to build either the 226 megawatt
3 unit or the hundred and twenty-eight megawatt
4 unit.

5 Q. So I think the answer is yes,
6 Entergy is skeptical about meeting that goal;
7 correct?

8 A. I would say that we think it would
9 be very difficult to achieve that goal.

10 Q. Yeah. And Entergy is really pretty
11 much determined that it's not going to be able
12 to meet that goal. I think you'd agree with
13 that?

14 A. I don't think anyone has made any
15 definitive statement that we can't meet the
16 goal. I just would tend to agree with the
17 experts that it would be very difficult to
18 achieve that goal.

19 Q. So assume with me for a moment that
20 you're wrong about that and that Entergy could
21 meet the goal that the City Council set or even
22 meet, say, half that goal. That would shave
23 some more off your capacity need in the future;
24 wouldn't it?

25 A. If that goal was met, yes, it would

1 shave the need, yes.

2 Q. That hundred megawatt capacity need
3 through 2026, if we talk about that, would go
4 down more from there?

5 A. If, you know, customers complied and
6 there was success in achieving the goal, yes,
7 it would go down.

8 Q. But you're still telling the Council
9 it should approve the 226 big power plant,
10 aren't you?

11 A. What we have asked the Council to do
12 is approve a unit to allow us to provide grid
13 stability, grid reliability, to ensure that
14 we're able to meet our customers' needs in the
15 future. Us requesting that the Council approve
16 this plant is really about ensuring that we're
17 able to provide customers power when they need
18 it most. You know, regardless of whether or
19 not I believe we're able to meet that DSM goal
20 would have absolutely no bearing on whether or
21 not we would have a reliable system if we're
22 not allowed to build one of the alternatives
23 that we put on the table.

24 Q. Mr. Rice, let me ask you about this.
25 I think -- I hope you'll agree with me that the

1 economic projections that Entergy has made for
2 either the big power plant out there or the
3 smaller RICE units, assume that it's going to
4 be selling some of the power from that plant,
5 is that correct, into the MISO South market?

6 A. If there are occasions where MISO's
7 asked us to run the plant in order to ensure
8 the reliability of the greater system, yes,
9 that will be sold into the MISO system;
10 however, the best part about that is, one, we
11 will not make money on that; two, if we do
12 receive compensation from MISO as a result of
13 that, those are monies that we would use to
14 reduce the cost that our customers pay for
15 power.

16 Q. All right. So that's the money that
17 you make from capacity sales is going to
18 mitigate risk to the ratepayers. That's what
19 you're telling me, isn't it?

20 A. Money that we receive if MISO asks
21 us to run this plant for the greater good --
22 I'll just use that term -- and we are
23 compensated for that, those are monies that
24 will be used to credit customers and reduce
25 their costs.

1 Q. That's right. And your projections
2 about the price at which those sales would be
3 made, I mean, it's fair to say those are
4 considerably higher than what it is right now;
5 is that correct?

6 A. I would have to defer to
7 Mr. Cureington on that. I'm not sure exactly
8 what prices were used in his estimations or in
9 any estimations.

10 Q. So you would defer to Mr. Cureington
11 about that?

12 A. Yes, I would.

13 Q. Okay. And so would you defer to
14 Mr. Cureington about generally what's going to
15 happen in the MISO market there?

16 A. In what respect?

17 Q. Well, let me just ask you. Didn't
18 you tell the Council in your application in
19 this case is that capacity prices in the MISO
20 South market are going to sharply increase?

21 A. I believe that was in reference to
22 as the market approaches equilibrium, meaning
23 that right now, as I understand it, there is a
24 surplus in the MISO market. As that surplus
25 becomes less and the market approaches

1 equilibrium, those costs should rise up. I'm
2 not an expert in economics, but, you know, as
3 demand rises and supply decreases, typically
4 costs rise.

5 Q. Now, this is --

6 MR. WIYGUL:

7 I have a better reference this time,
8 Mr. Cragin.

9 EXAMINATION BY MR. WIYGUL:

10 Q. I'm looking at your 6/20/16
11 testimony and I'm looking at page 3, no dashes
12 or anything of that nature. And I'm looking at
13 lines 13-16.

14 A. Thirteen through 16?

15 Q. Sixteen.

16 A. Okay.

17 Q. You see that sentence?

18 A. Can you start the sentence for me?

19 Q. ENO's need comes at a time -- (As
20 read.)

21 A. All right. I'm sorry. Maybe I'm
22 missing it. You did say page 3?

23 Q. I did say page 3.

24 MR. CRAGIN:

25 This is direct testimony.

1 MR. WIYGUL:

2 6/20/16, the direct testimony.

3 MR. CHARLES RICE:

4 I'm looking at direct testimony of
5 Charles L. Rice, Jr., June 2016, page 3.
6 You said, line 16.

7 MR. CRAGIN:

8 Starting at line 13.

9 MR. CHARLES RICE:

10 Starting at line 13.

11 Okay. Got it.

12 EXAMINATION BY MR. WIYGUL:

13 Q. I think I would like you to read
14 that sentence for us.

15 A. Sure. It reads, ENO's needs -- need
16 comes at a time when market equilibrium is fast
17 approaching in MISO South, which is a point at
18 which there will no longer be excess capacity
19 available for purchase in the wholesale market,
20 causing capacity prices to sharply rise. (As
21 read.)

22 Q. And so, I mean, that's really no
23 equivocation here. You're telling the Council
24 that prices are going to rise in that sentence,
25 aren't you?

1 A. Yes.

2 Q. Now, and if those prices don't go up
3 as you told the Council, then the ratepayer is
4 going to have to pay for more cost of this
5 plant given that the Council approves it in the
6 rate case and all of that?

7 A. I'm not sure I understand your
8 question.

9 Q. Well, you're counting -- You told us
10 earlier that those capacity sales, right, are
11 going to be to the benefit of the ratepayer;
12 correct?

13 A. That's correct, if --

14 Q. That's right.

15 A. If MISO asks us to run the plant to
16 support the greater market.

17 Q. So those things are uncertain.
18 You're not as certain as what's been projected
19 here; correct?

20 A. I mean, I can't predict the future.
21 I mean, I don't know when and if MISO would ask
22 us to run the plant five years from now, three
23 years from now, two years from now.

24 Q. So there's an economic risk to the
25 ratepayer there. Wouldn't you agree with me?

1 A. I can't say I agree with you.

2 Q. Now, so would Entergy agree to hold
3 the customer harmless, in other words, to
4 guarantee that the prices that you have talked
5 about here in the MISO South market are going
6 to sharply increase?

7 A. Ask the question again, please.

8 Q. Would Entergy be willing to make a
9 commitment to hold ratepayer harmless if the
10 capacity prices in the MISO South market did
11 not sharply increase as you told the Council
12 that they would?

13 A. I can't make such a guarantee.

14 Q. All right. Thank you.

15 You know, as I understand it,
16 Mr. Rice, Entergy --

17 A. Can I add something to that?

18 Q. You certainly may.

19 A. Sure. I can't make such a guarantee
20 because I can't predict the future. What we're
21 attempting to do with the construction of this
22 plant is to mitigate risk. We're attempting to
23 mitigate risk not only to our system to ensure
24 that we have a reliable system, that we don't
25 have cascading outages, but also to mitigate

1 the risk to our customers.

2 Thirty percent of my customers live
3 at or below the poverty line. That is
4 something that affects every decision that we
5 make as a company. So we take into account the
6 factors that affect our customers on a daily
7 basis. I live here. I was born here. My
8 parents are ratepayers, so, you know, it's
9 something that we take very, very seriously
10 here at Entergy. So, again, we're attempting
11 to, one, make sure we have a stable, reliable
12 electric grid, but also to mitigate the risk to
13 our customers.

14 Q. Yes, I fully appreciate that,
15 Mr. Rice. So let's talk about that.

16 So what Entergy is telling the
17 Council in this application, you're looking at
18 a situation where your system is vulnerable to
19 uncontrolled cascading outages; correct?

20 A. I'll say currently we're facing
21 risk, yes.

22 Q. Well, I mean, the way it's been
23 described in there, it sounds almost
24 catastrophic; is that correct?

25 A. If you could point me to where the

1 word "catastrophic" was used. I don't think
2 we've ever used that term, but I would agree
3 with you that currently, at this particular
4 time, there's a risk to our system, yes.

5 Q. But you can't characterize that risk
6 as a big risk or a small risk?

7 A. I don't know if I would use the word
8 "big" or "small." I would use the term that
9 right now, because we do not have local
10 generation here in the City of New Orleans,
11 that our system bears risk. There are risks
12 that could be associated with a hurricane.
13 There are risks that could be associated with
14 an overload of the system. There are risks
15 that could be load shed events. There are a
16 number of risks.

17 The risk that we face right now is
18 if there are certain contingencies that occur,
19 there is a possibility of cascading outages
20 here in the City of New Orleans, and it would
21 be very, very significant and it would have a
22 very significant impact on not only our
23 customers, but also businesses here in the City
24 of New Orleans. And there are people that
25 depend on Entergy every day to ensure when they

1 flip that light switch, that the lights come
2 on. And there are people that have medical
3 issues that are depending on Entergy to provide
4 the power to make sure they're able to have
5 those medical issues handled.

6 JUDGE GULIN:

7 Mr. Rice, sorry to interrupt you.

8 You've got about five minutes left,
9 so go on to the next question.

10 EXAMINATION BY MR. WIYGUL:

11 Q. And how long have we been in that
12 dangerous situation, the uncontrolled cascading
13 outages?

14 A. Since the Michoud 1 and 2 were no
15 longer producing power.

16 Q. All right. So -- And really, I
17 mean, when we get right down to it, future
18 capacity need is not that relevant to what
19 you're proposing here. You're saying you have
20 to have a power plant in the city in Orleans
21 Parish to address your reliability issues. It
22 doesn't really matter whether you need the
23 capacity in the future, and that's basically
24 correct, isn't it?

25 A. I would disagree with that.

1 Q. Now, you do have folks in your
2 company who work with transmission on a daily
3 basis?

4 A. Yes.

5 Q. And I think you'd agree with me that
6 those are good people?

7 A. And very smart people, also.

8 Q. And very smart people, I'm sure.

9 And if you ask them to address a
10 way -- to find a way to address that
11 uncontrolled cascading outage situation through
12 transmission improvements, they could tell you
13 how to do that and how much it would cost,
14 couldn't they?

15 A. I would say they probably already
16 have done that. However, the way to address
17 this via transmission, I believe, based upon
18 the analysis, would be extremely difficult and
19 extremely costly, and it's not guaranteed that
20 we would be able to, one, obtain the right of
21 way to construct whatever facilities will need
22 to be constructed in order for there to be a
23 true transmission solution because this is a
24 transmission constrained area. It's an urban
25 area. There's not a lot of land available. So

1 just relying on transmission would be probably
2 very difficult.

3 Q. But you're saying you actually have
4 done that analysis of how much it would cost
5 and how long it would take?

6 A. I don't know if we've done analysis
7 of how long it would take, but we've looked at
8 a myriad of possibilities, but, again, based
9 upon the analysis that was performed by the
10 experts, it's been determined that the NOPS
11 unit is, one, the most cost effective option
12 for our customers; and, two, will provide the
13 best grid reliability and stability for our
14 system.

15 Q. All right. Thank you, Mr. Rice.

16 One other thing for you here. Is
17 black start capability for this -- whatever
18 unit you might build there, important to
19 Entergy?

20 A. Black start capability is something
21 that will provide us the capability to start
22 this unit in the event of a catastrophic event.
23 If there's a catastrophic event, sure, it will
24 be very, very important.

25 Q. So the big one, the CT unit, the

1 226 megawatt unit you propose, it does not have
2 black start capability?

3 A. The original proposal did not have
4 black start capability, that's correct.

5 Q. Does the proposal now have black
6 start capability?

7 A. Yes, it does.

8 Q. It does? When was that added?

9 MR. CRAGIN:

10 I'm sorry. Can we get a
11 clarification on whether you're talking
12 about the proposal with regard to the CT
13 or the proposal --

14 MR. WIYGUL:

15 The CT. I'm talking about the CT
16 unit now.

17 MR. CHARLES RICE:

18 That did not have black start
19 capability.

20 EXAMINATION BY MR. WIYGUL:

21 Q. And it still doesn't?

22 A. No, it does not.

23 Q. But you are telling the Council that
24 that's the one that they should approve?

25 A. That would be our preference, yes.

1 MR. CRAGIN:

2 Your Honor --

3 MR. WIYGUL:

4 Thank you, Mr. Rice. I don't have
5 any other further questions.

6 JUDGE GULIN:

7 Thank you, Mr. Wiygul.

8 Ms. Stevens Miller.

9 MS. MILLER:

10 Could I have just a moment, Your
11 Honor?

12 JUDGE GULIN:

13 Sure.

14 MS. MILLER:

15 Your Honor, I believe that my
16 questions would be largely redundant of
17 Mr. Wiygul, so I'm going to waive my
18 time.

19 JUDGE GULIN:

20 Okay.

21 And Ms. Harden.

22 EXAMINATION BY MS. HARDEN:

23 Q. Good afternoon, Mr. Rice. We've met
24 before. I'm Monique Harden, attorney with Deep
25 South Center for Environmental Justice.

1 A. Good morning.

2 Q. How are you?

3 A. I'm doing great.

4 Q. Okay. Mr. Rice, do you know whether
5 the location selected for the CT gas plant or
6 the alternative RICE gas engines is a high
7 flood risk area?

8 A. I can't state specifically, but what
9 I can tell you is that all of our plans will
10 comply with all federal, state, and local
11 regulations and that --

12 Q. That's not my question.

13 MS. HARDEN:

14 Your Honor, I have limited time
15 here.

16 MR. CRAGIN:

17 Your Honor, let him finish his
18 response, please.

19 JUDGE GULIN:

20 I think he was being responsive,
21 yes.

22 You can -- Are you finished?

23 MR. CHARLES RICE:

24 I don't think -- Well, I mean, what
25 I was saying was our plant -- this plant

1 will comply with all federal, state, and
2 local regulations. If there is some
3 specific flood mitigation that needs to
4 be put in place per the law, we will
5 comply with that.

6 EXAMINATION BY MS. HARDEN:

7 Q. Is it a concern for you that Entergy
8 power plants in Louisiana are located within
9 three miles of predominantly African-American
10 communities?

11 A. Does that concern me?

12 Q. Uh-huh (indicating affirmatively).

13 A. I would say that -- as with this
14 plant, that when this plant was constructed, I
15 think it was the '50s or the '60s, that area
16 was marshland, still is marshland. There was
17 not a development around it, and I think if you
18 actually looked at the records and the facts,
19 the area was probably predominantly Caucasian.

20 Now, what has gone on since that
21 time, I can't really specify, but I guess it's
22 really akin to what happened with the airport.
23 When that airport was originally built, there
24 was really nothing around it, but communities
25 developed around it. So I think we have a

1 similar situation here.

2 Q. Is it a concern for you?

3 A. I would say this. We operate our
4 plants in accordance with all federal, state,
5 and local laws. We comply with all EPA
6 standards and those are designed to protect
7 human health, and we will continue to operate
8 in such a manner.

9 So, you know, and not to really
10 personalize this, but, you know, I live in
11 Algiers. I live in a neighborhood that's
12 directly across the river from a number of
13 refineries. I live in those areas. My kids
14 have been raised in that area and we haven't
15 experienced anything. So, you know, from my
16 aspect, I believe that plants are operated
17 according to the law within EPA standards that
18 are designed to protect environmental health
19 and personal health. I believe there really
20 shouldn't be -- Of course people should be
21 concerned about it, but I think from my
22 perspective, you know, it's -- I would have to
23 tell you that, you know, it's not really that
24 much of a concern because I know we're going to
25 operate within EPA standards.

1 Q. Did you participate in the
2 negotiations on the settlement agreement that
3 terminated the Entergy System Agreement?

4 A. Did I directly participate where I
5 was in the room? No, I did not.

6 Q. Did you supervise or oversee or
7 direct any negotiations from Entergy New
8 Orleans in that settlement agreement?

9 A. Yes, ma'am.

10 Q. I'd like you to take a look at your
11 direct testimony at page 6, lines -- I'll let
12 you get there. Are you on page 6, Mr. Rice?

13 A. Yes, ma'am.

14 Q. So if you can hone in line 17
15 through 20, and let me know when you're --

16 A. Seventeen starts with
17 "considerations"?

18 Q. "In accordance" -- "And in
19 accordance" or "In accordance with the
20 Council's directive."

21 A. Yes, ma'am.

22 Q. If you can read that to --

23 A. Sure.

24 Q. Okay.

25 A. And in accordance with the Council's

1 directive in Resolution R-15-524, which
2 directed the company to use reasonable,
3 diligent efforts -- and let me go back and say
4 use -- it's got open quotation marks,
5 reasonable, diligent efforts, close quotation
6 marks -- to pursue development of a peaking
7 resource in the city following termination of
8 the Entergy System Agreement. The site
9 selection process involved identification of
10 potential locations for the development of new
11 generation in Orleans Parish, period. (As
12 read.)

13 Q. Thank you.

14 So isn't it true, though, that
15 before the City Council passed Resolution
16 15-524 that Entergy New Orleans had already
17 reached an agreement on the settlement in
18 principle to do this?

19 A. Well, I'd have to know the dates,
20 but I would say that there was no prior
21 agreement with the City Council or anyone that
22 we would do anything specific.

23 MS. HARDEN:

24 Your Honor, may I -- the settlement
25 agreement that's already been entered for

1 cross by Alliance for Affordable Energy
2 and 350.org --

3 EXAMINATION BY MS. HARDEN:

4 Q. Mr. Rice, I'd like you to take a
5 look at that settlement agreement because it
6 might refresh your memory for my question.

7 JUDGE GULIN:

8 Do you want me to give him one, or
9 do you have one?

10 MS. HARDEN:

11 Yeah. I really -- I didn't want to
12 duplicate the same document in the
13 record --

14 JUDGE GULIN:

15 Okay. That's fine.

16 MS. HARDEN:

17 -- but it's the same document. I
18 trust you.

19 MR. CHARLES RICE:

20 Can you give me a copy, please --

21 MS. HARDEN:

22 Sure.

23 MR. CHARLES RICE:

24 -- to make sure we're on the same
25 document?

1 MS. HARDEN:

2 Yeah. If you could, please -- At
3 the header, it's marked DSCEJ Exhibit
4 number, but we're not going to enter it
5 because it's already been entered in the
6 record.

7 MR. CRAGIN:

8 Your Honor, can I get a
9 clarification? Has the whole settlement
10 agreement been entered into the record?
11 I remember the resolution was.

12 MS. HARDEN:

13 No, it hasn't.

14 MS. MILLER:

15 No, it has not. I believe the
16 advisors reserved based on the whole
17 settlement agreement being provided. We
18 can substitute this --

19 JUDGE GULIN:

20 Why don't we just go ahead and call
21 this your exhibit?

22 MS. HARDEN:

23 Okay. DSCEJ -- I have lost the
24 exhibit number.

25 JUDGE GULIN:

1 We'll call it DSCEJ 6 --

2 MS. HARDEN:

3 Six? Okay.

4 JUDGE GULIN:

5 -- at this point for cross.

6 MS. HARDEN:

7 For cross, that's great.

8 EXAMINATION BY MS. HARDEN:

9 Q. Mr. Rice, if you could look at
10 page 5 of the settlement agreement -- Well,
11 first of all, can you identify this settlement
12 agreement? Have you seen it before?

13 A. Yes, I have.

14 Q. Can you identify what it is for the
15 record?

16 A. I will read the title. It is a
17 Settlement Agreement before the Federal Energy
18 Regulatory Commission, United States of
19 America. And I can tell you that this was a
20 settlement agreement to terminate the Entergy
21 System Agreement.

22 Q. Thank you, sir.

23 If you can go to page 5 of that
24 document, settlement agreement.

25 A. Okay.

1 Q. The first full sentence of that
2 page 5 that begins, Following the July 9th,
3 2015, settlement conference. (As read.)

4 JUDGE GULIN:

5 I'm sorry. I'm not there.

6 MR. CHARLES RICE:

7 Yeah. I don't see it.

8 MS. HARDEN:

9 I'm sorry. We're looking at page
10 5 --

11 MR. CHARLES RICE:

12 Okay.

13 MS. HARDEN:

14 -- and the first full sentence that
15 begins, Following the July 9th, 2015,
16 settlement conference. (As read.)

17 MR. RICE:

18 Okay. I got it. I'm sorry.

19 JUDGE GULIN:

20 Okay.

21 EXAMINATION BY MS. HARDEN:

22 Q. Could you take a moment to look at
23 that? And I'm going to ask the question again.

24 A. Okay.

25 Q. So what the sentence says is that

1 The parties to the settlement -- The settling
2 parties reached agreement on a settlement in
3 principle and that that settlement in
4 principle, the terms of which are detailed
5 below. And so it begins with Roman numeral 2,
6 Settlement Agreement, and it goes on to page
7 13, Subsection E. (As read.) If you can
8 follow me there, Mr. Rice.

9 A. Okay.

10 Q. And there does it not read, The
11 following agreements of specified parties with
12 respect to certain particular future generation
13 in the City of New Orleans. And then under
14 that header it says ENO, Entergy New Orleans,
15 and CCNO, the City Council of New Orleans,
16 agree as follows? (As read.)

17 MR. CRAGIN:

18 Your Honor, I'm sorry. I'm lost.

19 Would you give me a cite?

20 MS. HARDEN:

21 Are you on 13? And we're looking at
22 Subsection E.

23 MR. CRAGIN:

24 Okay. Thank you.

25 MS. HARDEN:

1 Okay.

2 EXAMINATION BY MS. HARDEN:

3 Q. So this shows that one of the terms
4 of the settlement that was agreed to in
5 principle included the language that's now in
6 Resolution 15-524; is that correct?

7 A. I mean, I would have to look at the
8 specific resolution, but I can take your word
9 for it.

10 Q. You've never seen Resolution 15 --

11 A. I'm sure I have, but it's not
12 something that I have committed to memory, so I
13 don't know if the --

14 MS. MILLER:

15 It's already admitted.

16 MS. HARDEN:

17 It's already entered? Do you
18 remember the number?

19 MS. MILLER:

20 I think it was four or five.

21 MS. HARDEN:

22 Four or five?

23 JUDGE GULIN:

24 Let's go off the record for a
25 moment.

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

3 JUDGE GULIN:

4 Back on the record.

5 EXAMINATION BY MS. HARDEN:

6 Q. So, Mr. Rice, if you can take a
7 moment looking at the paragraphs in that
8 resolution and compare them to the paragraphs
9 that are from the FERC System Agreement.

10 A. All of them?

11 Q. Well, no. Did you say there was an
12 excerpt?

13 MS. HARDEN:

14 I'm sorry, Your Honor. Might I
15 approach?

16 JUDGE GULIN:

17 Yes.

18 EXAMINATION BY MS. HARDEN:

19 Q. So what's marked as page 12 of the
20 exhibit for Resolution 15-524, beginning with,
21 Whereas, ENO will use reasonable, diligent
22 efforts, and comparing that with Subsection E
23 of the FERC settlement. (As read.)

24 A. They seem to match.

25 Q. Okay. Thank you.

1 So would you, then, agree that prior
2 to the resolution that you cite in your
3 testimony directing Entergy to pursue a gas
4 plant in New Orleans, that Entergy had
5 previously agreed to doing that within the FERC
6 settlement?

7 A. So I would agree that the FERC
8 settlement is dated August 14th, 2015, and the
9 Council resolution is dated November 5th, 2015.
10 So I can't -- And I apologize. I can't
11 specifically tell you that these agreements
12 were made one before the other. I wouldn't be
13 surprised if there were parallel paths.

14 Q. Okay. Well, then, let's just delve
15 a little further in the settlement agreement
16 then, shall we?

17 A. Okay.

18 Q. Okay. So on page 6 of the FERC
19 settlement agreement --

20 A. Okay.

21 Q. -- and this is looking at
22 Paragraph 3, and looking at the second
23 sentence -- excuse me -- the third sentence of
24 that Paragraph 3 on page 6, and it reads that
25 The Louisiana Public Service Commission, City

1 Council of New Orleans, and the Public Utility
2 Commission of Texas cannot vote on approval of
3 the settlement agreement until certain
4 procedures before them, including further
5 approvals, have been completed, which are
6 expected to be completed by the end of October
7 2015. (As read.)

8 A. Okay.

9 Q. So does that sentence not indicate
10 to you that what the City Council did in
11 passing the resolution, which came actually a
12 month after October 2015 in November, occurred
13 after Entergy had already agreed in principle
14 on pursuing the development of a gas plant in
15 New Orleans?

16 A. And I apologize, and I'm really not
17 trying to be difficult. What I can agree with
18 you on is that the Council resolution did come
19 after the FERC settlement in that it was
20 approved after the FERC settlement. And there
21 could have been a variety of reasons for that.
22 I mean, for all I know, the Council may not
23 have been having a meeting until November and
24 that's why it wasn't approved until November.
25 But I can't -- you know, I can't state with

1 definite -- or definitively that, you know, one
2 really came before the other.

3 Q. Okay. So can we look at it this
4 way? Would you file a resolution before it's
5 been voted on by the City Council?

6 A. Wait. Would I what?

7 Q. Would you file a resolution that has
8 not been voted on by the -- a draft resolution
9 that hasn't been voted on by the City Council?

10 A. No, I would not.

11 Q. So this resolution did not come into
12 effect until November 2015; is that correct?

13 A. Yes. According to the date, yes.

14 Q. Which is after Entergy New Orleans
15 had already agreed to pursuing the development
16 of a gas plant; is that correct?

17 A. I mean, it came after the
18 August 14th FERC settlement, so, yes.

19 Q. Thank you.

20 Have you directed Entergy personnel
21 to pursue the development of a new peaking
22 generation?

23 A. Did I direct them to?

24 Q. Yes.

25 A. It's something that, yes, we --

1 Q. Mr. Rice, has any Entergy employee
2 recommended to you that Entergy propose an
3 alternative to new peaking generation?

4 A. I can tell you that we looked at a
5 number of alternatives, which included a
6 variety of things, be it transmission. We ran
7 a number of scenarios as requested by the
8 Council advisors. We ran a number of scenarios
9 that we looked at personally as a company.

10 But what I can tell you is we have
11 individuals that work for us that their sole
12 job is to analyze what goes on with our
13 transmission system. And some of those
14 individuals have been doing that for 20, 30
15 years. And, you know, based upon their
16 experience, based upon their knowledge, they
17 made a recommendation that we needed to have
18 local generation here in the City of New
19 Orleans. And, you know, at one time, we had
20 781 megawatts out at that facility, which
21 primarily ran for reliability purposes. So
22 people recognize we need to have generation out
23 there to continue to have reliability.

24 Q. My question to you, though,
25 Mr. Rice, is whether any Entergy employee has

1 come to you with a recommendation for something
2 that is an alternative, different than new
3 peaking generation in New Orleans?

4 A. No.

5 Q. No. Is there a financial incentive
6 for you to build a gas plant in New Orleans?

7 A. I would say there is a reliability
8 and stability incentive, not financial
9 incentive.

10 Q. So there would be no bonus coming
11 your way should the gas plant be built? That's
12 the question.

13 A. No. I would not get a bonus based
14 upon the construction of this gas plant.

15 Q. Would there be any other type of
16 financial incentive if not a bonus?

17 A. No.

18 Q. In the course of your work, do you
19 review data or reports on the percentage of
20 income spent on Entergy bills by low-income
21 residents here in New Orleans?

22 A. I have seen information with regard
23 to that.

24 Q. You have seen information.

25 Would it be a concern for you to

1 know that our City of New Orleans ranks second
2 among U.S. cities for the low-income households
3 that pay up to nearly 20 percent of their
4 income on electric bills?

5 MR. CRAGIN:

6 Objection; assumes facts not in
7 evidence.

8 MS. HARDEN:

9 It does assume -- I want to know if
10 it would be of concern if that was known
11 to him.

12 JUDGE GULIN:

13 So it's a hypothetical question that
14 if that were true and he knew it, would
15 it be of concern?

16 MS. HARDEN:

17 Yes.

18 JUDGE GULIN:

19 Okay. You can answer that.

20 MR. RICE:

21 Can I expound? Sure, that would be
22 a concern, but let me add this. Okay?
23 We live in a city where over 30 percent
24 of the people live at or below the
25 poverty level, so, of course, we would

1 have a greater percentage than a lot of
2 cities of people who expend a significant
3 portion of their income when it comes to
4 electrical service.

5 It's similar to -- you know, we
6 could compare New Orleans to San Diego,
7 San Francisco, wherever the case may be.
8 California, San Diego, or San Francisco,
9 the average income may be \$70,000 a year,
10 or close to it. I believe that is the
11 case. Here the average income is \$36,000
12 a year, so, of course, people here are
13 going to spend a significant --
14 significantly more or a significantly
15 larger portion of their income on
16 electric service.

17 But I will also add that our
18 rates -- and this is a fact -- are about
19 20 percent below the national average.
20 So, you know, it's really all, for lack
21 of a better term, relative. Not that I'm
22 dismissing what you said. And, you know,
23 we support a lot of nonprofits in this
24 city who provide poverty solutions for
25 the residents. So it's something that we

1 take very, very seriously, so --

2 EXAMINATION BY MS. HARDEN:

3 Q. And I guess I should have clarified
4 in my clarification that it was an
5 apples-to-apples comparison of low-income
6 households in U.S. cities, New Orleans is No. 2
7 for the largest amount of that income going to
8 electric bills. Would that be of concern to
9 you if that were made known to you?

10 MR. CRAGIN:

11 Your Honor, I think she may have
12 corrected it, but can I say, again, is
13 that a hypothetical?

14 MS. HARDEN:

15 Yes.

16 MR. CHARLES RICE:

17 And let me just say this. I don't
18 know if I necessarily agree with that.
19 But if that were true, of course, it
20 would be something that concerns me.

21 MS. HARDEN:

22 Thank you.

23 MR. CHARLES RICE:

24 I mean, I'm a citizen. I live here,
25 was raised here, so, of course. And I

1 care about the people that live in this
2 town. So, of course, that would be of
3 concern.

4 EXAMINATION BY MS. HARDEN:

5 Q. Mr. Rice, on a scale of one to ten
6 with ten being the highest, how would you gauge
7 your concern regarding electrical outages due
8 to transmission overloading?

9 A. You said transmission overloading?

10 Q. Yes.

11 A. It's a ten.

12 Q. It's a ten.

13 How long have you had this concern?

14 A. That is a concern of mine always. I
15 am always concerned about reliability of the
16 Entergy system, more specifically the Entergy
17 New Orleans system. I've been in this job
18 since 2010 and I would tell you that not only
19 is the reliability of the transmission system a
20 ten, the reliability of the distribution system
21 is ten. Whether or not we're able to provide
22 enough generation to our customers is a ten.
23 Whether or not, you know, anything that happens
24 with our system is a ten, at least for me.

25 Q. Would you agree that in your direct

1 testimony with -- proposing the initial CT gas
2 plant application that you don't present an
3 in-depth discussion of this concern regarding
4 transmission overloading being at the high
5 level of a ten for you?

6 MR. CRAGIN:

7 Can we get clarification? Are you
8 talking about just Mr. Rice's testimony?

9 MS. HARDEN:

10 Just Mr. Rice's testimony.

11 MR. CHARLES RICE:

12 I mean, I would have to go back and
13 review it, and I have read it. If your
14 question is did I state in my testimony
15 that my concern about the reliability of
16 the transmission system is a ten for me,
17 I would say that is not contained in my
18 testimony.

19 MS. HARDEN:

20 Yeah, and that's not my question.

21 EXAMINATION BY MS. HARDEN:

22 Q. My question is do you agree that in
23 your initial direct testimony, you did not
24 discuss in-depth this concern for transmission
25 overloading?

1 A. I think that's a different question.

2 Q. That was my first question.

3 A. Ask it one more time.

4 Q. Do you agree that in your direct
5 testimony, which was for the initial CT gas
6 plant, that you did not discuss in-depth this
7 concern regarding transmission overloading?

8 A. I believe that was discussed in the
9 testimony of a number of other people. But
10 specifically in mine, I don't -- there probably
11 was not an in-depth discussion because I would
12 refer that issue to the experts who deal with
13 that on a daily basis.

14 Q. But that did change in your
15 supplemental and amending direct testimony. Is
16 that not true?

17 A. I'm sure in my supplemental and
18 direct testimony, I also referred to the
19 appropriate experts. Could there have been a
20 further discussion of transmission reliability?
21 If you could point me to the page, I'll be
22 happy to look at it.

23 Q. Using the same scale of one to ten,
24 with ten being the highest, how would you gauge
25 your concern regarding electrical outages due

1 to problems with wires, poles, and substations
2 that are part of the distribution system?

3 A. I believe I answered that and I said
4 that would also be a ten.

5 Q. Would you agree that these outages
6 that occur in New Orleans are not caused by the
7 lack of a generating facility in New Orleans?

8 A. If you're referring to --

9 MR. CRAGIN:

10 What outages are you referring to,
11 Counsel?

12 MS. HARDEN:

13 The same outages from a distribution
14 system that includes problems with wires,
15 poles, and substations.

16 MR. CHARLES RICE:

17 Well, certain parts of the
18 substations are considered part of the
19 transmission system. But, you know --
20 And I apologize. What was the question
21 again?

22 EXAMINATION BY MS. HARDEN:

23 Q. Would you agree that these outages
24 regarding the --

25 A. Got it.

1 Q. The recurring outages we're
2 experiencing in the City of New Orleans that
3 are part of the distribution system, would you
4 agree that those outages are not caused by
5 there being a lack of or no generating facility
6 in New Orleans?

7 A. I would say this. There's a
8 transmission system. There's a distribution
9 system. The transmission system is similar to
10 your interstate highways. The distribution
11 system is similar to your streets.

12 What I would tell you is, yes, there
13 have been outages on our distribution system.
14 I would tell you that every utility in America
15 experiences outages on its distribution system.
16 We just saw a major one in Atlanta airport.
17 That had nothing to do with whether or not
18 there was generation.

19 If a pole gets struck by a citizen
20 who is drunk, that is going to cause a
21 distribution outage, and, no, that is not
22 related to whether or not there's a generating
23 system here in New Orleans. If there's an
24 outage which occurred as a result of a tornado
25 and it took down distribution poles, that is

1 not one that is caused by the lack of
2 generating capacity here in the City of New
3 Orleans.

4 So outages on a distribution system
5 are caused by a variety of factors. You know,
6 again, what we're proposing here is to make
7 sure we have a reliable, stable grid, more so
8 our interstate system versus what I said was,
9 you know, the streets as that would be our
10 distribution system.

11 Q. So I take it from your answer that
12 you would agree that the outages are not due to
13 the lack of a generating facility in New
14 Orleans? The examples you gave were ones where
15 you said that wasn't caused by a generating
16 facility. The Atlanta airport, another one;
17 right?

18 A. That's correct.

19 Q. Isn't it true that there have been
20 2,599 electrical outages in the distribution
21 system occurring between May 2016 through June
22 2017?

23 A. I apologize. I don't know the exact
24 number, but if that came from a document that
25 was filed with the City Council, then I would

1 agree with you.

2 Q. And it was actually from the City
3 Council Resolution No. 17-742.

4 Taking a look at that resolution, is
5 it also true that in response to these
6 electrical outages, that the City Council
7 opened a whole new docket in order to consider
8 minimum performance standards for reliability
9 at Entergy and also consider holding the
10 company accountable with financial penalties
11 for not meeting such standards?

12 A. I don't have the document in front
13 of me.

14 Q. Okay. I think I may have a copy.

15 MR. CRAGIN:

16 Your Honor, we will stipulate that
17 the Council opened a docket on
18 reliability and that --

19 MS. HARDEN:

20 I'm sorry, Mr. Cragin, I can't hear
21 you.

22 MR. CRAGIN:

23 I said we will stipulate that the
24 Council opened a docket on reliability
25 and that whatever is in the resolution --

1 distribution reliability, and we will
2 stipulate in the resolution that it is
3 what it is.

4 MS. HARDEN:

5 Right. Specifically it is what it
6 is. I want to point out it's about
7 performance standards and the potential
8 for financial penalties imposed for not
9 meeting standards if developed. They're
10 being considered.

11 MR. CRAGIN:

12 And there's no decision that has
13 been made on that here.

14 MS. HARDEN:

15 Who am I cross-examining --

16 JUDGE GULIN:

17 Well, we're trying to reach a
18 stipulation here. Are you able to reach
19 a stipulation?

20 MS. HARDEN:

21 Well, I think maybe the best way to
22 do it, if I may, Judge?

23 JUDGE GULIN:

24 Yeah. Go ahead.

25 MR. CHARLES RICE:

1 I think I have the paragraph for
2 you.

3 MS. HARDEN:

4 Oh, you do have it? Okay.

5 EXAMINATION BY MS. HARDEN:

6 Q. Which paragraph are you looking at?

7 A. I'm on page 7. It's Paragraph 8 and
8 it reads, By December 31, 2017, based upon
9 technical advisors' review of ENO's
10 supplemental information, the technical
11 advisors will file with the Council, with
12 copies to all parties to the docket, the
13 results of its analysis of ENO's outages and
14 reliability performance along with the
15 advisors' evaluation recommendation of
16 appropriate minimum reliability performance
17 standards for ENO, take into account the
18 consideration of the urban nature of ENO's
19 service territory within Orleans Parish, and
20 recommending appropriate financial penalties
21 for noncompliance for consideration by the
22 Council. Can I -- (As read.)

23 Q. So my question with regards to that
24 is that if you could verify that the City
25 Council did take that action?

1 A. Yeah.

2 MR. CHARLES RICE:

3 But I would also, if I can, Your
4 Honor, make sure that everyone knows
5 that, you know, we're investing in our
6 distribution system. Last year we spent
7 \$10 million to improve our distribution
8 system. This year we spent roughly
9 \$16 million to improve our distribution
10 system. And next year, we're scheduled
11 to spend \$14 million to improve our
12 distribution system. So it's something
13 that is of concern to us and we are
14 taking measures to address that.

15 MS. HARDEN:

16 Thank you.

17 No further questions, Your Honor.

18 JUDGE GULIN:

19 Thank you. We'll mark this as DSCEJ
20 No. 7 and admit it for cross.

21 Mr. Edwards, are you ready?

22 Actually, why don't we take a
23 ten-minute break before we start with
24 Mr. Edwards. Come back at 11:33.

25 (Whereupon a recess was taken.)

1 JUDGE GULIN:

2 Let's go back on the record while
3 we're waiting for Mr. Rice.

4 During the break, Ms. Hand asked me
5 about the status of DSCEJ No. 6. My
6 recollection is this was a substitute --
7 or not really a substitute, but it was a
8 full copy of a prior exhibit and I think
9 I admitted it for cross.

10 MS. HARDEN:

11 That's correct.

12 JUDGE GULIN:

13 Okay.

14 MS. MILLER:

15 Ms. Hand, could you tell me, does
16 the admission by Deep South take care of
17 your concerns with our exhibit just being
18 an excerpt, or would you still like me to
19 provide a whole copy? Or you could think
20 about it and let me know.

21 MS. HAND:

22 To the extent that it -- Just
23 because we haven't had time to cross
24 check, to the extent that it is verified
25 that it is a complete copy of what you

1 had offered an excerpt of, it does
2 resolve our concerns.

3 MS. MILLER:

4 Okay. If you could just let me
5 know.

6 JUDGE GULIN:

7 And also during the break, I was
8 informed by Mr. Edwards that he intends
9 to pass on cross of Mr. Rice, so we'll go
10 to Mr. Reed for the advisors.

11 MR. REED:

12 Good morning, Your Honor.

13 EXAMINATION BY MR. REED:

14 Q. Good morning, Mr. Rice.

15 A. Good morning, Mr. Reed.

16 Q. Do you have a copy of your rebuttal
17 testimony with you?

18 A. Yes, I do.

19 Q. All right. Just for the record, my
20 name is Presley Reed, and I'm appearing on
21 behalf of the Council of New Orleans advisors.
22 And I only have a few questions to ask you,
23 Mr. Rice.

24 Do you have -- There was a
25 discussion with one of the intervenors' counsel

1 regarding cost overruns of the NOPS unit.

2 A. Yes, sir.

3 Q. Isn't it true that if there is a
4 cost overrun, that the Council could determine
5 that that overrun was, in fact, imprudent and,
6 therefore, disallow those overrun costs?

7 A. That is absolutely correct.

8 Q. All right. I'm referencing your
9 testimony at page 2 of your rebuttal, your
10 Question No. 5. You make reference and quote
11 the advisor witness Joseph Vumbaco where you
12 state that The RICE alternative presents the
13 most viable alternative for the Council's
14 consideration in the instant docket to resolve
15 ENO's current transmission system reliability
16 issues and, accordingly, is the advisors'
17 collective recommendation to the Council for
18 approval; is that correct? (As read.)

19 A. Yes, sir.

20 Q. Now, do you have a copy of
21 Mr. Vumbaco's testimony?

22 A. Not in front of me. Okay. I think
23 it may be in here. Okay.

24 Q. Now, referencing page 8 of
25 Mr. Vumbaco's testimony, specifically line 13

1 through page 19, line 3, would you agree with
2 me that Mr. Vumbaco --

3 A. Wait a minute. You said page 8?

4 Q. Yes, that's correct. Page 8 of
5 Mr. Vumbaco's testimony.

6 A. Okay.

7 Q. And we're focusing specifically on
8 line 13.

9 A. All right.

10 Q. And if you read starting at that
11 point through to page -- line 9 -- I'm sorry --
12 page 9, line 3 --

13 JUDGE GULIN:

14 Would you like him to read out loud
15 or to himself?

16 MR. REED:

17 He can read to himself. He can read
18 it all.

19 EXAMINATION BY MR. REED:

20 Q. Would you agree --

21 A. Hold on. Let me read it.

22 Q. Okay.

23 (Whereupon a pause occurred in the
24 proceedings.)

25 MR. CHARLES RICE:

1 Okay.

2 EXAMINATION BY MR. REED:

3 Q. Would you agree with me that that
4 particular language in Mr. Vumbaco's testimony
5 includes what we just discussed in terms of
6 your testimony, but he adds some additional
7 considerations which would determine the full
8 extent of the advisors' recommendation for the
9 RICE unit?

10 A. Yes, sir.

11 Q. You also have a conversation where
12 you discuss the issue of peak generation and
13 alternatives to peak. Are you aware or in your
14 opinion is solar PV a cost-effective
15 alternative to providing peak energy?

16 A. Well, let me say this. We haven't
17 had sun here for the last six days, so if
18 you're asking, you know, whether or not we can
19 rely on solar PV for reliability purposes, my
20 answer is no. If you're asking me whether or
21 not we have actually looked at solar as a
22 potential alternative to solve the issues which
23 we are currently facing, that was something
24 that we considered. Is it practicable at this
25 time? No, it is not. Is it an appropriate

1 solution at this time? No, it is not.

2 Based upon my reading and based upon
3 my discussions with members of my team such as
4 Mr. Cureington and others who I consider
5 experts in the area, right now solar is not a
6 cost-effective solution for us. Also, because,
7 you know, we need generation that is as close
8 to the load as possible.

9 And, you know, let's just use simple
10 math. If you were attempting to build a solar
11 facility as large as what we're proposing --
12 and we'll just use the 128 megawatt unit -- it
13 takes about ten acres to build or a little more
14 than ten acres to build a 1 megawatt unit.
15 Let's do simple math. Ten times -- If we just
16 did a hundred megawatts, that's a thousand
17 acres. I would venture to say there are not a
18 thousand contiguous acres in the City of New
19 Orleans at this particular time. Of land. Let
20 me say that. A thousand contiguous acres of
21 land.

22 Q. All right. I think your answer was
23 no?

24 A. That's right.

25 Q. To the extent that ENO has excess

1 capacity that is ultimately sold into the MISO
2 market, isn't ENO required to credit those
3 revenues back to ratepayers?

4 A. Yes, we are.

5 MR. REED:

6 Those are all my questions, Your
7 Honor.

8 JUDGE GULIN:

9 Thank you.

10 Any redirect?

11 MR. CRAGIN:

12 Just a few questions, Your Honor.

13 EXAMINATION BY MR. CRAGIN:

14 Q. Mr. Rice, do you recall when
15 Ms. Harden was asking you questions about the
16 settlement agreement that was filed by the FERC
17 and which was later approved by the City
18 Council?

19 A. Yes.

20 Q. She pointed you to Roman numeral 2
21 in the settlement agreement. Do you have that
22 document in front of you? I'm talking
23 specifically about the FERC Settlement
24 Agreement.

25 A. FERC Settlement Agreement.

1 JUDGE GULIN:

2 Which is DSCEJ Exhibit No. 6.

3 MR. CHARLES RICE:

4 Okay. I have it.

5 EXAMINATION BY MR. CRAGIN:

6 Q. Can you turn to page 5 of the
7 settlement agreement, please?

8 A. I believe it says -- Paragraph
9 No. 2, Settlement Agreement?

10 Q. Yes, Roman Numeral 2.

11 A. Yeah.

12 Q. I want you to read for the record
13 the sentence -- well, two sentences above that
14 subheading beginning with "Following."

15 A. Following the June 9th, 2015,
16 settlement conference, representatives of the
17 settling parties reached agreement on a
18 settlement in principle subject to final
19 approval of the LPSC, CCNO -- meaning New
20 Orleans City Council -- and PUCT -- I'm
21 assuming that's the Texas Commission. The
22 terms of that settlement in principle are
23 detailed as follows -- below. I'm sorry -- are
24 detailed below. (As read.)

25 Q. So is it your understanding that

1 this settlement agreement did not come in to
2 being until the City Council approved it?

3 A. It was not truly confected until the
4 City Council approved it in November.

5 Q. Do you recall also the questions
6 that Ms. Harden asked you with regard to the
7 community concerns about locating the New
8 Orleans Power Station at the Michoud site?

9 A. Yes.

10 Q. And she also asked you about your
11 concerns regarding the same?

12 A. Yes.

13 Q. Did some members of the community
14 raise concerns about the power plant being
15 located there once Entergy filed its
16 application?

17 A. Yes, and that was the result of
18 numerous community meetings that we held. I
19 think we probably held close to 30 community
20 meetings. I probably participated in all of
21 them with the exception of maybe two. And, you
22 know, we heard what the community was saying
23 and we attempted to address some of their
24 concerns. That's why we went out and hired
25 experts to study the issues which are put forth

1 such as subsidence, such as emissions. That's
2 why we hired Ms. Higgins. That's why we hired
3 Dr. Losonsky to look at those issues and ensure
4 that we were not doing anything to harm the
5 community.

6 Q. And do you believe the company has
7 adequately addressed the concerns of the
8 community?

9 A. I believe we have. Again, we take
10 corporate social responsibility very seriously.
11 We have been recognized by a number of
12 publications for our corporate social
13 responsibility to include the Dow Jones
14 sustainability index. Back in 2000, we made a
15 commitment that we would reduce our carbon
16 emissions levels to year 2000 levels and we've
17 exceed that goal. Here we are in 2017. So we
18 are -- I would say Entergy as a corporation is
19 probably or was probably and still is on the
20 forefront of climate change.

21 Q. And do you have any concerns as we
22 sit here today that this plant, if it is
23 constructed, will be operated in a safe and
24 secure manner and in compliance with all
25 applicable air permitting standards and

1 whatever other requirements, governmental
2 requirements there are with regard to this
3 plant?

4 A. As I stated before, we will operate
5 the plant in an environmentally sound manner.
6 We will comply with all EPA standards. We will
7 comply with all LDEQ standards. Any laws put
8 forth by the city, we will comply with those
9 also. So we're very much committed to ensuring
10 that we operate this plant in an
11 environmentally sound manner similar to the way
12 we operated for the last 50 to 60 years.

13 MR. CRAGIN:

14 No further questions, Your Honor.

15 JUDGE GULIN:

16 Any recross from Mr. Wiygul?

17 MR. WIYGUL:

18 No recross.

19 JUDGE GULIN:

20 How about Ms. Stevens Miller?

21 MS. MILLER:

22 No, Your Honor.

23 JUDGE GULIN:

24 Ms. Harden?

25 MS. HARDEN:

1 No, sir.

2 JUDGE GULIN:

3 Mr. Edwards?

4 MR. EDWARDS:

5 No, Your Honor.

6 JUDGE GULIN:

7 And Mr. Reed?

8 MR. REED:

9 No, Your Honor.

10 JUDGE GULIN:

11 Okay. Thank you very much,

12 Mr. Rice. You can step down.

13 Okay. I think we're ready for
14 intervenors' witness Dr. Kolker.

15 JUDGE GULIN:

16 Good morning. Welcome.

17 MR. KOLKER:

18 Good morning.

19 JUDGE GULIN:

20 Before you take a seat, just face
21 the court reporter. She's going to
22 administer the oath to you.

23 DR. KOLKER:

24 All right.

25 ALEXANDER KOLKER, Ph.D.,

1 after having been duly sworn by the
2 above-mentioned Certified Court Reporter, was
3 examined and testified as follows:

4 JUDGE GULIN:

5 Begin with cross by Entergy.

6 EXAMINATION BY MR. BARTON:

7 Q. Good morning.

8 A. Good morning.

9 Q. Good morning, Dr. Kolker. My name
10 is Harry Barton. You and I have not met
11 before; is that right?

12 A. Not that I know of. Good morning.

13 Q. It is a small town so not that you
14 know of is fine.

15 I represent Entergy New Orleans in
16 this matter. I've just got a few questions for
17 you this morning. So let's start.

18 You filed testimony on behalf of
19 parties to this proceeding that include the
20 Alliance for Affordable Energy, the Deep South
21 Center for Environmental Justice, and the
22 Sierra Club; that's correct?

23 A. Yes, that is correct.

24 Q. And you stated in your prefiled
25 supplemental testimony at page 1, lines 7

1 through 9 that you prepared your direct and
2 supplemental testimony on your own time at the
3 request of the Alliance for Affordable Energy;
4 is that right?

5 A. Yes, that is correct.

6 Q. So you would agree, then, that your
7 work in this case was sort of influenced by the
8 Alliance for Affordable Energy because you
9 performed it at their request?

10 A. I don't think that that's a complete
11 correct characterization. My testimony here is
12 based on my expert opinion, based on my
13 training as a marine scientist and a geologist,
14 and I do not think that it would be fair to say
15 that they -- that my opinion was in any way
16 influenced by the people that asked me to do
17 it. Instead, it was influenced by the science
18 and my knowledge of science and my knowledge of
19 coastal issues in Louisiana.

20 Q. So you would consider your work,
21 then, to be more of an independent nature?

22 A. It is my technical opinion.

23 Q. And so you would agree, then, that
24 it's possible for a witness to submit testimony
25 on behalf of a party and still perform

1 independent analyses?

2 A. In my case, I believe that the
3 testimony that I submitted was my own
4 independent analysis. I don't think I could
5 speak for every possible -- every possible, you
6 know, testimony that could be submitted by
7 anyone.

8 Q. If it's possible for you, it's
9 possible for another witness perhaps?

10 A. In my case, I believe that my
11 testimony reflects my scientific and technical
12 opinion and judgment.

13 Q. Thank you.

14 Now, in that same part of your
15 testimony, you indicated that the information
16 you present and your opinions are based on your
17 years of experience; is that right?

18 A. That would be correct, as well as
19 the scientific literature that I am aware of.

20 Q. Okay. And you don't have a degree
21 in geology, do you?

22 A. My degree is in marine and
23 atmospheric sciences and I studied under one of
24 the nation's leading geologists.

25 Q. Okay. But you don't actually have a

1 degree in hydrogeology either?

2 A. The degree is in -- My Ph.D. is in
3 marine and atmospheric sciences. Some issues
4 of hydrogeology certainly came up during my
5 advanced education, but that's not the degree
6 title.

7 Q. Okay. Thank you.

8 The list of peer reviewed
9 publications you submitted with your direct
10 testimony was complete and up to date when you
11 submitted it to the Council?

12 A. It was the most relevant list that's
13 out there. Of course, you know, there are
14 hundreds and thousands of -- there are hundreds
15 of studies on subsidence worldwide and I
16 provided a list of the ones that I felt were
17 most relevant for the issue at hand.

18 Q. So of the articles that you thought
19 were most relevant to this case --

20 A. Sure.

21 Q. -- none of those included peer
22 reviewed articles about possible impacts of
23 industrial groundwater usage on subsidence, did
24 they?

25 A. I don't think that that is really

1 correct to say. I certainly cited the Jones
2 et al. study.

3 Q. I'm talking about your articles. So
4 let me clarify this.

5 At the time you submitted your
6 direct testimony, you had written no peer
7 reviewed articles about possible impacts of
8 industrial groundwater usage on subsidence, had
9 you?

10 A. Industrial -- That is not a complete
11 correct characterization. My 2011 study and
12 geophysical research letters looked at the role
13 of fluid withdrawal as the driver of subsidence
14 in coastal Louisiana. We mostly looked at the
15 Grand Isle tide gauge. Much of that was
16 associated with oil and gas withdrawal, but
17 when you withdraw oil and gas, you also pull
18 out other fluids such as groundwater.

19 Q. Now, prior to your involvement in
20 this case --

21 A. Uh-huh (indicating affirmatively).

22 Q. -- you've never attempted to assess
23 the potential impacts of groundwater withdrawal
24 from a proposed -- a specifically proposed
25 industrial facility, have you?

1 A. That would -- I think that would
2 probably be correct to say.

3 Q. Okay. So, then, it would also be
4 correct that prior to this case, you've never
5 attempted to assess possible subsidence
6 resulting from groundwater withdrawal from a
7 specifically proposed industrial facility?

8 A. That is probably correct.

9 Q. And one more of these.

10 A. Sure. Go for it.

11 Q. Prior to this case, you've never
12 attempted to assess possible flood risks
13 associated with the operation of groundwater
14 wells for a specifically proposed industrial
15 facility?

16 A. So, you know, I did serve as one of
17 the academic liaisons to academic members of
18 the framework development team of Louisiana's
19 coastal master plan and we certainly did look
20 there at the role of flood risk across the
21 State of Louisiana and issues did certainly
22 come up as to the role of subsidence, and, in
23 general, industrial -- industry was considered
24 there. Likewise, I do serve on a panel that's
25 a National Academy of Science's panel in which

1 we are, in general, looking at the impacts of
2 long-term physical changes on the energy
3 industry in -- across the Gulf of Mexico. So
4 these are issues that I am generally familiar
5 with.

6 Q. And, again, I'll ask the question.
7 Generally familiar with, that's great. But you
8 haven't before assessed possible flood risks
9 with a specific proposal for an industrial
10 facility that has yet to be built, have you?

11 A. That, I think, would be correct to
12 say.

13 Q. Thank you.

14 Now, isn't it true that all the
15 analyses and work papers that you might have
16 prepared in support of your testimony were
17 submitted with your testimony?

18 A. Can you just repeat that, please?

19 Q. Sure. Sure.

20 Isn't it true that any analyses or
21 work papers that may have been prepared in
22 support of your testimony were submitted with
23 your testimony?

24 A. So I believe I did support -- When I
25 submitted my testimony, I also included, I

1 believe, a reference list and also figures from
2 various scientific reports that I felt would
3 help that -- would help that report.

4 Q. Okay. Great.

5 So other than what's contained in
6 the report and attached to it and cited
7 therein, there are no other analyses or
8 calculations that you've performed other than
9 what the Council has already had filed with
10 them?

11 A. I think that that would be fair to
12 say.

13 Q. Okay. Great.

14 Now, your testimony doesn't discuss
15 the result of any drawdown calculations that
16 you performed yourself; is that correct?

17 A. So I think that the testimony that I
18 prepared shows my understanding. I'm certainly
19 one to believe that if the data exists out
20 there, you should use existing data in your
21 analyses. So I certainly -- My analyses
22 certainly showed existing data and existing
23 analyses that were out there.

24 Q. So I'll get back to my question,
25 though. Your testimony doesn't discuss the

1 results of drawdown calculations that you
2 yourself performed; is that right?

3 A. You know, I did -- I actually do --
4 I don't think that's completely correct. I did
5 provide in the supplemental, the rebuttal
6 testimony, I believe I did provide some
7 analyses of how much fluid would be withdrawn
8 and the comparison between that level of fluid
9 withdrawal and other things that we might be
10 familiar with. So, for example, I did point
11 out that over a ten-year period, I think you
12 would withdraw the amount of water equivalent
13 to 760 Olympic size swimming pools.

14 Q. That's not necessarily a draw drawn
15 calculation. I'm speaking in the sense of
16 Dr. Losonsky's report, for instance, the
17 Hantush-Jacob Leaky Aquifer Solution or the
18 Theis Solution that are examples of drawdown
19 calculations from Dr. Losonsky's report. Your
20 testimony doesn't discuss any of those
21 calculations that you performed yourself, does
22 it?

23 A. I think I did point out that there
24 were -- that I certainly had questions about
25 Dr. Losonsky's --

1 Q. I'm asking about your calculations.
2 Did you perform a Hantush-Jacob Leaky Aquifer
3 calculation yourself?

4 A. Oh. Oh, no, I didn't.

5 Q. And that's because you haven't
6 performed that calculation in connection with
7 your testimony?

8 A. So --

9 MR. BARTON:

10 We can strike that question, Your
11 Honor. I'll move on.

12 EXAMINATION BY MR. BARTON:

13 Q. Your testimony also doesn't discuss
14 the results of any consolidation of the
15 settlement calculations that you yourself
16 performed; is that correct?

17 A. So my testimony does show that the
18 Jones et al. study -- which I will say I was an
19 early reviewer on ,and I believe I put that in
20 my testimony. I gave them a review of that
21 report before they submitted it to its --

22 MR. BARTON:

23 Your Honor, I object to a
24 nonresponsive response here. I'm clearly
25 asking about his calculations for this

1 testimony and we're sort of evading the
2 issue.

3 DR. KOLKER:

4 I mean, I -- Well, I -- But I -- So
5 I -- But I did talk about the Jones
6 et al. report, and I will say that I was
7 an early reviewer on that report so I
8 think that that might -- that does inform
9 my testimony.

10 MR. BARTON:

11 Okay. I'll ask this one more time
12 and you see if you can answer me clearly
13 in a yes-or-no answer. If not, we'll try
14 to move on.

15 EXAMINATION BY MR. BARTON:

16 Q. Your testimony itself doesn't
17 discuss the results of any consolidation,
18 calculations that you, Alexander Kolker,
19 performed in connection with your analysis of
20 this case, does it?

21 A. Like I said, I don't think that is a
22 completely fair calculation -- completely
23 fair -- I think what I have said is that I
24 looked at the issues. I certainly looked at
25 the data that was there. And when I say "look

1 at," I don't think I mean, well, God, I just
2 skimmed the report. I evaluated whether or not
3 these data were reasonable, whether I thought
4 that they were accurate, and whether they
5 were -- whether they were important.

6 Did I, for example -- If you --
7 maybe this will get at your question, though.
8 I did not, for example, use a computer program
9 that solved the solution on my computer. So I
10 think that that might be fair to say, but I did
11 evaluate it to the best that I -- evaluate this
12 to the best that I could. I did look, you
13 know, at the math. I think maybe what you're
14 get -- If you're getting at the question of did
15 I run a specific computer program that solved
16 that equation --

17 Q. Right.

18 A. -- then the answer to that would be
19 no.

20 Q. Thank you. That was simple. Thank
21 you.

22 I just have a few more questions
23 here. So you reviewed as part of your work all
24 of the testimonies and reports that were
25 authored and submitted by Dr. George Losonsky

1 for this proceeding; is that right?

2 A. Yes.

3 Q. And so, then, you're aware that
4 Dr. Losonsky himself performed several
5 scientific and mathematic calculations to
6 support his findings; is that correct?

7 A. I do have some questions about those
8 reports and I think that I brought them up, but
9 I am aware that he did some work and I think
10 that he, you know, made a first pass.

11 Q. And so you did reference that you're
12 aware of those calculations and you had some
13 questions. But your testimony doesn't assess
14 whether Dr. Losonsky actually got the correct
15 mathematical solutions to his calculations,
16 does it?

17 A. I don't think that that's a fair way
18 of saying it. I think I did point out that
19 there are large volumes of water that are going
20 to be extracted and that Dr. Losonsky's
21 calculations did not address what happens in
22 terms of the void space left behind when
23 these -- when this water is withdrawn.

24 Q. Point me to the line in your
25 testimony -- and I'll try to skip ahead here,

1 but your supplemental testimony. I think
2 you're talking about page 4.

3 JUDGE GULIN:

4 While Dr. Kolker is looking at that,
5 could I ask to get a copy of Dr. Kolker's
6 testimony?

7 DR. KOLKER:

8 So I -- Yeah, so --

9 EXAMINATION BY MR. BARTON:

10 Q. Lines 1 through 6, in this excerpt
11 of your testimony, you don't mention
12 Dr. Losonsky's calculations once, do you?

13 A. So I don't --

14 Q. Okay.

15 A. Well, actually, wait a second. So I
16 think that my -- I don't think that's actually
17 correct because on line -- you said I don't
18 measure -- I don't talk about Losonsky's
19 testimony once --

20 Q. None of this is --

21 A. -- and clearly in line 4, I do -- I
22 do reference Dr. Losonsky's testimony.

23 Q. On page 4, line 4?

24 A. Line 4.

25 Q. The word "Losonsky" is contained in

1 that testimony?

2 A. Yes. Yes. So that's his testimony.
3 So I say I reference that.

4 Q. We must be looking at different
5 testimonies, Dr. Kolker. Are you looking at
6 the prefiled supplemental testimony of
7 Dr. Alexander Kolker?

8 A. Okay. So I'm looking at this right
9 here and -- Right?

10 Q. Let's see. This is when I wish I
11 had the mobile microphone.

12 A. And I certainly say --

13 JUDGE GULIN:

14 You're looking at the prefiled
15 direct testimony of January 6?

16 DR. KOLKER:

17 Of the January 6th or October 13th?

18 MR. BARTON:

19 October the 13th.

20 DR. KOLKER:

21 Oh, October 13th.

22 MR. GUILLOT:

23 Do you have it?

24 EXAMINATION BY MR. BARTON:

25 Q. So are we on the October 13th

1 testimony?

2 A. So I'm not -- Yeah. So I do say --
3 reference in Question 8 in Dr. Losonsky's
4 testimony, he states that based on --

5 Q. That's not what I'm talking about.

6 A. Oh.

7 Q. Just above that, lines 1 through 6.

8 A. That's one through three on mine.
9 That's one through three. Is that one through
10 six or one through three?

11 Q. One through six. The calculation
12 you were just referencing.

13 A. The Olympic size swimming pool?

14 Q. Yeah. Yeah.

15 A. Yeah.

16 Q. You don't mention Dr. Losonsky's
17 calculations once in that testimony, do you?

18 A. Perhaps I was not clear enough in my
19 testimony and --

20 Q. We are talking about your testimony.

21 A. So I think it might be worth
22 explaining what I said and would like a chance
23 to clarify that.

24 Q. Well, what I'm asking you about
25 is --

1 MS. MILLER:

2 Your Honor.

3 EXAMINATION BY MR. BARTON:

4 Q. -- what's contained in your
5 testimony, but we can move on.

6 JUDGE GULIN:

7 I'll decide what he can say and what
8 he can't say, but I tend to agree,
9 actually, with Mr. Barton. Let's wait
10 for the question and then answer the
11 question.

12 DR. KOLKER:

13 Sure.

14 JUDGE GULIN:

15 Go ahead and ask the question again
16 in reference to Dr. Losonsky.

17 MR. BARTON:

18 Okay. I'm going to try to rephrase
19 this to be a little more specific.

20 DR. KOLKER:

21 Okay.

22 EXAMINATION BY MR. BARTON:

23 Q. You already stated that you're aware
24 that Dr. Losonsky performed calculations like
25 the Theis Solution and the Hantush-Jacob Leaky

1 Aquifer Solution to support his testimony?

2 A. Right.

3 Q. And so your testimony doesn't
4 actually assess whether Dr. Losonsky correctly
5 executed those solutions, does it?

6 A. I don't think that that is fair.
7 And let me -- allow me to explain. When I say
8 the question of what happens to the void space
9 left behind after this water is withdrawn
10 remains unanswered, I am referring to
11 Dr. Losonsky's testimony and stating that I do
12 not think that based on his work, he
13 answered -- he addressed what happens to the
14 void space left behind. Now, it's true I
15 probably could have said that --

16 Q. Again, that's not my question.

17 A. I could have said that more clearly,
18 but I believe that I'm providing you with the
19 answer to your question there.

20 Q. I don't think that you are. So let
21 me try to ask it in a different way.

22 You haven't actually performed or
23 attempted to replicate Dr. Losonsky's
24 performance of, say, the Hantush-Jacob Leaky
25 Aquifer Solution as part of your own analysis,

1 have you?

2 A. I think that what I said actually
3 here is that some of -- is that -- and perhaps
4 I was not clear enough, but I believe the point
5 that I am trying to make is that Losonsky's
6 testimony and his solution to the leaky aquifer
7 problem does not fully address the void space
8 left behind when fluid is withdrawn. And I
9 could --

10 Q. Did you or did you not attempt to
11 replicate the calculations that Dr. Losonsky
12 performed in his report? Yes or no?

13 A. Like I said, I did not run a
14 computer model that -- the same computer model
15 that he did.

16 MR. BARTON:

17 Okay. I think that's as close as
18 we're going to get to a straight answer
19 so I will tender the witness.

20 JUDGE GULIN:

21 I think that was a very responsive
22 answer that you wanted.

23 MR. BARTON:

24 Fair enough.

25 JUDGE GULIN:

1 Okay.

2 Next is the advisors.

3 Mr. Beatmann.

4 EXAMINATION BY MR. BEATMANN:

5 Q. Dr. Kolker.

6 A. Good morning.

7 Q. Good morning.

8 My name is Jay Beatmann. I'm here
9 on behalf of the Council's advisors in this
10 case. I've just got a few follow-up questions.

11 Mr. Barton asked you about the
12 parties you were representing in the case. Do
13 you remember that?

14 A. Yes, I do.

15 Q. And would you agree that the experts
16 in this case that have been engaged to provide
17 expert analysis are providing that analysis to
18 the best of their ability?

19 A. It's hard for me to, you know, speak
20 for every single person in this case, but I
21 normally tend to take people at their face
22 value.

23 Q. And I think he asked you about
24 whether or not you consider your opinions to be
25 independent?

1 A. I believe he asked that question,
2 yeah.

3 Q. And I apologize. Would you restate
4 your answer?

5 A. I -- So I think the answer that I
6 gave is that my opinions are my best technical
7 ability, and I -- and I believe that my answers
8 represent my best technical understanding of
9 the geology of Louisiana. And I -- So I
10 believe that that was the answer that I gave
11 him, and I still think that my -- the answers
12 that I give are my best technical understanding
13 of the geology of Louisiana.

14 Q. Okay. And do you know whether
15 another witness in the case would have a
16 different view about the testimony that they
17 provide? Are you aware of that?

18 A. I mean, I -- So I think you're -- So
19 clearly it's hypothetically possible that
20 technical people can have different opinions.

21 Q. Let me ask you to look at page 2 of
22 your prefiled supplemental testimony.

23 A. Yeah.

24 Q. October 13th, 2017.

25 A. Yeah.

1 Q. If you look at lines 11 through 15.

2 A. Sure.

3 Q. You state that The City of New
4 Orleans should hire an independent expert
5 beholden only to the city and its residents to
6 fully and comprehensively examine how any water
7 withdrawals caused by the ENO plant could
8 impact the area, including homes and businesses
9 near the facility, as well as all of the flood
10 control structures that could be impacted by
11 this plant; is that correct? (As read.)

12 A. That is my testimony. Yeah, that's
13 correct.

14 Q. What do you mean by "beholden only
15 to the city and its residents"?

16 A. So -- Okay. So here's the point
17 that I'm trying -- This is a really tough
18 situation. They're discussing doing something
19 that in my technical-- that in my technical
20 opinion has the potential to impact a very
21 important flood control structure. And I think
22 that an outside -- rigorous outside analysis
23 that examines all of the potential issues is
24 really needed. Something that examines the
25 potential for the impact on houses in the area,

1 on the newly constructed Lake Borgne surge
2 barrier, the levees that are adjacent to that,
3 and that this is a very, very critical issue,
4 and that I think that it deserves the highest
5 level of independent analysis.

6 Q. Did you perform any independent
7 analysis?

8 A. So I analyzed and I examined the
9 published literature that is out there.

10 Q. No, sir. That's not my question.
11 My question is point me to the area of your
12 testimony where you performed an independent
13 analysis of the things that you say the city
14 should receive.

15 A. So I think maybe we -- I did say
16 that it should be a fully -- it should fully
17 and comprehensively examine all of the issues
18 of how any water withdrawal will impact the
19 flood control structures in the area. And I
20 remain convinced in my opinion there.

21 Q. And you haven't done that; is that
22 correct?

23 A. That is correct. So what I have
24 done is said that there is a reasonable
25 potential for this based on the published

1 literature for this to impact the -- for this
2 to impact a very critical flood control
3 structure.

4 Q. Sir, does your testimony on page 2,
5 does that mean that you believe that witnesses
6 that have submitted testimony in this case
7 about the issues that you speak about are
8 beholden to someone other than the city and its
9 residents?

10 A. I am not saying that people are
11 beholdened. I am not -- What I am not saying
12 is that just because someone was paid as an
13 expert witness, they're somehow tainted. I'm
14 not saying that. What I am saying is that this
15 is a really, really tough issue and that it is
16 critical that the city get this right.

17 Q. And that's right because you were
18 retained by parties in the case; is that
19 correct?

20 A. That is -- I mean, I would not
21 say -- I was clearly retained by parties in
22 this case, and I think that certainly the --
23 they should -- the city should get outside
24 experts. And, yeah, people that were not
25 retained by any party in the case, I think

1 would be good. I think it would be very good
2 if they got outside experts that were not party
3 or retained by any people in this case that are
4 going to give a very fair assessment of how any
5 use -- withdrawal of water could potentially
6 impact some of the most important flood control
7 systems in this city, and I remain convinced in
8 that.

9 And this is not to criticize people
10 that were retained as outside experts. It's
11 not to say that Dr. Losonsky is somehow
12 tainted, if that's your question -- if that's
13 where you're going. It is simply to say that
14 this is a critically, critically important part
15 of the system and that the data that has been
16 collected to date suggests that water withdrawn
17 in the area could lead to subsidence.

18 Q. Sir, you were critical of the CK
19 report that was attached to testimony provided
20 by ENO in this case; is that correct?

21 A. That is correct, yes.

22 Q. And you were critical because -- In
23 one respect, you were critical because the CK
24 report included or -- yes, it included what you
25 describe as one point in time as a reference

1 instead of two; is that correct?

2 A. I think that's correct. In order to
3 understand if change is happening, you need to
4 measure -- change over time is happening, you
5 need to understand the time component.

6 Q. But you performed no analysis even
7 once; is that correct?

8 A. I think that's maybe a
9 mischaracterization. So it is the data points
10 being spaced in time. So the CK report, just
11 mostly it looked at photographs of houses and
12 those photographs of houses were taken once.
13 In order to understand if any geological change
14 is happening, you need have change -- you need
15 to have measurements that were taken at
16 different points in time. So, yeah.

17 So, for example, the Jones et al.
18 report I thought was a much better report
19 because that was an analysis of data that was
20 collected in 2009 and then again in 2012. And
21 by examining images that were collected in 2009
22 and 2012, they had that critical time component
23 which I felt made the Jones et al. report a
24 superior piece of analysis.

25 Q. Did you take any pictures yourself

1 at any point in time of the site?

2 A. So the -- So I -- Have I -- I did
3 not. I don't think I collected photographs at
4 any point. But, in part, because photographs
5 are really -- a really untechnical way of
6 looking at subsidence. Sometimes you can see a
7 huge crack in the building and that might give
8 you some clue, but, generally speaking,
9 photographs are a pretty low tech way of
10 looking at subsidence.

11 Q. Okay. Fair enough. But with
12 respect to any reference point whatsoever, you
13 have no reference point to point to other than
14 a reference point that was drawn from another
15 report or expert; is that correct?

16 A. That -- So it is correct that my --
17 that the testimony I submitted was an analysis
18 of the published literature. And I think that
19 that -- and that I was not an author on any of
20 those studies. I did provide an internal
21 review to the Jones et al. study, but I was not
22 a -- an author on any of the studies that I
23 referenced. I think that that might be the
24 most accurate way to phrase it. My role was
25 similar to someone who might be a lawyer who

1 had looked at previous judgment, who was doing
2 legal research by looking at the case record of
3 what other judges had decided.

4 Q. Sir, are you familiar with the work
5 performed by the U.S. Army Corps of Engineers
6 on the levee system in New Orleans East?

7 A. Generally speaking, yes.

8 Q. On page 8 of your prefiled testimony
9 dated January 6, 2017 --

10 A. Yes.

11 Q. -- you state on lines 12 through 14,
12 The chance of flooding could be reduced if
13 restoration and protection measures are
14 implemented by building levees and restoring
15 wetlands. (As read.)

16 Do you see that?

17 A. I think that your line numbering is
18 different from mine, but I do recall writing
19 that. Let me -- Yes. That's on page 9 of my
20 testimony, but, yes, I do see that.

21 Q. And when you wrote this sentence,
22 did this contemplate the work that has been
23 done on the levee system, in fact, in that area
24 since Katrina?

25 A. Yes. Absolutely. The post-Katrina

1 flood protection systems are substantially
2 better than the pre-Katrina ones.

3 Q. Thank you.

4 And on the next page, page 9 --

5 A. Yeah.

6 Q. -- you talk about on line 10, For
7 example, a ten-year rainfall event could lead
8 to about one foot of flooding in areas near the
9 proposed NOPS plant. (As read.)

10 Do you see that?

11 A. Yes, I do.

12 Q. And did you do any analysis at the
13 site to draw your conclusions about potential
14 flooding in that area?

15 A. So, like I said, I looked at the
16 published literature and I guess I would
17 consider a technical examination of the
18 published literature an analysis; right?
19 It's -- Like I said, it's similar to a lawyer
20 who does legal research by looking at what
21 judges have written in the past, judges'
22 decisions. So I did look at the published
23 literature, and they show -- and -- you know,
24 and as my testimony states, a ten-year rainfall
25 event would result in about a foot of flooding

1 in the area.

2 Q. Right. And does that contemplate
3 Entergy's proposal in terms of the elevation of
4 the construction?

5 A. So obviously my concern is that
6 increased subsidence in the area would create a
7 bigger hole effectively and create a -- have
8 the risk of raising that flood level.

9 Q. Right. But my question is -- Well,
10 first of all, do you have any knowledge of
11 Entergy's proposal with respect to the
12 elevation of the proposed plant?

13 A. I believe that Entergy submitted
14 that information in their original application.

15 Q. Do you know what it is?

16 A. Off the top of my head, I cannot
17 quote you that number. I would like to have a
18 chance to look at their application. But I do
19 remember -- recall them putting that in
20 their -- in their testimony.

21 Q. So is it fair to say that when you
22 talk about one foot of flooding in the area,
23 you're not talking about one foot of flooding
24 at the Michoud site considering Entergy's
25 proposed elevation plan in construction, are

1 you?

2 A. Let me think about the best way
3 to -- That analysis on the ten-year rainfall
4 event assumed effectively current -- assumed
5 current conditions at the time of the study.

6 Q. Is that a no?

7 A. So that would be -- So my analysis
8 pointed out that if the new plant led to
9 further subsidence, that number would be
10 greater.

11 Q. Okay. Let's move on.

12 Would you agree that there are a
13 variety of factors that contribute to
14 subsidence?

15 A. In Louisiana, absolutely.

16 Q. Would you agree that subsidence is
17 occurring in many, many areas throughout the
18 City of New Orleans?

19 A. The City of New Orleans is
20 absolutely prone to subsidence, and that's why
21 I feel like it is so critical that we get any
22 issue that could potentially impact subsidence
23 correct.

24 Q. Are you familiar with Gentilly?

25 A. Yes. I have friends that live

1 there.

2 Q. Is subsidence occurring there?

3 A. Yes, subsidence is occurring in
4 parts of Gentilly.

5 Q. Are you familiar with Lakeview?

6 A. Yes. It's a lovely neighborhood.

7 Q. Is subsidence occurring there?

8 A. Absolutely.

9 Q. And subsidence is occurring in New
10 Orleans East; right, sir?

11 A. Like I said, subsidence is occurring
12 in many, many parts of the city, including New
13 Orleans East.

14 Q. And subsidence is going to occur, in
15 your opinion, going forward in New Orleans?

16 A. So, you know, one thing that has
17 emerged is that subsidence is controlled by
18 many factors and there are things that can
19 accelerate or decelerate subsidence. So I do
20 think that subsidence will remain a factor in
21 the future, but I think that research has shown
22 that there are things that we can do to raise
23 or lower that rate in some situations. And
24 fluid withdrawal is one of those.

25 Q. Would you agree that the -- Strike

1 that.

2 Are you familiar with the subsidence
3 from the groundwater withdrawal that was
4 occurring at Michoud prior to the deactivation
5 of the Michoud units?

6 A. Yes.

7 Q. And would you agree that the water
8 withdrawal that is expected to occur under
9 Entergy's current proposal is significantly
10 less than the water withdrawal that was
11 occurring at Michoud?

12 A. Yes, that is correct.

13 MS. MILLER:

14 Your Honor, I apologize, but there
15 are actually two proposals. So I think
16 the attorney should clarify which one
17 he's speaking for or if he's speaking to
18 both.

19 MR. BEATMANN:

20 Sure.

21 EXAMINATION BY MR. BEATMANN:

22 Q. Under the proposal -- Well, let me
23 ask it this way. Is it fair to say that under
24 either proposal that Entergy has put forward,
25 significantly less water withdrawal is expected

1 when compared to the water withdrawal that was
2 happening with Michoud Units 2 and 3?

3 A. So let me phrase this correctly.
4 Yes, the new plants withdraw less water than
5 the old plants. That does not alleviate all of
6 my concerns. I think that that is -- It does
7 not alleviate all of my concerns, but certainly
8 they withdraw a lot less water than the old
9 ones.

10 MR. BEATMANN:

11 Thank you.

12 That's all I have, Your Honor.

13 JUDGE GULIN:

14 Is there any redirect?

15 EXAMINATION BY MS. MILLER:

16 Q. Dr. Kolker, could you turn in your
17 prefiled supplemental testimony to pages 3 and
18 4, please?

19 A. Yes, I'd be happy to.

20 Q. Now, at the top on page 4 is the now
21 infamous Olympic size swimming pool paragraph;
22 is that correct?

23 A. That is correct.

24 Q. And if you go to page 3, the
25 Question 7, which is the question you were

1 answering, begins with, In Dr. Losonsky's
2 testimony, he writes and quotes Dr. Losonsky's
3 testimony; is that correct? (As read.)

4 A. Yes, that is correct.

5 Q. And then the continuation of that
6 question is, What do you think of this
7 statement? Should we be concerned? (As read.)

8 And so the following two paragraphs
9 were in response to a statement in
10 Dr. Losonsky's testimony?

11 A. That is correct. That is absolutely
12 correct.

13 MS. MILLER:

14 I have no other redirect, Your
15 Honor.

16 JUDGE GULIN:

17 Any other questions? Any recross?

18 MR. BARTON:

19 No. Thank you, Your Honor.

20 JUDGE GULIN:

21 Advisors?

22 MR. BEATMANN:

23 No, Your Honor.

24 JUDGE GULIN:

25 Thank you, Dr. Kolker. You may be

1 excused.

2 And I think this is a good time to
3 take our lunch break. Let's come back at
4 1:15.

5 (Whereupon the lunch recess began at
6 12:28 P.M., and the proceedings
7 reconvened at 1:15 P.M.)

8 JUDGE GULIN:

9 Okay. My understanding is we're
10 going to begin with Mr. Brubaker. Is
11 Mr. Brubaker in the house?

12 While you retrieve Mr. Brubaker, we
13 recently -- a new attorney entered her
14 appearance for Alliance and maybe you
15 could identify yourself for the record.

16 MS. TAUBER:

17 Sure. Thank you, Your Honor.

18 My name is Jill Tauber with
19 Earthjustice, and I represent the
20 Alliance for Affordable Energy and 350
21 New Orleans.

22 JUDGE GULIN:

23 All right. Welcome, Ms. Tauber.

24 Welcome, Mr. Brubaker.

25 MR. BRUBAKER:

1 Thank you.

2 JUDGE GULIN:

3 And if you would remain standing and
4 face the court reporter.

5 MAURICE BRUBAKER,

6 after having been duly sworn by the
7 above-mentioned Certified Court Reporter, was
8 examined and testified as follows:

9 MR. EDWARDS:

10 Before we tender him for
11 cross-examination, Your Honor, and I
12 think I know the answer, but I want to
13 make sure that his direct testimony dated
14 January 6, 2017, and his additional
15 testimony dated October 16, 2017, has
16 been admitted in the record.

17 JUDGE GULIN:

18 Indeed, it has.

19 MR. EDWARDS:

20 Thank you, sir.

21 JUDGE GULIN:

22 Sierra Club.

23 MR. SMITH:

24 We're going to cede our time, Your
25 Honor. Thank you.

1 JUDGE GULIN:

2 Okay. Then Entergy.

3 EXAMINATION BY MR. GUILLOT:

4 Q. Morning, Mr. Brubaker. We meet
5 again.

6 A. We meet again. Good morning -- Good
7 afternoon.

8 Q. Good afternoon to you, sir.

9 Mr. Brubaker, isn't it true that
10 market equilibrium is when supply and demand
11 come into balance?

12 A. Yes.

13 Q. And isn't it also true that the laws
14 of supply and demand apply to wholesale
15 electricity markets?

16 A. Yes, sure do.

17 Q. All else equal, Mr. Brubaker,
18 capacity prices rise when supply becomes
19 constrained; isn't that correct?

20 A. That is true, yes.

21 Q. Is this a true statement? At
22 equilibrium, the cost of new supply could
23 include a premium if supply is constrained?

24 A. Can I hear that again?

25 Q. All right. Is this a true

1 statement? At equilibrium, the cost of new
2 supply could include a premium if supply is
3 constrained?

4 A. Yes, that's correct.

5 Q. Is this a true statement? The MISO
6 capacity market does not extend past one year?

7 A. The ability to purchase capacity in
8 the MISO market to resolve shortfalls is a
9 12-month or one-year proposition, yes.

10 Q. Mr. Brubaker, I don't think your mic
11 is on.

12 (Whereupon a pause occurred in the
13 proceedings.)

14 EXAMINATION BY MR. GUILLOT:

15 Q. All right, Mr. Brubaker. In your
16 experience, how long does it normally take to
17 construct a CT?

18 A. Three to four years.

19 Q. And the unavailability of equipment
20 could add to that time?

21 A. Well, it could if it's not been
22 properly planned and arrangements made in
23 advance of the construction requirement dates.

24 Q. And regulatory approvals could add
25 to that time?

1 A. They could.

2 Q. Mr. Brubaker, in your opinion,
3 generation resources should ideally be located
4 near the load they serve; isn't that correct?

5 A. I think it's most efficient to
6 locate generation resources near the load to be
7 served and also it avoids the risk of
8 transmission availability and curtailment. So,
9 yes, for those reasons, it's generally regarded
10 as appropriate. Now, there are times when that
11 can't happen, but there should be at least some
12 generation near the load to be served.

13 Q. As we approach equilibrium, did you
14 agree that it's reasonable to assume that the
15 cost of capacity will be the cost of a new
16 built CT?

17 A. It will tend to that point. It may
18 be higher or lower, depending upon
19 circumstances, but that would be -- it's
20 generally believed that the cost of new entry
21 or CONE is going to set the price in the
22 future.

23 Q. Now, the accelerated deactivation of
24 older steam or coal generation in MISO South
25 could hasten equilibrium, couldn't it?

1 A. Would you mind repeating?

2 Q. Accelerated deactivation of older
3 legacy units could hasten equilibrium in MISO
4 South?

5 A. It could. You'd have to look at
6 what else was happening in the region. There
7 might be new generation coming on. So you'd
8 have to look at the net, but all else equal, it
9 would do that.

10 Q. All right. Your testimony does not
11 address or otherwise dispute the methodology
12 used by ENO to create its load forecast; isn't
13 that correct?

14 A. Correct.

15 Q. And your testimony does not address
16 or otherwise challenge any deactivation
17 assumptions by ENO; isn't that correct?

18 A. That's correct. They've already
19 done the deactivation of Michoud.

20 Q. All right. Now, in connection with
21 your testimony, you haven't done any analysis
22 or attempted to address any local reliability
23 needs; isn't that correct?

24 A. I didn't testify about that, but I
25 think as I just explained a moment ago, that

1 there are concerns about not having generation
2 near the load. I didn't offer testimony about
3 that however.

4 Q. All right. Thank you.

5 All right. But your testimony is
6 based on ENO's overall capacity provision;
7 isn't that correct?

8 A. Correct.

9 Q. All right. And do you agree that
10 based on that capacity position, that ENO would
11 have a need for the full amount of the CT over
12 the 20-year planning horizon?

13 A. I don't recall when the forecast
14 takes it to that point. At some point if load
15 forecast proves it, it would.

16 Q. You talked about the benefits of
17 having RICE generation, of installing RICE
18 units in your testimony. Do you recall that?

19 A. I do.

20 Q. Can you just explain what you think
21 some of the benefits are in installing the RICE
22 generation?

23 A. Sure. Let me find that in my
24 testimony so I don't forget something. Do you
25 have a reference handy there?

1 Q. Oh, sure.

2 A. I think probably it starts on page 8
3 of my most recent testimony.

4 Q. Yes. I agree.

5 A. Okay. Good. So I said from an
6 efficiency standpoint, the RICE units have a
7 lower heat rate, which means it takes fewer BTU
8 of energy to create a kilowatt hour. That is
9 true of the CT. So that's a benefit.

10 It also cost less to start it up
11 because you're starting up one of a number of
12 large automobile engines effectively instead of
13 having to start a whole CT unit when maybe you
14 don't need all of the capacity. And so for
15 that reason, it's flexible. It's got a shorter
16 run time, which means when you run enough to
17 meet load, you don't have to keep it on as long
18 as is the case for the CT. So in that regard,
19 it's more flexible and can be more economical.

20 Because there are -- If you look at
21 the RICE units, there's seven of them. The CT,
22 there's one of them. The CT, if you need any
23 part of it, you have to start it up and take
24 the running fuel costs and other expenses of
25 keeping the whole thing up. But the RICE

1 units, you can put on one, two, three, four,
2 five units, whatever is required, and save
3 costs in that way.

4 It's also less costly from a total
5 dollar standpoint than the CT, so customers are
6 better off on the front end at least by not
7 having to pay the additional carrying costs on
8 the CT vis-a-vis the RICE units.

9 And it also provides flexibility and
10 visibility, so that if the load forecast
11 doesn't materialize as expected currently,
12 there's a savings to the customer, because the
13 proposition with the CT is that we're
14 ultimately going to need this within the
15 lifetime of the CT, but that may not be true.
16 You might need some or all of the RICE units
17 for ten years and then that's it. Because we
18 don't really know how effective energy
19 efficiency and demand response activities will
20 be.

21 So it has a lot of -- It provides a
22 hedge to the customers against unknown events
23 in the future and gives the company an
24 opportunity to deal with those events as they
25 unfold.

1 Q. What about storm restoration
2 benefits? Do you agree they would also have
3 storm restoration benefits?

4 A. It would be by having it local and
5 having it with black start capability. It
6 would facilitate the restoration of the system
7 following a hurricane or other adverse weather
8 event.

9 Q. So your client in this case is on an
10 interruptible rate, isn't it, Mr. Brubaker?

11 A. That is correct.

12 Q. Do you believe that it is a good
13 practice for a utility to constantly interrupt
14 customers like your client any time there's a
15 reliability concern?

16 A. No, I don't. The LIS tariff has
17 some guideline and conditions within it as to
18 how often the interruptions can occur and under
19 what circumstances and also the notice time to
20 be given. There are very few customers can
21 accept any interruptible power.

22 Air Products happens to be one of
23 the unique ones that take part of the load
24 interruptible. It has a minimum of 4,000 kW
25 firm load for certain needs, but the balance is

1 under the interruptible tariff. And Air
2 Products is able to meet its commitments to its
3 customers, its production commitments to its
4 customers with the storage and the production
5 capability that it has at the facility so long
6 as those interruptions are within the limits of
7 the tariff that it signed up under which to
8 take power. Should it happen that the
9 interruptions would exceed that by any material
10 amount, Air Products could simply decide that
11 "I can't tolerate interruptible power. I want
12 it firm." And then you've got an extra
13 20 megawatts or so problem to solve.

14 Q. And is it your understanding,
15 Mr. Brubaker, that under the interruptible
16 tariff that your clients take service under, it
17 could simply choose not to curtail its load and
18 pay a penalty instead? Isn't that correct?

19 A. I believe it could. It also would
20 face the possibility of being kicked off the
21 tariff. So I think Air Products has been
22 pretty observant of those requirements.

23 Q. But is it all -- Okay. I'll stop
24 there.

25 MR. GUILLOT:

1 No more questions.

2 JUDGE GULIN:

3 Okay. Thank you.

4 Any redirect?

5 Mr. Edwards?

6 MR. EDWARDS:

7 None.

8 JUDGE GULIN:

9 Okay. Then, Mr. Brubaker, we thank
10 you very much. You may step down.

11 MR. BRUBAKER:

12 Thank you, sir.

13 JUDGE GULIN:

14 Do we have any other witnesses
15 available today?

16 (No response.)

17 JUDGE GULIN:

18 That sounds like a no to me.

19 All right. Then we will reconvene
20 tomorrow morning at 9:00 A.M., and it
21 looks like we'll start then with Stanton
22 and go on with the rest of the other --
23 Lanzalotta then Vumbaco and Prep and
24 maybe -- who knows, maybe we can even get
25 in Movish.

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MS. HAND:

Your Honor?

JUDGE GULIN:

Yes.

MS. HAND:

In an attempt to maximum the possibility of getting Movish in and letting everyone head home for the holidays, would folks be willing to begin at 8:30 tomorrow morning?

JUDGE GULIN:

Okay. Let's try that, then. Let's try 8:30 tomorrow morning.

MS. HAND:

Thank you, Your Honor.

JUDGE GULIN:

Then we'll see you-all tomorrow at 8:30.

(Whereupon the proceedings were recessed for the day at 1:29 P.M.)

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REPORTER'S CERTIFICATE

This certification is valid only for a transcript accompanied by my original signature and original required seal on this page.

I, Kathy Shaw-Gallagher, Certified Court Reporter in and for the State of Louisiana, as the officer before whom this testimony was taken, do hereby certify that this testimony was reported by me in stenotype reporting method, was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding; that the transcript has been prepared in compliance with transcript format guidelines required by statute or by rules of the board, and that I am informed about the complete arrangement, financial or otherwise, with the person or entity making arrangements for deposition services; that I have acted in compliance with the prohibition on contractual relationships, as defined by Louisiana Code of Civil Procedure Article 1434 and in rules and advisory opinions of the board; that I have no actual knowledge of any prohibited employment or contractual relationship, direct or indirect, between a court reporting firm and any party litigant in this matter nor is there any such relationship between myself and a party litigant in this matter nor is there any such relationship between myself and a party litigant in this matter; I am not related to counsel or to the parties herein, nor am I otherwise interested in the outcome of this matter.

KATHY SHAW-GALLAGHER, CCR, RPR
Certified Court Reporter
Curren-Landrieu, L.L.C.
749 Aurora Avenue
Suite 4
Metairie, Louisiana 70005

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