NO. R-09-483

BY: COUNCILMEMBERS MIDURA, CARTER, HEDGE-MORRELL AND WILLARD-LEWIS

IN RE: RESOLUTION REGARDING PROPOSED RULEMAKING TO ESTABLISH INTEGRATED

RESOURCE PLANNING COMPONENTS AND REPORTING REQUIREMENTS FOR ENTERGY NEW

ORLEANS, INC.

RESOLUTION AND ORDER TO APPROVE ENTERGY NEW ORLEANS, INC.’S APPLICATION FOR APPROVAL OF

PROGRAMS TO BE INCLUDED IN THE ENERGY SMART PLAN PURSUANT TO COUNCIL RESOLUTION R-09-

136 AND THE 2009 AGREEMENT IN PRINCIPLE DOCKET NO. UD-08-02

WHEREAS, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City

of New Orleans (“Charter”), the Council of the City of New Orleans (“Council”) is the governmental body

 with the power of supervision, regulation and control over public utilities providing service within the

City of New Orleans; and

WHEREAS, the Council is responsible for making all necessary rules and regulations to govern

applications for the fixing or changing of rates and charges of public utilities and all petitions and

complaints relating to any matter pertaining to the regulation of public utilities; and

WHEREAS, Entergy New Orleans (“ENO” or “Company”) provides electric service to all of New Orleans,

except the Fifteenth Ward, Algiers, and gas service to all of New Orleans; and

WHEREAS, on December 6, 2007, the Council through Resolution R-07-600 asserted its commitment to

energy efficiency and the development of a viable, cost-effective energy efficiency program in Orleans

Parish; and

WHEREAS, the Council adopted Resolution R-08-601 on November 6, 2008, which directed ENO to set

aside approximately $1,855,000 for future use in the residential programs of the Energy Smart Plan; and

WHEREAS, the Council adopted Resolution R-08-366 on July 10, 2008, which found that the

consensus-based Energy Smart program concepts were an appropriate basis for developing an Energy

Smart

Plan for Council future consideration and;

WHEREAS, President Barack Obama has made energy efficiency a central component to his

administration's economic recovery plan. Following the passage of the American Clean Energy and

Security Act, President Obama announced major energy efficiency initiatives that will save consumers

billions of dollars every year. The President has indicated that making our economy more energy

efficient is one of the fastest, easiest, and cheapest ways to make our economy stronger; and

WHEREAS, the March 25, 2009 Agreement in Principle in Docket UD-08-03 (“2009 AIP”), adopted by

Resolution R-09-136 on April 2, 2009, provides for one unified energy conservation program available to

customers in the Company’s service area; and

WHEREAS, in addition to the $1,855,000 seed money for residential energy efficiency programs set aside

pursuant to Resolution R-08-601, the 2009 AIP established that the Energy Smart Plan will be funded at

 a level of $3.1 million per year; and

WHEREAS, the 2009 AIP directed the Advisors to the Council to “collaborate with the Company in the

further evaluation of the general concepts identified by the Council in Resolutions R-07-600 and R-08-

366 for the Company’s program evaluation, design, and integration into the DSM/energy conservation

programs previously developed by the Company in Docket UD-08-02 for potential aggregation, as

appropriate, into a unified program, namely, the Energy Smart Plan;” and

WHEREAS, the 2009 AIP provides that “the Company will be held to the achievement of specific DSM

and energy conservation goals and targets for any programs approved by the Council in Council Docket

UD-08-02;” and

WHEREAS, the 2009 AIP provides for an annual review by the Council to assess “whether the Company

has attained the targets/goals established by the Council within the 12-month review period;” and

WHEREAS, the 2009 AIP also provides that the Council’s annual review will include an “evaluation

 of the appropriateness of goals/targets for the prospective 12-month review period and, if necessary,

adjustment of the stated goals/targets shall be accomplished through a sub-docket of the Council in

Docket UD-08-02;” and

WHEREAS, the 2009 AIP provides that “the Company will design, select and implement either itself or

through contractors, and with the approval of the Council, demand side programs which are to benefit

all customer classes that support such programs through their electric rates;” and

WHEREAS, the 2009 AIP provides that “all programs approved by the Council, with the exception of low

income weatherization and domestic solar water heating programs, prior to implementation, must be

determined to be cost-effective under the industry accepted testing criteria of the Total Resource Cost

(“TRC”) Test and the Program Administrator Cost (“PAC”) Test as defined in the California Standard

Practice Manual, ‘Economic Analysis of Demand-Side Programs and Projects,’ October 2001;” and

WHEREAS, the 2009 AIP provides that in the Council’s determination of whether a program, or a

component of a program, is to be administered and implemented by the Company or a third party, the

following criteria are to be considered: (1) cost effectiveness of such action; (2) the maintenance of

customer commercially-sensitive or confidential information; (3) feasibility (demand response, time of

use rates, AC cycling); and (4) other criteria that may be identified by the Company and determined

appropriate by the Council; and

WHEREAS, the 2009 AIP provides that “the Company shall utilize deemed savings as verified appropriate

by the Council (with appropriate monitoring and verification in support thereof) to measure the effects

of the Energy Smart Plan’s programs and in determining whether it has met or exceeded its

goals/targets;” and

WHEREAS, the 2009 AIP provides that “DSM/EE targets should be set based on approved funding levels

and based on a set of specific approved programs with calculated deemed savings and estimated market

participants for those designed programs,” and “such targets shall be established by the Council in its

order in Council Docket UD-08-02 and will be reviewed annually to account for changes in funding,

program design and market conditions;” and

WHEREAS, ENO also has an obligation under the 2009 AIP to “commission a 12-month study of

residential and commercial solar photovoltaic (“PV”) applications to provide information on the

benefits, costs and overall performance specific to the New Orleans area associated with these

applications;” and

WHEREAS, Resolution R-09-267, issued on June 4, 2009 in Docket UD-08-02, set forth a procedural

schedule to implement the Energy Smart Plan pursuant to Resolution R-09-136 and the 2009 AIP; and

WHEREAS, upon approval of the appropriate energy efficiency programs by the Council, we will select an

Independent Third Party Monitor to oversee ENO competitive selection of a Third Party Program

Administrator (“TPA”). Pursuant to the 2009 AIP, the Independent Third Party Monitor is anticipated to

oversee all aspects of the Company’s solicitation of interest and administration of the RFP bidding

process.

Although the 2009 AIP requires that “within sixty (60) days of the Council’s approval of the programs in

Docket UD-08-02, the Company should issue a Request for Proposals (RFP) for selection of the TPA to

administer and implement the Energy Smart Plan,” that process cannot begin until such time as an

Independent Third Party Monitor is selected by the Council. The TPA will be responsible for the

implementation and administration of energy efficiency programs specified and approved by the

Council.

Upon the selection of the TPA by ENO, and the agreement of that selection by the Council, the final

phase of program development will begin with the goal of program startup and implementation as soon

 as feasible in2010. The Council strongly encourages that any TPA selected utilize the local work force at

all levels to the greatest extent possible in order to benefit the local New Orleans’ economy.

WHEREAS, ENO filed on July 2, 2009 in Docket UD-08-02 its Application for Approval of Programs to be

Included in the Energy Smart New Orleans Plan and Related Approvals Pursuant to Resolution R-09-136

 and the 2009 Agreement in Principle (“Energy Smart Application”), which included a Report in Support

of the Energy Smart Application (“Energy Smart Report”) and affidavits; and

WHEREAS, ENO requests that the Council approve the design, selection and implementation of its

proposed Energy Smart Programs, find that such programs are cost effective, approve the level of

funding allocated to each program, and concur that the expected total energy savings as the kWh

goals/performance incentives for 2010 satisfy the applicable requirements of the 2009 AIP, subject to

ENO’s request to supplement and adjust such goals for 2010 to account for the expected launch date of

the Energy Smart Plan and the date of the Council’s determination on its Application; and

WHEREAS, ENO proposed in its Energy Smart Application the following non-pilot programs: (i)

Residential Solutions, (ii) Residential Low Income, (iii) ENERGY STAR A/C, (iv) Residential AC Tune-up, (v)

Energy Efficient New Homes, (vi) Residential CFL, (vii) Small Commercial Solutions, and (vii) Large

Commercial and Industrial Solutions. ENO also proposed the following pilot program projects: (i) Solar

Hot Water Pilot, (ii) In-Home Display Pilot, and (iii) Residential and Commercial Solar PV Monitor Pilot.

For these pilot programs, ENO also requests in its Application that the Council approve its estimated cost

and ENO’s administration of such studies, and grant all general and equitable relief that the law and

nature of the case may permit. Finally, ENO proposed a One-Stop Energy Shop as an energy efficiency

resource center (collectively, the “Energy Smart Programs”); and

WHEREAS, ENO’s Application proposes the following designs and projected twelve (12) month kWh

goals and costs for its programs:

1. Residential Solutions: This program is intended to incent homeowners to use a whole-house
2. approach, including a review of the entire building envelope effecting everyday needs for reducing energy consumption and help establish and train a network of skilled and credible home energy analysts and contractors (586,490 kWh,198 kW savings; $390,000 cost);
3. (ii) Energy Efficient New Homes: This program would offer cash incentives to, recognition for, and promotion of New Orleans’ area residential building contractors who take steps to implement specific energy efficiency building practices that meet the program criteria for an energy efficient new home (1,266,391 kWh, 252 kW savings; $280,000 costs);
4. (iii) Residential AC Tune-up: This program would recruit and train air conditioning (“AC”) contractors to perform proper air conditioning tune-ups on existing, working residential air conditioners in New Orleans and provides incentives to customers toward the cost of tune-ups (706,191 kWh, 389 kW savings; $240,000 cost);
5. (iv) ENERGY STAR AC: This program is designed to increase the market penetration of ENERGY STAR central and window ACs in New Orleans through incentives and which would train participating contractorson how to perform “Quality Installation” of the units (706,901 kWh, 208 kW savings; $240,000 cost);
6. (v) Residential Low Income Program: which is intended to improve the energy efficiency, comfort and affordability of homes for New Orleans’ residents who qualify under Federal guidelines for the Weatherization Assistance Program (“WAP”) by providing funding to make homes weatherization ready. Energy Smart provides up to $2,500.00 to make repairs to a homes envelope such as roof repair, wall or floor repair or venting of a gas furnace, to bring a home up to WAP standards. The program also includes a window AC replacement/turn in program and, related energy efficiency education (81,699 kWh, 18 kW saving; $300,000 cost);
7. (vi) Residential Direct Install CFL: which is intended to increase the market participation of ENERGY STAR-qualified compact flourescent lamps (“CFL”) in the New Orleans area through direct home installation of CFLs through partnership with local non-profits and customer education (3,081,611 kWh, 445 kW saving; $230,000 cost);
8. (vii) Small Commercial Solutions: which would provide incentives to commercial customers with peak demand of less than 100 kW to implement cost-effective energy efficiency measures (1,784,262 kWh, 257 kW saving; $680,000 cost); (viii) Large Commercial and Industrial (C&I) Solutions: which is intended to provide incentives to commercial, industrial and government customers with peak demand of 100 kW or greater to implement site-specific and unique cost-effective energy efficiency opportunities (customer projects) through measures not addressed by prescriptive (deemed) offerings, in addition to prescriptive projects where appropriate (3,304,371 kWh, 509 kW saving; $1,030,000 cost);
9. (ix) Solar Hot Water Pilot: which is intended to provide incentives for solar water heater installations in New Orleans (259,785 kWh, 39 kW saving; $150,000 cost);
10. (x) In-Home Monitor Display Pilot: which is intended to allow the customer to view, near real-time, their energy usage and costs through the use of AMI meters to determine how this information access affects customer energy consumption behavior (428,100 kWh, 134 kW saving; $280,000 cost);
11. (xi) Residential and Commercial Solar PV Monitor Pilot: which is intended to gather data on the costs and benefits, including the performance of residential and commercial solar PV applications in the New Orleans area (0 kWh, 0 kW saving; $100,000 cost); and
12. (xii) One-Stop Energy Shop: which is intended to be an education and awareness program to provide a customer clearinghouse for information on energy efficiency, demand side management, the Energy Smart Programs, products, incentives and best practices (0 kW saving; costs included in above other programs); and

WHEREAS, ENO is also analyzing the feasibility of appropriate financing mechanisms that would support

and incent participation in the proposed Energy Smart Programs; and

WHEREAS, ENO describes in its Energy Smart Report that the selection of its proposed programs and

identification of the energy efficiency goals/targets involved the following considerations and processes:

(i) stakeholder-suggested programs, energy efficiency alternatives and New Orleans area-based data

sources compiled by ENO’s consultants (ICF Resources, LLC, Frontier and Associates, LLC and GCR &

Associates) were considered; (ii) cost-effectiveness of all programs were screened using the TRC and

PAC tests, as appropriate; (iii) the programs were screened for consistency with the guiding principles

developed by the Council’s Advisors and ENO and were reviewed against other competing or

complementary programs; (iv) the programs were screened taking into consideration local demographic

data and customer profiles provided by GCR & Associates; and (v) the programs were scaled and

balanced to available funding levels and participation; and

WHEREAS, on or about July 6, 2009, Messrs. Donald Sylvester and Pres Kabacoff submitted to the

 Council Utility Regulatory Office without service on the Official Service List what purported to be a

“Motion for Leave to Intervene Out-of-Time and For Inclusion on Service List.” The intervention request

 was made on behalf of the Energy Policy Task Force (“Task Force”); and

WHEREAS, this Task Force motion provided the following points: (i) “The Task Force is dedicated to

recommending the best combination of financial, regulatory and legal methodologies for establishing a

comprehensive energy policy that promotes conservation and efficient use of potential and of existing

energy resources, greenhouse gas reduction, and ongoing education;” (ii) “The Task Force has members

served by utilities regulated by the Council;” and (iii) the “Task Force has substantial and bona fide

interest in the subject matter of this docket, which may have substantial effect on the establishment of

a comprehensive energy policy;” and requested, while acknowledging it was out of time, that the Task

Force be granted full rights of an intervenor in the docket; and

WHEREAS, on July 10, 2009, ENO filed a Limited Objection to Requested Intervention Purportedly of the

Energy Policy Task Force. Generally, ENO argued that the Task Force’s intervention request was not

compliant with Article III of Chapter 158 of the Code of the City of New Orleans (“City Code”) and

Resolutions R-08-295 and R-09-267. More particularly, ENO contended that:

Although the request for intervention filed by Messrs. Kabacoff and Sylvester asserts that the ‘Task

Force has members served by utilities regulated by the Council,’ the document: 1) fails to identify the

 members of the Energy Policy Task Force and, as such, 2) fails to demonstrate that the Energy Policy

Task Force, as a collective association, has a justiciable interest in this proceeding; and, 3) fails to

demonstrate that Mr. Kabacoff or Mr. Sylvester, or other representative has the authority, to represent

the purported undisclosed members of the Energy Policy Task Force as required by Section 158-288 of

the City Code.”

ENO Limited Objection at 3-4.

Finally, ENO urges that the granting of the intervention request should be conditioned upon the

requesters’agreement to: (i) take the proceeding as it is currently found, with the existing procedural

schedule and processes that have been established to govern this process; (ii) serve any document filed

by the requestor on all parties to this proceeding as set forth on the Official Service List to this

proceeding, with failure to do so resulting in the filed document being stricken from the record; and (iii)

cure the deficiencies identified in Paragraph 3 above within fifteen days of the Council’s decision

requiring same; and

WHEREAS, on July 9, 2009, ENO held a public meeting at the University of New Orleans to discuss the

Energy Smart Application and opened the 15-day period during which the public could post

informational questions on ENO’s website with respect to the Energy Smart Application; and

WHEREAS, on or about July 31, 2009, ENO, pursuant to the procedural schedule of Resolution R-09-267,

posted on its website responses to forty-five (45) informational questions related to the Energy Smart

Application that ENO received on its website during the 15-day period after July 9, 2009 (“ENO Website

Q&A”); and

WHEREAS, on August 11, 2009, the Alliance for Affordable Energy (“AAE”) filed in Docket UD-08-02 its

Comments Regarding ENO’s Energy Smart Report. (“AAE Comments”). The primary arguments made by

AAE in its comments include: (i) that leveraged financing is an essential element of the Energy Smart Plan;

(ii) that a whole house approach needs to be utilized throughout the Energy Smart Plan (e.g., with the

thirdparty call center, incentives for deeper weatherization retrofits, TRC and PAC tests); (iii) that

disseminationof energy efficiency information and the possibility of a Tier 2 audit as proposed are not

sufficient; (iv) thatincentives to bring non-code homes up to code should be offered; (v) that more

details on the reallocation ofresources from under-performing programs to other programs should be

provided; (vi) that cost guidelines oncontractors should be imposed; (vii) that the Energy Smart Program

targets should be aspirational rather thanbased on the deemed savings presented in the Application;

and (vii) that ENO’s avoided cost calculation doesnot match its planning process; and

WHEREAS, on August 25, 2009, ENO filed its response to the Alliance’s August 11, 2009 Comments

Regarding ENO’s Energy Smart Report (“ENO Response”); and

WHEREAS, in general, ENO argues that AAE's comments include assertions that are not substantiated by

any facts or evidence and, therefore are insufficient to support and to demonstrate that its

recommendations are in the public interest. According to ENO, AAE's comments raise criticisms of ENO’s

proposed programs but lack the identification of constructive, workable alternatives. More specifically,

ENO’s argues: (i) that AAE sole reliance on Resolution R-08-366 as the basis for design and

implementation of the Energy SmartPlan is misplaced because it ignores the requirements established

by the Council in the 2009 AIP concerning design and development of Energy Smart; (ii) that AAE’s

comments lack any qualitative or quantitative analysis to support its assertions; (iii) that the alleged

need for leveraged financing would displace all or some of incentive based energy efficiency; (iv) that

leveraged financing is not an energy efficiency program but rather is an enabling device aimed at

increasing participation in energy efficiency programs. According to ENO, it acknowledges the

importance of financing as a tool to eliminate some participation barriers but the significant reliance on

a risky, marginally effective financing mechanism that may displace incentives that and (v)that AAE’s

contention that the Council should set “aspirational” program savings goals rather than a formula-based

approach is in direct contradiction to the 2009 AIP that requires programs to be selected on the basis of

specific, widely-recognized, industry standard, economic, cost-effectiveness tests; and

WHEREAS, on September 4, 2009, the Honorable Jeffrey Gulin, the Hearing Officer in the proceeding,

certified the record in this proceeding; and

WHEREAS, on September 10, 2009, the Council Utility Committee held a public hearing on the Energy

Smart Application; and

WHEREAS, on the basis of the record before the Council and the reasons set forth below; now therefore:

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS THAT:

Energy Smart Application

1. ENO’s Energy Smart Application requests that the Council: (i) approve the design, selection and

implementation of its proposed Energy Smart Programs; (ii) find that such programs are cost effective;

(iii) approve the level of funding allocated to each program; and (iv) concur that the expected total

energy savings as the kWh goals/performance incentives for 2010 satisfy the applicable requirements of

the 2009 AIP, subject to ENO’s request to supplement and adjust such goals for 2010 to account for the

expected launch date of the Energy Smart Plan and the date of the Council’s determination on its

Application. ENO also requests in its Application that the Council approve its proposed Residential and

Commercial Solar PV Pilot Study and its proposed In-Home Monitoring Pilot, including the estimated

cost and ENO’s administration of such studies on the basis of the record before us, the Council finds

ENO’s Energy Smart Application to be just, reasonable and in the public interest and is hereby approved,

subject to the modifications ordered herein.

Energy Smart Programs

2. The Council finds that the proposed Energy Smart Programs satisfy ENO’s obligation under paragraph

46.b of the 2009 AIP to design and select demand side programs that benefit all customer classes and to

submit them for approval by the Council. In addition, the scope and purpose of the Solar Hot Water Pilot

Program and the Residential and Commercial Solar PV Monitor Pilot specifically were agreed to be part

of the Energy Smart Programs pursuant to paragraph 45 of the 2009 AIP as approved in Resolution R-09-

136. As described in the Energy Smart Application and Report, the Energy Smart Programs appear to be

Designed to address the energy efficiency needs of members of each of the customer classes that

support the programs through their electric rates (i.e., residential, small commercial, and large

commercial, industrial and government customers), and each class would benefit from participation in

the proposed Energy Smart Programs through the forecasted energy savings identified therein.

The Council expects that these energy efficiency programs will benefit all ratepayers. In basic terms, the

Entergy Operating Companies (under the operation of the Entergy System Agreement) provide energy

from the lowest cost power plants available and all ratepayers share in these costs. When customer

demand for more electricity in any hour exceeds the capability of the lower cost plants, ENO will meet

the higher energy requirements with higher cost energy from other power plants on the Entergy System

or from market purchases. All ratepayers share in these higher costs. Energy efficiency programs can

both delay and reduce the overall need to construct new power plants and transmission lines therefore

benefiting all ratepayers.

3. The Council finds that the design and selection of the proposed Energy Smart Programs are

reasonable and based on supporting studies and analysis. AAE argues that the studies did not make

sufficient use of local data and should have utilized data from the Louisiana Dept. of Natural Resources

(HERO program) and Total Community Action (a local community group that provides weatherization in

New Orleans) data should have been used. AAE Comments at 14. In contrast, ENO states that it did use

local data, specifically data from GCR & Associates. Energy Smart Report at 26-32; ENO Response at 27-

30. We find that AAE has not shown that ENO’s selection of local data is unreasonable based on the

information and record before the Council. Accordingly, we will not require any adjustments to ENO’s

proposed program until the Council has an opportunity to conduct its 12-month review of the Energy

Smart program pursuant to paragraph 46.a. of the 2009 AIP.

4. AAE’s Comments in part argue that ENO’s proposed Energy Smart Programs lack a whole house

approach, which is needed throughout the Energy Smart Plan (e.g., with the third party call center,

 incentives for deeper weatherization retrofits, and the TRC and PAC tests). AAE Comments at 9-11. The

 Council finds that the Energy Smart Plan sufficiently incorporates a whole house approach in many

regards. In particular, the whole house approach is specifically contemplated within the Residential

Solutions program, the Energy Efficient New Homes program inherently incorporates a whole house

approach, and ENO in its Answer to the AAE Comments, confirms that it intends to use a whole house

approach within its Low Income program. Energy Smart Report, Appendix 4 at 1 of 41; ENO Response at

7-11. Moreover, while we agree that a whole house approach has benefits, we also recognize that this

approach requires a greater investment per home or structure. In turn, that approach reduces the

number of homes and business that can be benefit from the Energy Smart Programs given the finite

funding that has been approved. Accordingly, the Council will evaluate the results of the Tier 1 and Tier

2 audit programs in its 12-month review of the Energy Smart program, but will not require any

adjustments to ENO’s proposed program at this time.

5. With respect to AAE’s suggestion that “deeper weatherization” and retrofits should be included within the incentive programs, the Council initially notes that there is no all-inclusive list of energy efficiency measures which are defined as “deep weatherization” under any industry standard. Further, numerous measure that AAE argues should have been included were screened under the TRC test: radiant barriers; duct work; heating and cooling system overhauls; ceiling; wall and floor insulation; air infiltration reduction; efficient windows; wall sheathing; and cool roof construction. Those weatherization measures that passed the TRC test, such as duct work efficiency, Energy Star air conditioning, wall and floor insulation, solar screens, and Energy Star Furnace are eligible for incentives under the Energy Smart program. Energy Smart Report, Appendix 4. The weatherization measures that did not pass the TRC test, such as radiant barriers, were excluded from the proposed incentive programs. ENO also states that additional weatherization measures, such as attic insulation, will be included if the measures are ensured to be cost effective through a Level 1 or Level 2 Audit. ENO Website Q&A, Responses to Questions 3 and 43. The Council also recognizes that there may be practical difficulties and limits in motivating behavioral changes needed to maximize participation in a whole-house approach. Although AAE argues that other weatherization measures should have been included in ENO’s offering for incentives, the AAE has not shown that the weatherization and retrofit attributes in the proposed Energy Smart Programs are not reasonable based on the information and record before the Council.

6. In support of AAE comments involving the lack of third party call center, the Council shall require that

the third party call center and/or the One-Stop Energy Shop, need to be available to help customers make well-informed decisions and that those operating the call center and/or One-Stop Energy Shop must be well-versed in whole house considerations. The Council notes that ENO’s Residential Solutions program contemplates use of a third-party call center for marketing purposes and is intended to encourage homeowners to use a whole house approach to energy efficiency. Energy Smart Report, Appendix 4 at 1 and 4 of 41. The Council notes the importance of energy efficiency education, “deep weatherization” actions and encouraging participation through incentives and education of the benefits of the Energy Smart Programs. To this end, the Council directs ENO to take the appropriate measures to ensure that the call center and/or One-Stop Energy Shop staff are sufficiently trained to work closely with consumers and to be able to express the benefits of participating in the Energy Smart programs (including suggesting the importance of Tier 2 audits and the resulting savings that can occur).

7. AAE also alleges that the proposed methods of disseminating energy efficiency information and the

availability of a Tier 2 audit are not sufficient to promote real energy efficiency savings. AAE Comments at 11-13. A Tier 2 audit is a comprehensive whole house audit designed to estimate potential energy savings due to infiltration and heat loss through walls and attics. Diagnostic evaluations conducted during the Audit may include duct and air seal testing and combustion safety testing. Energy Smart Report, Appendix 4 at 3 of 41;

ENO Websie Q&A, Responses to Questions 1, 6, 39 and 42. The essence of AAE’s position is that customers must be sufficiently apprised of the real benefits of not only basic weatherization, but deeper weatherization actions that result in real energy efficiency, and be encouraged by sufficient incentives to participate in such programs.

8. The Council finds that each of the proposed Energy Smart Programs that are subject to the cost-

benefit tests identified in 2009 AIP (namely, Residential Solutions, ENERGY STAR A/C, Residential AC

Tune-up, Energy Efficient New Homes, Residential CFL, Small Commercial Solutions and Large C&I

Solutions and the In-Home Display Pilot programs) are deemed cost-effective because they satisfy the

TRC and PAC tests as required by the 2009 AIP. The 2009 AIP provides that: all programs approved by

the Council, with the exception of low income weatherization and domestic solar water heating

programs, prior to implementation, must be determined to be cost-effective under the industry

accepted testing criteria of the Total Resource Cost (“TRC”) Test and the Program Administrator Cost

(“PAC”) Test as defined in the California Standard Practice Manual, ‘Economic Analysis of Demand-Side

Programs and Projects,’ October 2001.

2009 AIP at ¶ 43.

As noted in the 2009 AIP, the Residential Low Income and Solar Hot Water Pilot programs need not

 satisfy the cost-effectiveness test, and the Solar PV Monitor Pilot program is a study of residential and

commercial solar PV applications that is to be conducted to provide information on the benefits, costs

and overall performance of these applications in the New Orleans area. Id. at ¶ 43 and 45. In addition,

the costs of the One-Stop Energy Shop are spread among the Energy Smart Programs and thus

incorporated into the cost-effectiveness analysis of these programs. As such, the cost-effectiveness tests

specifically apply to neither the Solar PV Monitor Pilot study program nor the One-Stop Energy Shop.

The TRC and PAC tests as run, applied, and described in the Report are reasonable as they are based on

and were applied in accordance with the dictates of the 2009 AIP. Thus, the Council rejects AAE’s

comments that the TRC and PAC tests should be run pursuant to a whole-house approach (i.e.,

considering impact of all retrofits together) because such tests were applied and run according to the

 cost-effectiveness analysis established by the California Standard Practice Manual pursuant to the

Council-approved 2009 AIP.

9. AAE also provides in its Comments that ENO should offer incentives to bring non-code homes up to

code and should provide further details on the process of how it will reallocate resources away from

“underperforming programs” to other performing programs. AAE Comments at 13-15. The Council

recognizes that some jurisdictions have instituted programs that assist homeowners in meeting

building codes; however, this approach was not part of the Energy Smart Plan mandate as provided for

in Resolution R-09-136 and the 2009 AIP. Nor do we find it unreasonable that ENO has not included this

approach in the proposed programs under consideration. As with other program modifications asserted

 by AAE, we note that the AAE, in many instances has made viable suggestions; however, AAE has not

shown that ENO’s proposals are unreasonable or not in the public interest. Accordingly, the Council will

not require any adjustments to ENO’s proposed program at this time.

10. With respect to AAE’s concerns regarding the proper reallocation of resources from under-

performing energy efficiency programs to programs that work, the Council finds that the Energy Smart

Application addresses the first element of this concern (i.e., determining which programs are under-

performing and which are performing well) by providing that ENO will monitor and assess the programs

on an on-going basis in addition to the Council’s oversight. Application Report at 42-45. In addition, we

note that the annual evaluation and cost-effectiveness provisions required by Resolution R-09-136 (at

12) and the 2009 AIP at ¶

46.a. will provide a backstop to ensure funds are not wasted. With respect to the second element of

AAE’s concern (i.e., how to reallocate the funds), the Council directs ENO to take such action as may be

necessary to ensure the reallocation of any funds is prudent and appropriate, complete with supporting

documentation and rationale for such reallocation, for including in its subsequent filing with the Council

at the end of the 12-month period. The Council will review any fund reallocations and supporting

reports in its annual evaluation of the Energy Smart Plan.

11. AAE also argues that cost guidelines on contractors should be imposed. AAE Comments at 15. AAE’s

concerns that a contractor will increase its costs by the amount of the incentive should not be an issue

because (i) each contractor will need to sign an agreement whereby it agrees with certain contractor

guidelines and practices, (ii) such guidelines and practices should include a code of conduct precluding,

among other things, such practice, and (iii) these contractor guidelines and practices terms and

conditions are details that should be established and enforced by the TPA. In addition, as in any such

program, monitoring contractor performance to ensure quality and compliance is reasonable and

expected, and this is provided for in the Energy Smart Application. Energy Smart Report, Appendix 4 at 1

 and 3 of 41. Thus, the Council hereby directs ENO to require that contractor guidelines and practices

include a code of conduct that prohibits a contractor from increasing its costs by the amount of the

incentive. Any contractor in violation of this provision shall be eliminated from program participation

should such action be discovered.

Targets

12. The 2009 AIP provides that the Company will be held to the achievement of specific DSM and energy

conservation goals and targets for any programs approved by the Council in this docket employing the

approach and cost effectiveness tests prescribed in Resolution R-0-136. The 2009 AIP further provides:

The Company will be held to the achievement of specific DSM and energy conservation goals and targets

for any programs approved by the Council… employing the following criteria:

a. The Company will be held to goals/targets only for programs selected and administered by the

Company and as finally approved by the Council in Docket UD-08-02. An annual review of whether the

Company has attained the targets/goals established by the Council within a 12-month review period (to

be defined), evaluation of the appropriateness of goals/ targets for the prospective 12-month review

period and, if necessary, adjustment of the stated goals/targets, shall be accomplished through a sub-

docket of the Council in Docket UD-08-02.

2009 AIP at ¶ 46.a. In addition, 2009 AIP paragraph 47 provides that:

DSM/EE targets should be set based on approved funding levels and based on a set of specific approved

programs with calculated deemed savings and estimated market participants for those designed

 programs. Such targets shall be established by the Council in its order in Council Docket UD-08-02 and

will be reviewed annually to account for changes in funding, program design and market conditions as

described in Section 46.a above. (emphasis added)

2009 AIP at ¶ 47.

ENO has provided, as part of its filing, three years of estimates of participants and number of installations for each of its demand side measures included in its proposed Energy Smart Plan programs. For each of these measures, ENO has included estimates of annual energy savings (kWh) and annual coincident peak savings (kW). Deemed savings per installation for each measure were developed utilizing the databases of ICF International and Frontier and Associates, LLC and modified by ICF International and Frontier and Associates, LLC to develop deemed savings data that are applicable for the New Orleans area. As part of evaluating the measures and determining the net benefits associated with each program, it was necessary for ENO to account for anticipated free riders. Free riders are participants in a program who would have installed a measure regardless of a formal demand side program or incentive offered by the utility. To account for the effects of free riders the Company employed a specific net-to-gross (“NTG”) ratio for each measure. The primary source of NTG ratios was the Energy Efficiency Policy Manual, prepared by the Energy Division of the California Public Utilities Commission. The combination of these per measure savings, installation estimates, NTG ratios, and assumed losses are reflected in the 12-month goals for kWh savings and kW savings presented in Table 1 of ENO’s Energy Smart Application. AAE contends that the targets for Energy Smart should be “aspirational” and not based on the aggregated deemed savings of all the programs, and claims the targets and ENO’s plan to reach them are missing from the Energy Smart Application. As a preliminary matter, the Council notes that ENO has identified the targets it proposes in Table 1 on page 4 of the Energy Smart Application, and the Energy Smart Report goes into great detail as to the basis for the targets.

The Council also recognizes AAE’s position on “aspirational” targets and recognizes the benefits of

implementing energy saving measures, but is also cognizant of the Council’s prior directives in Council

Docket UD-08-03 that any goals established by this Council must also take into consideration the rate

implications of such actions. The 2009 AIP set aside a discrete funding level for Energy Smart Plan and a

prescribed set of cost-effectiveness tests. These factors are the primary drivers that determine program

selection and not simply a desire to establish a specific energy savings target. Further, the 2009 AIP

specifies that targets should be set based on approved funding levels and based on a set of specific

approved programs with calculated deemed savings and estimated market participants for those

designed programs. We fail to see how a regulator can require a company to achieve energy efficiency

goals that ignore the resultant programs derived from a prescriptive design and the approved level of

funding authorized for the implementation of the Energy Smart Plan energy efficiency programs.

In addition, the Council believes that it has appropriately allocated funding for the Energy Smart Plan in the 2009 AIP and notes that a review of U.S. Department of Energy Form EIA 861 data shows that based on 2007 data and estimated Energy Smart funding, ENO would have ranked in the top 20 percent of all utilities in the South central and Southwest North American Electric Reliability Corporation (“NERC”) regions with respect to energy efficiency spending as a percent of total revenues. U.S. Department of Energy, Energy Information Administration, Form EIA-861, Annual Electric Power Industry Report, Form EIA-861 Final Data File for 2007. 2007 is the latest year for which DOE EIA-861 data was available. Further, utilizing a ratio that indicates energy efficiency program cost as a function of energy saved, the EIA 861 data shows that the expected cost-per-kWh saved for the Energy Smart Plan lies near the median of the investor owned utilities in the South central and Southwest NERC regions. Accordingly, the Council believes the savings anticipated to be generated by the Energy Smart Plan are reasonable estimates based on the level of funding previously set aside by the Council.

13. In setting the goals and targets for the application in the Electric Formula Rate Plan (“EFRP”) required under Resolution 09-136, it is necessary for the Council to consider the context in which the goals and targets will be used. While consistent with the proposed programs and the determination which programs to implement, we note, however the 12 month kWh savings goals presented in Table 1 of the Energy Smart Application are not appropriate for use in the EFRP. The kWh savings numbers presented in Table 1 of the Energy Smart Application are net savings numbers and are reduced by the NTG ratio. Accordingly, the Table 1 numbers do not include energy savings associated with the participants in ENO’s programs for whom it has been assumed would have implemented the measure in the absence of a program. While this is appropriate for the program selection, the EFRP makes no reference to assumptions regarding free riders or NTG ratios. Further, the Council expects that the Company will utilize all participants in a given Energy Smart Program when calculating both the Energy Efficiency Program Lost Contributions to Fixed Costs and if the savings goal was achieved for the purposes of the Energy Efficiency Incentive Mechanism referenced in Section III.E of the Rider Schedule EFRP. Accordingly, we believe the appropriate kWh targets for the first 12 months (calendar year 2010 as proposed in the Company’s filing) should be set at 14,238,801 kWh, approximately 17 percent higher than the goals provided by ENO in its Energy Smart Application, to account for the removal of NTG factors and maintain consistency with the approved Rider Schedule EFRP. Further, based on the same logic and information contained in the filing, the Council finds that appropriate kWh targets for calendar year 2011 should be set at 16,581,090 kWh, a 16 percent increase to those filed by the Company in its Energy Smart Application. The targets provided herein are effective for the indicated calendar years unless modified through other provisions within this resolution or modified through the annual review process provided for in paragraph 46.a of the 2009 AIP.

14. The 2009 AIP anticipates that the New Orleans specific experience in implementing the Energy Smart

Plan will be utilized in the evaluation of the appropriateness of goals/ targets for the prospective annual

periods. As the first opportunity for an annual review of whether the Company has attained the targets/goals established by the Council will be at such time in 2011 after ENO has submitted its annual FRP filing for the 12 months ending December 31, 2010, the Council elects not to set goals for the 2012 calendar year at this time and shall revisit the issue in this proceeding subsequent to ENO’s EFRP filing for the 12 months ending December 31, 2010. The targets provided herein are effective for the indicated calendar years unless modified through other provisions within this resolution or modified through the annual review process provided for in paragraph 46.a. of the 2009 AIP.

15. ENO’s Energy Smart Application included a description of their plans for energy efficiency programs

evaluation, measurement and verification (“EM&V”) to confirm program impacts and serve as a basis for

future program changes. The budget for EM&V proposed in the Company’s filing was approximately 4% of the total costs of the Energy Smart programs. As a comparison, the California Public Utilities Commission established an EM&V funding guideline of 8% of total energy efficiency program funds, based on experience from energy efficiency programs. Decision 05-04-051, April 21, 2005, Rulemaking 01-08-028, Page 9. Furthermore, the types of protocols needed for the major parameters to include in EM&V submittals were described in that decision. (NOTE: In decision D.07-10-032, the California PUC authorized utilities to set aside 8% of the 2009-2011 budget for Evaluation, Measurement, and Verification ("EM&V"). The August 25, 2009 draft of proposed decision regarding the Application of SCE for approval of its 2009-2011 Energy Efficiency Program, the CPUC tentatively set the overall EM&V budget at a conservative level of 4%, citing substantial funds remaining from past EM&V budget authorizations. In the fall of 2009, final EM&V budgets will be adopted by the CPUC, commensurate with expanding EM&V requirements. Accordingly it does not appear that this is a final decision nor does it appear to revise the 8% guideline.)

In ENO’s Energy Smart Application, evaluation activities and general areas of data collection are listed, but not as prescriptive, specifically defined inputs for a subsequent re-evaluation of each energy efficiency program. Appendix 4 of the filing presents measurement and verification on a program basis, but does not directly relate data collected for EM&V to the specific data needed for the annual evaluation of each program. It will be necessary to improve the initial estimates used in the proposed program designs, such as deemed savings and net-to-gross ratios. With each subsequent filing with the Council related to the a request by the Company for new or continued program approval under the Energy Smart Plan, the Company is directed to prepare and include in such filing a set of EM&V submittals for each program, based on the “International Performance Measurement & Verification Protocol” standards and to provide definition on how such data will be used in the annual evaluation of each program.

16. As to AAE’s concern that more transparency and stakeholder participation of the evaluation of the

Energy Smart Plan is needed, the Council is comfortable that these will exist under the requirements of the 2009 AIP. Under Paragraph 46.a of the 2009 AIP, the annual review of whether ENO attained the targets, evaluation of appropriateness of the targets for the next twelve (12) months and any needed adjustments thereto will occur pursuant to a sub-docket of the Council in this proceeding (Docket UD-08-02). Moreover, in an upcoming Council Utility Committee meeting, the Council intends to address ENO’s Integrated Resource Plan submitted for public comment on September 30, 2009, that will generally follow the same structure we have used here, including a public meeting, followed by an opportunity for public questions, comments and reply comments.

Avoided Cost Calculation

17. AAE in its Comments argues that ENO’s avoided cost calculations do not match the Company’s

planning process. AAE further indicates that “…ENO is using a sound methodology for their avoided cost

calculations…” and that “Entergy uses a well-established method for determining avoided costs often called the ‘peaker method.’” AAE Comments at 17-18. Based on AAE’s comments, it appears that AAE’s concern is not with the calculation of avoided costs but rather the parity of the avoided costs with the Company’s planning process. The Council notes that, as part of this instant docket, the Council will be taking up the issue of ENO’s and Entergy’s complete integrated resource planning process at a later date. As, such the Council encourages the AAE to lodge its comments and concerns with ENO and Entergy’s planning process with the Council at such time as the Council reviews ENO’s integrated resource planning process in this Docket.

Leveraged Financing and Resolution R-08-366

18. AAE asserts in its Comments that Resolution R-08-366 created a presumption that leveraged financing would be an essential part of the consensus “Energy Smart Plan” concept that was before the Council at that time. AAE Comments at 4-8. The absence of such leveraged financing, together with other flaws according to the AAE, make the Energy Smart Programs proposed by ENO inadequate. It is the AAE’s contention that:

Resolution 08-366 (“Resolution”), On Report of the Energy Smart New Orleans Facilitation Process and

Proposed Energy Smart New Orleans Energy Efficiency Program, which the Council adopted on July 10,

2008, laid the framework for an energy efficiency plan for the City of New Orleans. In the Resolution, the

City Council envisioned nine elements that the Energy Smart Plan should include. The ninth element for

leveraged financing of energy efficiency improvements. AAE Comments at 5.

19. The authority for AAE’s assertion that Resolution R-08-366 created a presumption that the Energy

Smart Plan would have a leveraged financing mechanism is Section 10-103 of the New Orleans Home Rule Charter (“Charter”), which states: All ordinances, resolutions and motions of the city of New Orleans and all orders, rules and regulations made by any officer, department, board or other unit thereof not inconsistent with this charter shall remain in full force and effect until altered or repealed by the proper authority or until they expire by their own limitation.

20. For the reasons set forth below, the Council finds that AAE’s assertion that Resolution R-08-366 created a presumption that leveraged financing would be included in the Plan is incorrect and that AAE’s reliance on Section 10-103 of the Charter is misplaced.

21. It appears that AAE misunderstands Resolution R-08-366. In the predicate portion of Resolution

R-08-366, the Council recounted its milestones with respect to the development of energy efficiency and

the consensus plan that was before the Council, beginning with the rationale for such plan. The

resolution recitals stated:

WHEREAS, the Council recognizes that like every other community, we are not faced with

unprecedented global pressures that are affecting the prices of energy here in New Orleans.

Unfortunately, the Council has no control over the increased demand for global commodities. But these

cost increases will drive up the cost of oil, natural gas and other fuel costs that will cause our electric

bills to increase; and

WHEREAS, at the same time as we are experiencing fuel costs increases, we are approaching an electricity capacity shortage in the U.S. which means the demand for electricity is increasing much faster than the generation plants that supply electricity can be built, which will also cause price for electricity to go up; Resolution R-08-366 at 2. It was, and is, the Council’s belief that energy efficiency could help to soften those cost increases. The Energy Efficiency Task Force presented its recommendations to the Council in the form of the Energy Hawk Report. With respect to the Energy Hawk Report, the Council concluded:

. . . although many of the Energy Hawk recommendations may have a positive impact on New Orleans

citizens, the Council’s Utility Committee did not take formal action with regard to the Task Force

recommendations until such time as a broad cross-section of the New Orleans community had an

opportunity for input and each proposal was shown to be practical, cost-beneficial, and energy efficient;

Id. at 3.

22. A professional facilitator assisted the participants in the energy efficiency process in developing a set

of assessment criteria to be used in evaluating the various energy efficiency proposals that might be

recommended to the Council for consideration. And based on the criteria, the consensus plan was

ranked as the top proposal to be considered by the Council. Id. at 6.

23. The Energy Smart Plan’s proposed elements did envision “risk underwriting and targeted buy downs

to foster third-party financing of energy efficiency improvements.” Id. at 13. However, that was only an

element envisioned by the Energy Smart Plan proposal. It was not formally adopted by the Council. Indeed, the Council has not yet adopted a final plan. The instant process is for the express purpose of considering recommended programs. Thus, the Council’s mere acknowledgment of the presence of a financing element in a proposal presented to the Council in no way bound the Council to accept that proposal, or created a presumption that the Council would do so.

24. With respect to the Energy Smart Plan, the Council made the following statements in Resolution

R-08-366 before any plan was submitted to its Advisors for further input:

WHEREAS, the Council believes that the Energy Smart Plan was ranked as the top proposal to be

considered by the Council; and

WHEREAS, the Council believes that the Energy Smart Plan concept is consistent with and capable of

fulfilling the Council’s commitment to energy efficiency and the development of a viable energy

efficiency program, as part of the city’s comprehensive long-term energy policy; Resolution R-08-366 at

15 (emphasisadded). Id. at 15 (emphasis added).

25. The Council, then, without accepting a plan, directed its Advisors “to take the necessary steps to

develop and submit such proposed documents and recommendations as are necessary to implement the Energy Smart Plan concept . . . .” Id. at 16. The Advisors were also instructed to “investigate potentially appropriate funding mechanisms to finance the Energy Smart Plan... [and] investigate other state and federal sources of funding that would be used to lessen or eliminate the financial impact of a ratepayer funding mechanism.” Resolution R-08-366 at 17 (emphasis added). These initial considerations identified in Resolution R-08-366 were no more than conceptual considerations and requirements to investigate (not mandate) further potential funding sources of the Energy Smart Plan. Aside from endorsing the Energy Smart Plan concept, the Council made no substantive decisions regarding a final plan or specific programs, and none of its actions to this point could reasonably constitute a basis for a presumption of any kind. Accordingly, AAE’s claims regarding the creation of a presumption are without merit.

26. Subsequent resolutions of the Council on the same subject supersede earlier resolutions. Further, even if the AAE was correct, which it is not, that the Council’s mere recognition that leveraged financing was an element of the Energy Smart Plan, created a presumption, subsequent differing or inconsistent action by resolution with respect to the same issue would have the effect of superceding all earlier resolutions. Accordingly, to the extent the AAE’s argument that Resolution R-09-136 or the 2009 AIP is inconsistent with Resolution R-08-366, the later resolution would control. However, the Council did not adopt a plan or program in Resolution R-08-366 and, accordingly, no presumption was created. In fact, all of the Council’s actions with respect to energy efficiency as reflected in its resolutions have been entirely consistent.

27. Section 10-103 of the Charter has no bearing on these proceedings. No party has disputed the fact that resolutions, orders, rules and regulations remain in effect until altered or amended by proper authority, unless they expire by their own limitation, and no party has challenged the Council’s authority under Section 10-103 of the Charter. If, assuming arguendo, this Section of the Charter were applicable, it would tend to support the Council’s authority to alter or amend Resolution R-08-366 pursuant to Resolution R-09-136, which clarified the process, parameters and requirements of the Energy Smart Plan. This clarification to not specifically require leveraged financing as an element of the Energy Smart Plan, without preventing its consideration in the development of a proposal, also is understandable given that the current U.S. financial crisis, which crippled the debt and equity markets, commenced after the issuance of Resolution R-08-366 and before the issuance of Resolution R-09-136 and execution of the 2009 AIP.

Financing Mechanisms

28. Although leveraged financing or other financing alternatives are not a mandatory element of the

proposed Energy Smart Plan before us now, ENO indicates it is evaluating third-party and other financing possibilities under the Energy Smart Plan and “believes that participation in the Energy Smart Plan could be enhanced by the availability of financing alternatives.” Energy Smart Report at 40-41; ENO Response at 17. ENO is encouraged to further investigate financing alternatives that are appropriate as a complement to Energy Smart and that are sustainable and comprehensive.

29. Despite ENO’s efforts to analyze the viability of financing arrangements under the Energy Smart Plan

and AAE’s research involving leveraged financing programs possibly applicable to the New Orleans

ratepayers, no party has been able as of yet to present a viable program with a proven track record that would satisfy the cost-effective and other requirements of the 2009 AIP and Resolution R-09-136 as a complement to the Energy Smart Plan. The Council understands the parties’ positions in this proceeding with respect to including a financing option as a supplement to the Energy Smart Plan and finds that more needs to be done before a definitive position is reached.

30. While an appropriate financing mechanism (be it leveraged, third party or otherwise) may enhance the participation of New Orleans’ residents and implementation of the energy efficiency programs in the Energy Smart Plan, and may be feasible depending on its cost-effectiveness and viability within the New Orleans community, at this time there is little definitive detail in the record to support any such realistically achievable financing mechanisms. Particularly, there is little with respect to the specific details of the cost-effectiveness, structure, identifiable program penetration, consumer protections to be employed, the legal entity to administer such financing mechanism(s), the level and magnitude of viable funding sources, the entity responsible for the collection of the payment obligation or the ultimate means of implementing a financing mechanism(s) beyond the references to conceptual financing considerations included in Resolution R - 08-366.

31. Accordingly, the Council directs parties to this proceeding who are advocating a form of financing

mechanism(s) as a complement to the Energy Smart Plan to file with the Council in this Docket such

detailed plans for their recommended alternative financing mechanism(s) complete with responses to

the following information within 120 days of the adoption of this Resolution:

1. Identify lenders and investors who have shown an interest, demonstrated capability and ability to

facilitate the financing of energy efficient home improvement measures as a complement to the Energy

 Smart Plan in New Orleans through either:

a. the utilization of monetary incentives made available through the Energy Smart energy efficiency

programs to facilitate third party financing of energy efficient home and commercial improvement

measures by participants, or

b. such other approach that will facilitate the financing of the Energy Smart Plan as the party deems

appropriate.

2. Describe under what terms, conditions and circumstances would such a lender or investor be

interested in offering a leveraged or third party financing mechanism.

3. For each type of financing mechanism proposed, the parties are expected to present a financing plan

 with such metrics as may be required for the Council to fully evaluate such plan. Among the metrics

that the Council would find beneficial in its evaluation are the following:

a. What are the minimum and maximum amounts of the loans that would be offered to participants in the Energy Smart program?

b. What would be the origination/administrative fee associated with the financing?

c. What would be the default/guarantee fee?

d. What would be the closing costs associated with each type of loan offered?

e. What is the projected interest rate for the type(s) of loan(s) being offered and what are the primary

indicators for determining the interest rate?

f. What would be the grace period for this type of loan, if any?

g. What would the funding limits be for this/these type(s) of loans? Specifically, will 100% financing be

available?

h. Would both secured and unsecured loans be offered? What conditions would apply to each type?

i. A description of the repayment plans that would be offered to borrowers.

j. Would there be a pre-payment penalty?

k. Would there be a co-signer release option?

l. Would there be a repayment benefit and what percentage of borrowers who are eligible for such

 benefits would actually receive them?

m. What type of default prevention/rehabilitation programs would be available to borrowers?

n. How would the application process work? How will the pre-qualification of customers be

 accomplished.

Would there be alternative qualifying criteria for those with impaired credit and what would it be?

o. What financing options/services would be provided to low income applicants and/or applicants with a

credit score of less than 640?

p. What tools would be employed to educate energy efficiency contractors as part of the lending

process?

q. Does origination, disbursement and service of the loans reside with the lender or investor and what

are the specifics of such an arrangement? If third party, who would they be, what type of legal entity

and would it meet all lending laws of the state?

r. Will the customer loan be secured or unsecured, and if secured what will be the security?

s. What entity will provide credit or loss guarantees on behalf of customers and how will it be funded?

t. Will a minimum loan volume be required as part of the mechanism?

u. What financial controls will govern each type of mechanism?

4. Within the confines of the Energy Smart Plan as approved by the Council herein, what basic loan

package amounts should be provided and in what stratification and amounts?

5. What should be the source of and at what level should the loan loss reserve be established? What

would be the transaction costs incurred and how will such costs be funded that support any financing

 mechanism?

6. What mechanisms or vehicles would be employed, and how would they be accomplished, for the

repayment of the loan obligation?

7. What external sources of funds will be required and at what level and magnitude to create the

sustainability of the Energy Smart Plan at the funding levels presently approved by the Council?

8. If an energy efficiency district is to be created as part of any financing mechanism, as has been

established elsewhere in the country to finance and promote energy efficiency programs, the following

information should be provided:

a. What legal entity will be responsible for the creation and administration of the district?

b. What will be the structure, form and basis for the legal entity that will administer the district?

c. What steps will be necessary to create such entity?

d. Will there be a lien on the property for energy efficiency improvements which subordinates the rights

of the mortgage holder? If so, how will this be addressed to the satisfaction of realtors and mortgage

holders?

e. Will the loan be secured or unsecured, if secured what is the security for the loan?

f. Will the City be required to issue debt to finance the district. And if so, will the full faith and the credit

of the City be required in the issuance of any debt to fund the district and its activities?

g. Will the debt of the property owner for the energy efficiency improvements remain with the property

by virtue of a lien after a sale or transfer, or will full repayment be required at time of sale?

9. Can “stimulus funds” be employed as part of the financing mechanism, and if so, how?

10. What empirical analyses should be used to evaluate the potential effectiveness of any financing

mechanism so recommended?

11. What are the critical aspects that need to be considered in the establishment of a financing

mechanism and what timeline should be employed to realistically achieve and implement such a

 mechanism?

13. Will the financing mechanism create below market or subsidized interest and transaction costs for

participants and if so, at what level and how will same be funded?

32. Parties are strongly encouraged to provide definitive answers to each of the above questions, as well

as any other relevant information they deem beneficial, in the creation of a proposal for a specific

program that will allow the Council to establish a record in this proceeding on the merits of any

financing mechanisms it may consider for future implementation of an Energy Smart Plan financing

mechanism. Upon receipt of the filings directed herein the Council will institute further proceedings, as

appropriate, based on the responses received.

Supplemental Determination Based on Projected Launch of the Energy Smart Plan

33. The Energy Smart Application requests that the Council provide for a subsequent determination in this proceeding in which the Council would approve a refined energy efficiency target for the remaining months of calendar year 2010 reflecting the then-projected date of the launch of the Energy Smart Plan and the Council’s actions regarding the energy efficiency programs to be included in the Energy Smart Plan. The apparent basis for the Company’s request stems from the Company’s belief that given the remaining tasks and approvals required from the Council prior to program launch, including the selection of a qualified TPA through the RFP process and the Council’s concurrence in the Company’s selection of the recommended TPA, the Energy Smart Plan will not be fully ready for implementation in January 2010.

As the data for the Rider Schedule EFRP is based on 12 months ending December 31st of the appropriate

year, savings targets as applicable to the Rider Schedule EFRP must also be set based on 12 months ending December 31st of the appropriate year. To the extent that a qualified TPA is not under contract for at least thirty days prior to January 2010 resulting in the lack of commencement in the Energy Smart Program through no fault of the Company, the Company will be permitted to submit revised energy targets for the year ending December 31, 2010. However any revision to the targets so requested shall only be approved to the extent that the sole change is a “sliding forward” of the original program implementation schedule. Concurrent with any revision to the calendar year 2010 targets will be a commensurate revision to the level of expected expenses related to the implementation of the Energy Smart Plan for 2010. Additionally, the 2011 target set by Council will be revised based on this “sliding forward” of the program installation schedule. To this end, ENO is directed to submit within ten (10) days of the adoption of this Resolution a month by month schedule of anticipated Energy Smart Plan energy savings by program, and coincident peak reductions that is consistent with and reflects the three years of estimated costs and savings provided in the Energy Smart Application submitted to the Council on July 2, 2009. This will ensure equity and transparency with respect to any subsequent revisions in the energy efficiency targets to be considered by this Council.

Energy Policy Task Force Intervention Request

34. After reviewing the pleadings of Messrs. Sylvester and Kabacoff purportedly on behalf of the Task

Force, and ENO, the Council finds that the intervention request was filed out of time and out of compliance with the Council rules and the resolution governing the instant proceedings. However, the Council takes notice of the special role that Messrs. Sylvester and Kabacoff have had in advancing the energy efficiency process in New Orleans. Messrs. Sylvester and Kabacoff were leaders of the Energy Policy Task Force that produced the Energy Hawk Report, which report provided many of the important conceptual building blocks upon which the programs we are considering today was built. The Council is also mindful of the fact under the City Code, its rules are to be liberally construed toward the end of maximum public participation.

35. The Council finds, as ENO correctly notes, that Messrs. Sylvester and Kabacoff failed to identify the

members they represent and provided nothing to establish they were authorized to represent any

members of the Task Force. Accordingly, the intervention request on behalf of the Task Force is denied

as filed.

36. However, the Council will allow both Mr. Sylvester and Mr. Kabacoff to intervene in their individual

capacities, with the full rights of other intervenors, provided that they accept the proceedings as they

find them and, henceforth, they comply with the requirements of the City Code and the resolutions

governing these proceedings.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE

ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Clarkson, Fielkow, Head, Hedge-Morrell,

Willard-Lewis - 5

NAYS: 0

ABSENT: Carter, Midura - 2

AND THE RESOLUTION WAS ADOPTED.