



**ALLIANCE FOR  
AFFORDABLE  
ENERGY**

March 14, 2025

Via Electronic Mail  
Clerk of Council  
Room 1E09, City Hall  
1300 Perdido Street  
New Orleans, LA 70112

RE: RESOLUTION AND ORDER ESTABLISHING A DOCKET AND PROCEDURAL  
SCHEDULE TO ENHANCE DISTRIBUTED ENERGY RESOURCE PROGRAMS  
(UD-24-02)

Dear Clerk,

Please find the attached Comments of the Alliance for Affordable Energy for filing under the docket referenced above. We will submit physical copies at your instruction. If you have any questions, please do not hesitate to contact me. Thank you for your attention to this matter.

Sincerely,

Logan Burke  
Executive Director  
Alliance for Affordable Energy

**Before  
The Council of the City of New Orleans**

**In Re: RESOLUTION AND ORDER  
ESTABLISHING A DOCKET AND  
PROCEDURAL SCHEDULE TO  
ENHANCE DISTRIBUTED ENERGY  
RESOURCE PROGRAMS**

**DOCKET NO. UD-24-02**

**MARCH 14, 2025**

**COMMENTS OF THE ALLIANCE FOR AFFORDABLE ENERGY**

**I. INTRODUCTION**

The Alliance for Affordable Energy (“the Alliance”) hereby submits the following comments in response to the party proposals filed on December 20, 2024:

**II. ENTERGY NEW ORLEANS’ (“ENO”) ARGUMENTS AGAINST USE OF  
SYSTEM ENERGY RESOURCES, INC. (“SERI”) CREDITS ARE FLAWED**

- A. ENO creates a new term that does not appear in the Council Resolution or the AIP—“SERI refunds to customers.”*

There are no SERI refunds to customers in this matter. SERI provides the refunds to ENO. ENO’s obligation is to provide credits and prospective rate reductions according to the direction it will receive from the City Council (“Council”). Nothing in the Agreement in Principle (“AIP”) or the resolution adopting the AIP says that this matter is about SERI refunds to customers.

- B. ENO has no justiciable property interest in the SERI refunds, so it has no basis for asserting a takings claim.*

ENO assumes that it has the sole right to dictate the form and mechanism of the credits and prospective rate reductions realized from the refunds it receives from SERI, and a Constitutionally protected property interest in those refunds. ENO argues that it has the right to

direct how the SERI funds are disbursed, and that if the Council does not agree, then ENO will consider bringing a lawsuit against the Council.

SERI, of course, is a wholly owned subsidiary of Entergy Corporation, so the misconduct by SERI accrues to the entire Entergy Corporation. The ENO argument is that the party that commits improper conduct--in this case, the treatment of the Lease Revenues--has the right to dictate the terms of any restitution, and that a business required to pay fines, fees, or refunds has a Constitutionally protected property interest in those fines, fee, or refunds and the form of that restitution. ENO's argument violates sound public policy. Despite citing several legal decisions in its comments, ENO provides no authority to support this particular position.

Entergy also argues that the use of SERI refund balances to advance distributed energy resource ("DER") deployment and operation in the best interests of its customers would constitute a tax. A tax is a mandatory payment or charge collected by local, state, and national governments from individuals or businesses to cover the costs of general government services, goods, and activities. The Council's determination about how best to disburse the SERI refunds that ENO receives from a voluntary settlement is not a tax.

*C. ENO argues that applying the SERI refunds to program costs relating to deployment of distributed energy resources would constitute payments to non-utility third parties that would run into "legal obstacles," including ENO's potential initiation of legal action.*

Distributed energy resources include a wide range of services and technologies that are installed or operate at the distribution level of the grid, including generation, storage, energy efficiency, energy management, and others, operating alone or in combination with other DERs. While there are many ways to implement DER deployment programs, involving utilities, customers, vendors, developers, and combinations of all these, the only way to make them happen is to pay for them. Studies conducted across the United States over the past several

decades have demonstrated that the deployment and operation of DERs yields benefits to host customers, non-participant customers, and the utility which exceed the cost of those programs and measures.

As the Alliance and Together New Orleans (“TNO”) have explained to the City Council, \$32 million in applied SERI refunds can be matched and expanded with federal dollars to yield \$80 million in program funding. Moreover, directing the funds toward increasing DER deployment and operation offers additional valuable benefits, including increased resiliency at the site of the deployment and in the supporting grid, additional dispatchable capacity for the utility to access, a cleaner energy mix for New Orleans, and new tools to manage emergency and other outages.

In sum, properly constructed and operated DER programs like those proposed by the Alliance and TNO and funded by SERI fund balances will yield returns that exceed their costs, in turn maximizing the benefits to current and future customers in a way that offsetting customer utility bills alone cannot. Such programs have the best chance of maximizing the public interest benefits that can be realized from the SERI refund amounts.

ENO does have a ministerial obligation to pay invoices that will be charged against the SERI refund balances in an accurate manner and according to proper accounting practices. However, this ministerial duty does not create property rights in the refund amounts that it must apply to restitutionary purposes deemed in the public interest by the Council. Nor would this ministerial duty serve as a reasonable foundation for the kind of legal action that ENO indicates it would consider taking against the Council.

*D. The Council, with the advice of its Advisors and the Council Utilities Regulatory Office (“CURO”) and from other stakeholders, has the responsibility and right to determine how to best serve the public interest.*

In this exercise of authority, the Council may consider ENO’s legitimate interests and take advice from ENO on the best ways to ensure that the public, today and over the longer term, receives the benefits of any credits or disbursements.

There is nothing in the AIP or the resolution adopting the AIP that supports the notion that the Council has delegated its fundamental regulatory obligation to ENO, or that it is obligated to do so by the terms of its resolution or the AIP.

The public interest obligation is fundamental to the Council’s regulatory role. CURO, the Council’s Advisors, and the Council should reject ENO’s interpretation that the core documents or the law negate or limit the Council’s role regarding its public interest obligation—the Council’s authority is worth fighting for—and should oppose ENO’s positions in any legal proceedings. This proceeding has as its fundamental purpose developing the program that maximizes the public interest benefits that can be realized with these funds, and should move forward in that mission.

*E. The payment timing terms in the AIP do not control the manner in which the SERI funds should be applied to the benefit of customers.*

ENO implies that because the payment timing terms of the AIP were discussed with Council’s Advisors, and the AIP ultimately contained provisions regarding the timing of credits under the settlement, this contributes to a conclusion that, in ENO’s words in comments alone, “the objective of the SERI AIP is return the SERI refund to Entergy’s customers,” and that the SERI AIP “established the mechanisms to return the entirety of the SERI refund to customers” subject to the timing terms.

If ENO is asserting that the Council's Advisors have already approved of Entergy's position through a private agreement, there is no evidence to support this position. To the extent that ENO is saying that the AIP is about SERI refunds to customers, there is no such construct, as already explained.

ENO cites to the 'whereas' clause on page two of the resolution adopting the AIP which states that "as part of the AIP, *SERI agrees* to a total refund of \$116 million *to ENO* to be returned to ratepayers as detailed therein." This recital reflects SERI's agreement and that the refund will be paid to ENO and is followed by a very general statement that the refund will be returned to ratepayers as detailed in the AIP. The resolution and the AIP don't include detailed specifications on the mechanisms and methods for best utilizing the SERI refunds. There are specific terms as to timing, but nothing as to how and to whom disbursements must be made.

This silence is itself probative of the discretion and jurisdiction that the Council has retained, and there is nothing to preclude a Council decision to use the funds to offset the costs of DER-related programs, especially those that can provide benefits that ENO will not or cannot, today and in the future.

In sum, the Council's discretion to direct, on behalf of customers, the mechanisms and methods for spending the funds that ENO receives from SERI has not been waived or surrendered. The parties should move expeditiously to launch and conduct the programs that have been proposed by the Alliance and TNO.

### **III. ENO'S CASE CITATIONS**

ENO cites several legal decisions that it argues preclude the use of SERI refund balances to advance DER deployment and operation through any entity except ENO.

- A. *Entergy Gulf States, Inc. v. Louisiana Public Service Commission* case stands for two well-recognized principles of judicial review of regulatory decisions: first, that a regulator must base its decisions on evidence and authority, and second, that regulatory action on an agreement between the parties cannot ignore the plain language of the agreement. This proceeding is about establishing the evidence that a DER-related program leveraging ratepayer dollars to create utility-disbursed incentives for residential and commercial resilient distributed infrastructure serves the best interests of ENO's customers. As already discussed, there is no plain or reasonably inferred language in the Council resolution or the AIP that supports Entergy's position.
- B. ENO offers an additional argument regarding Louisiana and U.S. Constitutional prohibitions relating to the taking of private property without due process. The basic flaw with this argument is that a takings claim must be based on a justiciable property interest. ENO's interest in the SERI refunds is custodial, and is not a property interest that would support a takings claim.
- C. ENO cites a California case (*Assembly of State v. Public Utilities Commission*) as precedent for its argument that "diverting customer refunds to third parties is problematic and potentially illegal, and that paying Settlement Credits directly to customers [for payment to Entergy through bills] is the more reasonable and sound path intended by the SERI AIP and Council's Resolution." The California case does not say that. In that case, there were two important factors that are absent here: (1) First, the California case was about how unpaid interest on refunds must be distributed to customers, and (2) Second, the way that customer refunds must be paid is specifically set out in California state law.

D. Entergy's final case law citation (*Audubon Ins. Co. v. Bernard*) is about the Louisiana legislature improperly enacting a statute that contained a fee. The case stands for the proposition that if the legislature enacts a law which establishes a fee that constitutes a tax, but fails to follow constitutional requirements in such enactment, the law will be itself unconstitutional. The instant proceeding is not about a tax or a fee or a legislative enactment establishing either.

Furthermore, in *Michael v. City of Minden* 704 So. 2d 409, 411-412 (La. App. 2 Cir 1997), the 2nd Circuit Court of Appeal of Louisiana held that it was permissible for the city-owned utility company to use the money from an overcharge refund to improve the utility distribution system in lieu of direct refunds to ratepayers.

#### **IV. ENO'S REQUEST FOR INDEMNITY**

ENO comments that aggrieved customers or other interested parties might challenge a Council decision to move forward with an extension and expansion of Entergy's pilot storage program, as proposed by the Alliance and TNO. ENO posits that these aggrieved or interested persons would challenge such action as being inconsistent with the AIP and be detrimental to ENO. Therefore, ENO argues, the Council should grant indemnity to ENO.

ENO says it should be granted indemnity. Indemnity is unnecessary. The proposed programs pose no credible risk of such legal action. First, if the Council orders that some of the SERI refund balances be used to advance deployment and operation of DERs, that order will be based on the record created in this proceeding and supporting the Council's conclusion that such an approach is consistent with the public interest, and will document the ways that program expands the benefits available through use of the SERI refunds. Second, this process will continue to ensure full rights of public participation and comment as to the best ways to protect



and advance the public interest through the distribution of the SERI refund balances. Third, the kinds of programs proposed are fully within the Council's authority to direct regardless of the source of funds.

The arguments raised by ENO do not constitute a reasonable basis for a legal action as ENO asserts, so no indemnification is necessary.

## **V. CONCLUSION**

ENO's comments attempt to reframe the use of SERI refund balances as third-party payments. This is a misrepresentation of the settlement terms and appears to be an effort to regain control over funds that rightfully belong to ratepayers. Arguments from ENO rely on misinterpretations of the AIP and the resolution adopting the AIP, misapplied legal citations, and a fundamental denial of the public interest purpose of these refunds. This is not a matter of legal ambiguity—it is a clear-cut case of ENO trying to redirect and control the restitution process for its own benefit. ENO's proposal to use the SERI refunds to pay for utility-sponsored programs is another element of this effort.

Meanwhile, these funds, which should be working to lower costs and improve grid resilience for New Orleans residents, are instead sitting in ENO's accounts accumulating interest while action is delayed. Respectfully, the Council, CURO, , and its Advisors should reject any and all attempts from any party to obstruct or delay a solution that maximizes ratepayer benefits. Council has before it a proposal that can be quickly implemented to put the SERI funds to good use on delivering long-term savings and resilience for customers. The Council and stakeholders must move forward decisively, prioritizing ratepayers, and advancing the deployment of distributed energy resources without unnecessary delay.

Submitted respectfully,

A handwritten signature in black ink, appearing to read "Logan Burke". The signature is fluid and cursive, with the first name "Logan" and last name "Burke" clearly distinguishable.

Logan Burke  
Executive Director  
Alliance for Affordable Energy

**Before  
The Council of the City of New Orleans**


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PROCEDURAL SCHEDULE TO  
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**DOCKET NO. UD-24-02**

**MARCH 14, 2025**

**CERTIFICATE OF SERVICE**

I do hereby certify that I have, this 14th day of March 2025, served the foregoing correspondence upon all other known parties of this proceeding by electronic mail.

  
\_\_\_\_\_  
Logan Burke  
Alliance for Affordable Energy

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