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October 19, 2018

Via Hand Delivery

Lora W. Johnson, CMC, LMMC
Clerk of Council
Room 1E09, City Hall
1300 Perdido Street
New Orleans, LA 70112

Re: Rulemaking Proceeding to Consider the Process for How Any Future Requests for Proposals for Generating Resources or Purchase Power Agreements Issued By Entergy New Orleans, LLC Shall Be Conducted CNO Docket No. UD-18-05

Dear Ms. Johnson:

Enclosed for your further handling please find an original and three copies of Entergy New Orleans, LLC's ("ENO") Comments on the Council's of the City of New Orleans' Rulemaking Concerning Future Requests for Proposals for Generating Resources or Purchase Power Agreements in connection with the above-referenced matter. Please file an original and two copies into the record and return a date-stamped copy to our courier.

Should you have any questions, please do not hesitate to contact me. Thank you in advance for your usual courtesy and assistance with this matter.

Sincerely,

Harry M. Barton

HMB/bkd
Enclosures
cc: Official Service List

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BY:

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

**IN RE: RULEMAKING PROCEEDING)
TO CONSIDER THE PROCESS FOR)
HOW ANY FUTURE REQUESTS FOR)
PROPOSALS FOR GENERATING) **DOCKET NO. UD-18-05**
RESOURCES OR PURCHASE)
POWER AGREEMENTS ISSUED BY)
ENTERGY NEW ORLEANS, LLC
SHALL BE CONDUCTED**

**ENTERGY NEW ORLEANS, LLC’S COMMENTS ON
THE COUNCIL OF THE CITY OF NEW ORLEANS’ RULEMAKING
CONCERNING FUTURE REQUESTS FOR PROPOSALS
FOR GENERATING RESOURCES OR PURCHASE POWER AGREEMENTS**

Entergy New Orleans LLC (“ENO” or the “Company”) respectfully submits its Comments on the Council of the City of New Orleans’ (the “Council”) Rulemaking Concerning Future Requests for Proposals (“RFPs”) for Generating Resources or Purchase Power Agreements. ENO submits these Comments pursuant to the procedural schedule set forth in Council Resolution No. R-18-335 (the “Resolution”), which notes that through the process adopted for this proceeding, “the Council may consider adopting rules that would govern how ENO will conduct future RFPs for generating resources or purchase power agreements.” The Resolution expresses the Council’s frustration with the perceived slow pace of ENO’s 2016 Renewables RFP and identifies areas of concerns of interest to the Council that comments from parties to this proceeding should address.

Conducting, and making selections from, RFPs for generating resources has always been an essential part of ENO’s business and directly affects ENO’s ability to fulfill the core mission of that business – providing reliable, safe electric service to ENO’s customers at the lowest reasonable cost. ENO, along with its System Planning and Operations group (“SPO”), has many years’ worth of experience in conducting this part of its business and has adopted practices for its

work that are consistent with the objectives described in the Resolution, as well as rules established by other retail regulators. That said, ENO is constantly looking to improve the way in which this business function is performed. As such, ENO shares the Council's interest in improving the manner in which ENO administers and conducts RFPs and commends the Council's judicious use of its regulatory authority in initiating this proceeding to allow all stakeholders the opportunity to contribute practical and constructive ideas for accomplishing this shared goal. ENO's Comments provide input on several of the Council's areas of concern and identify lessons that ENO learned through the 2016 Renewables RFP. Prior to stating its specific Comments, ENO provides a brief recap of the 2016 Renewables RFP.

I. The 2016 Renewables RFP

As the Resolution notes, and as has been discussed in testimony filed in other Dockets pending before the Council,¹ on March 22, 2016, Entergy Services Inc. ("ESI")² published a public notice that ENO intended to voluntarily issue a renewables-specific 2016 RFP. The notice provided the expected near-term milestones, a high-level description of why ENO chose to undertake the 2016 RFP, the parameters around the types and sizing of renewable resources that the 2016 RFP intended to solicit, ENO's intention to submit a 5 megawatt ("MW") "self-build" solar project into the 2016 RFP, and the engagement of Mr. Wayne Oliver of Merrimack Energy Group Inc. to serve as the Independent Monitor ("IM"). To support the 2016 RFP, ESI also set up a public website where all notices were placed, draft and final 2016 RFP documents provided, and where comments and questions could be submitted and reviewed by prospective bidders and interested parties. The RFP was for 20 MW from existing or new resources that would use

¹ See, e.g., Docket No. UD-17-05, Docket No. UD-18-06.

² On September 30, 2018 ESI converted from a corporation into a limited liability company and is now Entergy Services, LLC ("ESL").

commercially-proven run-of-river hydroelectric, solar photovoltaic (“PV”), or onshore wind technologies. The 2016 RFP also stated a preference for resources within the ENO region. Among other things, this preference was stated to provide ENO with specific insight into the costs and feasibility of deploying renewable resources in and around Orleans Parish due to the benefits of locating generation resources near the load they serve.

In April 2017, the Company announced that it would voluntarily increase its commitment from the 20 MW sought in the 2016 RFP and would now pursue up to 100 MW of renewable resources. In May 2017, ENO selected three proposals, totaling approximately 45 MW.³ In September 2017, however, a complication arose that added significant time to the 2016 RFP, namely, ENO learned that the two bidders for separate 20 MW solar resources selected had not appropriately considered and included all transmission interconnection costs in their proposals and were not willing to take on the additional cost, which directly conflicted with the instructions to bidders in the 2016 RFP. Another issue was the unsettled Suniva/SolarWorld trade case regarding whether the U.S. would impose tariffs on imported solar equipment. As a result of these two issues, instead of negotiations concluding with the parties reaching two agreements, which would have led to an application in late 2017, negotiations faltered and eventually broke down altogether. In response to these circumstances, the Company consulted the IM and decided to allow all shortlisted bidders the opportunity to re-submit their bids with updated pricing information to expedite the process and avoid even further delays. The Company then allowed time for RFP bidders to update bids, the Company to evaluate those bids, and then enter into a second round of

³ In October 2017, ENO submitted an Application to Construct Distributed Generation-Scale Solar Photovoltaic Systems and Request for Cost Recovery and Related Relief, which sought approval to construct the 5 MW self-build project selected from the 2016 Renewables RFP. The Council ultimately approved this application on June 21, 2018 with Council Resolution No. R-18-222 and construction is underway.

contract negotiations, which added a significant amount of time to the 2016 RFP process. On July 31, 2018, ENO submitted an Application for Approval of its proposed Renewables Portfolio and Request for Cost Recovery and Related Relief, which seeks Council approval of a 90 MW portfolio of renewable resources and is currently pending in Docket No. UD-18-06.

As the Council, Advisors, and stakeholders know, in July 2018 the IM for the 2016 Renewables RFP submitted an Updated Final Report of the Independent Monitor (“Final IM Report”), which ENO filed with its Application in UD-18-06.⁴ The Final IM Report contained several findings that are relevant to the areas of concern identified by the Resolution.⁵ In the IM’s view, the 2016 Renewables RFP fulfilled many of the objectives that the Council identifies as important in the Resolution. Most notably, the IM concluded that “[t]he 2016 ENO Renewable Resource RFP solicitation process was undertaken in a fair, equitable, and unbiased manner by ESI with the oversight of the IM. The solicitation process initiated by ESI is a consistent and equitable process designed to treat all proposals the same throughout the process. The IM found that ESI followed its protocols and objectives throughout the solicitation.”

II. The Council’s Specific Areas of Concern

As noted above, the Resolution identifies several areas of concern on which the Council seeks comments. ENO’s Comments address several of these issues.⁶ As a general matter, ENO notes that RFPs are issued to test the market for solutions to particular goals and specific needs

⁴ The Final IM Report was attached to the Direct Testimony of ENO witness Seth E. Cureington as Exhibit SEC-6 and is incorporated herein by reference.

⁵ While the Final IM Report contains a thorough evaluation and assessment of how the 2016 RFP performed in terms of many of the goals identified in the Resolution, ENO assumes that the Advisors and other parties are already familiar with the IM’s assessment and, in the interest of brevity, will not exhaustively discuss the IM’s specific findings in these Comments.

⁶ ENO’s Comments do not exhaustively address the areas of concern and ENO may address additional topics from the Resolution after reviewing and considering feedback from other parties to the instant Docket.

that ENO faces in continuing to provide reliable electric service to its customers at the lowest reasonable costs and in an environmentally sustainable manner. Individual RFPs are as unique and varied as the needs they seek to address. ENO hopes that, if the Council chooses to adopt formal rules for future RFPs, those rules will be focused on creating a collaborative framework that fosters communication and maintains flexibility. Adopting rigid substantive or procedural rules that apply to all RFPs in the same manner would limit the ability of those RFPs to yield optimal solutions to the needs of ENO's customers and New Orleans in a timely manner. Such rigidity would be particularly detrimental as the rapid evolution of technology continues to transform electric utilities and the needs of their customers. In the changing environment facing ENO and its customers, flexibility and agility will be essential to ENO's ability to meet customers' needs. ENO trusts that the Council, the Advisors, and all parties will keep these realities at the forefront of their thought processes as this proceeding develops and as rules are potentially created.

a. Draft RFP Documents

The first area of concern involves the development of the Draft RFP documents and invites comment on several topics.

Topic 1.a.i. *How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP achieves wide participation by respondents and is not overly constrained to solicit specific, or narrowly defined resources:* In SPO and ENO's experience, the breadth of participation in RFPs is primarily influenced by the scope of the RFP and the manner in which it is publicized. As to the latter, as a routine part of conducting Company business, SPO maintains a large database of potential suppliers, power marketers, and other entities and informs those entities of the development and issuance of RFPs. SPO also publicizes the

existence of RFPs via industry trade publications that regularly include reference to RFPs. These practices were followed for the 2016 Renewables RFP and yielded a robust response.

With regard to the former, it is important to consider that defining the scope of RFPs as broadly as possible and minimizing requirements for proposals to encourage broad participation can detrimentally affect the goal of ensuring that the RFP solicits resources that meet the specific needs of ENO. Further, reducing proposal requirements and broadening the RFP scope could also conflict with efforts to reduce the time to evaluate proposals and make selections due to an increased number of issues that would require ENO's due diligence. An overly broad RFP scope also complicates the evaluation as proposals could have too many variables to make a reasonable comparison. As such, the desire for broad participation must be balanced with (i) the need to solicit proposals that will meet ENO's specific needs and (ii) the Council's goal of reducing the time and administrative expense required for ENO to conduct and conclude RFPs. As such, any rules the Council may ultimately adopt should provide ENO the flexibility to design the scope of future RFPs on a case-by-case basis to balance these potentially competing goals as warranted by the needs and circumstances facing ENO's business at the time an RFP is being developed.

Topic 1.a.ii. *How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP targets the specific power supply, reliability, or other system needs that would be met by acquiring those resource(s):* ENO agrees that this objective is an important consideration and suggests that it could be furthered by ENO's defining of the geographic region and desired generating characteristics (*i.e.*, peak, baseload, etc.) for resource proposals. RFP documents could also more specifically identify interconnection and/or delivery points that would most benefit the transmission and/or distribution systems from a reliability standpoint. As noted above, specified requirements of this nature may limit the number of

proposals submitted, but would also help ensure that the proposals ENO does receive and evaluate are carefully designed to meet the specific need an RFP seeks to fill. Ultimately the success of an RFP is defined by meeting the need the RFP sought to fulfill, and not the number of proposals received. So broad participation should be encouraged, but only to the extent that proposals can meet the need at hand when an RFP is issued.

Topic 1.a.iii. *How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP includes a proposed schedule of milestone events and dates that minimizes the time required to conduct necessary due diligence and negotiations:* It should be noted that the 2016 Renewables RFP did include an RFP Schedule at Section 4.1, which was also posted on the website for the RFP. ENO contemplates that all future RFPs would contain a similar proposed schedule of milestones events and dates, as including such information with RFPs is a routine component of SPO's management of this aspect of ENO's business. ENO also contemplates that all future RFPs would afford the Council, its Advisors, potential bidders, and other stakeholders an opportunity to comment upon the proposed schedules, as was done for the 2016 Renewables RFP.

With regard to contract negotiations following the selection of proposals, it should be noted that the time required for due diligence and contract negotiation can vary and is highly dependent upon the pace of the counterparty together with the attributes of the development resource being offered. As such, ENO would be wary of adopting required timelines that do not provide flexibility between various RFPs and/or proposals and counterparties. That said, ENO recognizes that the pace of contract negotiations for the 2016 Renewables RFP was a significant source of frustration for the Council, its Advisors, and all stakeholders – including ENO. However, ENO does not believe that establishing a “one size fits all” set of deadlines or milestones for contract negotiations

at the outset of an RFP, or in rules governing all RFPs, would be an effective or beneficial solution. Rather, ENO recommends that, if the Council wishes to adopt formal rules related to this issue, the rules should be focused on increasing communication with the Advisors and Council concerning the status of negotiations. The Council would, of course, retain the ability to establish deadlines for the negotiations or take other actions if, based on information received from the more detailed communications, it believed action was necessary. This kind of framework could both meet the Council's goal of ensuring that negotiations progress at appropriate pace and also avoid the detrimental effects of establishing deadlines that fail to consider the particular complications associated with a given proposal.

Topic 1.a.iv. *How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP includes a provision that requires a comprehensive narrative detailing the respondent's plan to comply with the provisions of Article IV of Chapter 70 of the Code of the City of New Orleans pertaining to local and disadvantaged business enterprises ("DBE") goals for the City of New Orleans:* ENO notes that the cited portions of the City Code do not necessarily apply to ENO, but rather apply to “contracting activities of the city that involve public spending or private projects that utilize public funding or incentives.”⁷ However, ENO and ESL fully agree with the importance of providing opportunities to diverse suppliers. As such, ESL created the Supplier Diversity and Development group to help ensure that all Entergy Operating Companies provide business opportunities to minority- and women-owned businesses.⁸ This group hosts several events a year and creates and maintains several policies and business practices

⁷ See, Sec. 70-457 of the City Code. (Emphasis added).

⁸ http://www.entergy.com/operations_information/supplier_diversity/.

to help ensure that opportunities are provided to such entities.⁹ These policies include a requirement for bidders into RFPs to submit subcontracting plans demonstrating how the bidder plans to employ diverse suppliers and meet required thresholds in this regard. Once a contract is entered into with a bidder, this plan is memorialized in that contract and the bidder/contractor is required to submit progress reports that are tied to milestone payments under the contract. These efforts and business practices, among others, contributed to the Southern Region Minority Supplier Development Council's choice to honor ESL as the Corporation of the Year at its 2015 IMPACT Awards and to name the Manager of ESL's Supplier Diversity and Development group as its Supplier Diversity Advocate of the Year. Regardless of the priority ESL already places on supplier diversity and the policies that ESL has implemented to ensure success in this aspect of ENO's business, ENO looks forward to seeing what practical suggestions other parties provide on this important topic.

Topic 1.b. *To further the objective of increasing the independence of the Independent Monitor ("IM") and increasing public confidence in the IM's selection and role in the RFP process, what changes to the selection process of the IM should the Council consider:* ENO notes that, of the many public comments and concerns stated in relation to the 2016 Renewables RFP, ENO is not aware of any public comment or statement that questioned the independence of the IM or expressed a lack of confidence in the selection of the IM or the performance of the IM's duties. It should also be noted that ESL's existing policies for RFPs prohibit any entity with a prior business relationship (other than as IM) with any ESL affiliate from serving as IM for at least three years following the termination of such relationship. That said, ENO offers some suggestions to the Council should it wish to further bolster the public's confidence in the integrity and independence

⁹ http://www.entergy.com/content/operations_information/supplier_diversity/calendar.pdf.

of IMs for future RFPs. ENO suggests that upon the publication of any future RFP notifications, any rules adopted could require ENO to notify the Council of the entity ENO has selected to serve as IM and afford the Council a reasonable amount of time (*i.e.*, 30 days) to express any concerns about ENO's selection or request that ENO submit another choice to the Council.¹⁰

b. Development of Final RFP documents

The Resolution identifies several areas of concern related to the development of final RFP documents. For the 2016 Renewables RFP, the Draft RFP documents were posted to the public RFP website (on May 6, 2016) to provide an opportunity for the Council, its Advisors, potential bidders, and other stakeholders to comment on the documents.¹¹ ENO also held a public meeting (on June 1, 2016) to allow these same parties to submit questions related to the RFP, including with regard to technical matters, the use of “non-price factors” in the weighing of proposals, and any other topics of interest. Responses to such questions were posted on the public RFP website. However, ENO recognizes that there is always room for improvement and, as such, offers some suggestions in response to the Council's requests.

Topic 2.a. *How should the draft RFP comment process be improved to increase transparency and facilitate opportunities for public input, access to draft RFP materials and technical discussions among the parties in the docket, and responses to questions or issues in the draft RFP raised by other parties?* As noted above, ENO's process for the 2016 Renewables RFP

¹⁰ To the extent that the Council does exercise the option to request another IM choice be submitted, the timeline and cost of the RFP would be affected, but those considerations can be taken into account by the Council when reviewing ENO's submissions.

¹¹ In the 2015 IRP Final Report, which was served to all parties in Council Docket No. UD-08-02 on February 1, 2016, ENO disclosed that a “draft of the RFP is scheduled for release during the 2nd quarter of 2016.” On March 22, 2016, at the Council's Energy Symposium, the Company publicly announced the 2016 Renewables RFP. In conjunction with the announcement, also on March 22, 2016, the Company published a publicly accessible website where all RFP-related documents were available for review and comment. The RFP website also included a list of all questions submitted to the RFP Administrator with responses and the contact information for the IM.

included opportunities for public review and comment on the draft document. However, if the Council wishes to adopt more formal requirements, the Council could specify the process through which ENO publishes draft RFP documents, makes them available to bidders, stakeholders, the Council and its Advisors, and receives feedback from those groups. The Council could also formally require ENO to hold a public conference, as occurred on June 1, 2016, to obtain feedback from stakeholders and the Advisors. The Council's confection and adoption of requirements of this nature would afford the Council the opportunity to balance the need for public input and transparency with the goal of ensuring that future RFPs proceed as expeditiously as possible.

Topic 2.b. *What role should the Council have in the comment process?* As noted above, ENO's 2016 Renewables RFP process provided the Council, its Advisors, and all stakeholders with multiple opportunities to review and provide comment upon the Draft RFP documents. Nevertheless, if the Council desires to formalize these opportunities for potential future RFPs, the Council could adopt rules that require the Advisors to provide feedback on the draft RFP documents issued for future potential RFPs. The Council's rules could specify the topics on which the Advisors would be required to provide feedback to ENO, *e.g.*, the proposed timeline, evaluation factors, RFP scope, proposal requirements, etc.¹² However, any rules of this nature should also consider the fact that conducting and making selections from RFPs for generating resources constitutes a core component of ENO's business, and thus, afford ENO the appropriate amount of flexibility and discretion to craft RFPs in an optimal manner for meeting the specific supply needs that may exist for its business at any given time. The responsibility for meeting these

¹² Again, the Council's adoption of formal rules in this regard would allow the Council to balance the need for public input with the desire to conduct RFPs in an expeditious manner. An overly lengthy comment period, or one that resembles a litigated proceeding with comments, replies, and a required Council decision to resolve disputes, would greatly hamper the ability to move RFPs forward in a timely fashion.

needs rests with ENO and, while Council oversight is an essential component of the regulatory compact, ENO must ultimately be allowed to exercise its judgment in making business decisions about the final designs of RFPs.

Topic 2.c. *Should the RFP process be changed to a two-step process in an effort to more efficiently evaluate the competitive bid submissions and increase the likelihood of maintaining the RFP schedule?* ENO would benefit from additional clarifications on this topic as the 2016 Renewables RFP clearly noted that the evaluation of proposals submitted into the 2016 Renewables RFP would be conducted in a two-step (or Phase) process.¹³ ENO looks forward to receiving any clarification on the intent of this topic when reviewing constructive and practical comments submitted by other parties.

Topic 2.d. *What requirements, if any, should the Council impose regarding the treatment, disclosure and use of "non-price" factors in the weighing offers from third parties against self-build proposals or affiliate offers?* ENO notes that the “non-price factors” for the 2016 Renewables RFP were clearly disclosed in the RFP documents¹⁴ and the Final IM Report noted that the transparency and level of communication with bidders as related to “the evaluation methods and methodology, the evaluation process, bid evaluation criteria ... [was] consistent with, and in some

¹³ See, 2016 Renewables RFP at Section 6.1. (“Following the Proposal Submission Deadline, the RFP evaluation will begin. In Phase I of this RFP (“Phase I”), proposals will be assessed for compliance with the Threshold Requirements. Proposals remaining in this RFP after the Threshold Requirements compliance review will then be evaluated in Phase I to identify the most economic proposals and significant high-level risks or RFP nonconformities associated with such proposals. Based on the Phase I evaluation results, ESI may reduce the number of proposals under consideration and may develop a preliminary shortlist of proposals (the “Shortlist”). Phase I will end after the completion of the Phase I evaluation of proposals and the establishment of the Shortlist or the determination by ENOI that the Shortlist is not necessary for this RFP. In Phase II of this RFP (“Phase II”), proposals placed on the Shortlist or otherwise remaining in this RFP will be evaluated in greater detail. Applying qualitative and quantitative assessments, the proposals in Phase II will be assigned a proposal ranking and a recommended disposition. A final list setting forth the proposal(s) (if any) selected for negotiation of a Definitive Agreement (the “Primary Selection List”) and the proposal(s) (if any) selected for possible negotiation of a Definitive Agreement (the “Secondary Selection List”) will be created.”).

¹⁴ See, e.g., 2016 Renewables RFP at Sections 1.10 and 6.1.6.

cases exceed[ed], industry standards for other competitive bidding processes.” Despite the fact that the 2016 Renewables RFP “exceeded industry standards” with regard to the fairness of evaluations between self-build and third-party proposals, ENO looks forward to reviewing constructive and practical comments concerning ways to improve the process.

It should also be noted that “non-price factors” play an important role in fulfilling the purpose of RFPs, including ensuring that proposals selected best meet “specific power supply, reliability, or other system needs” necessitating the issuance of an RFP. Non-price factors like locational value, the contribution to reliability and/or resilience, distribution and transmission factors, resource diversity, and others are all important to consider when a proposal is selected from an RFP.

Topic 2.e. *What information should be provided contemporaneously with the issuance of the final RFP documents to ensure a more efficient and timely negotiation process with respondents to any RFP?* This topic is one where the lessons learned in the 2016 Renewables RFP could help fulfill the stated objective. As has been noted, the 2016 Renewables RFP was the first of its kind for ENO and the proposals submitted, and ultimately selected, are also “first-of-kind” generation resources for ENO. These and other factors, as identified by the IM, contributed to the length of contract negotiations. Now that ENO has completed negotiations for certain kinds of contracts related to renewable resources, it could include more detailed term sheets and scope books (which outline the technical requirements resources must meet) contemporaneously with the issuance of RFP documents for future RFPs and clearly indicate that certain terms and conditions in the term sheets and technical requirements are not up for renegotiation. Adopting such a practice *may* reduce the time required for negotiating agreements for proposals selected from an RFP since it would help to ensure that only parties willing to transact on the terms in the

model contracts and proposals that can meet technical requirements from the scope books would submit proposals. However, potentially interested parties can often have differing views on commercial terms, so following such a process is not guaranteed to reduce negotiation time.

c. Issuance of the RFP

Topic 3.a. *How can the RFP process be improved to encourage more market participants and thereby reduce unnecessary administrative and transaction costs that may produce price premiums in supply offers?* ENO would also benefit from clarification on this topic as it is unclear how increasing the number of participants can reduce administrative and transaction costs, or how those kinds of costs result in price premiums in supply offers. ENO looks forward to reviewing an explanation of the correlation.

As noted above, participation can be increased by reducing the number of requirements stated up front for proposals. While reducing RFP requirements may encourage greater participation, it must also be balanced with clarity regarding bidder and product expectations, as too little clarity could result in bids that fall short of ENO and the Council's expectations and ultimately result in prolonged evaluations and negotiations. For example, eliminating the Midcontinent Independent System Operator ("MISO") queue filing requirement could increase market participation in the solicitation, but additional administrative costs would be incurred to review the variables between proposals when making selections. Reducing requirements of this nature could also affect a resource's ability to come online by the timeframe specified in the RFP.

Topic 3.b. *What safeguard provisions are necessary to assure a fair and competitive solicitation, increase the opportunity for the best resource to be selected, and provide confidence to the market that there will be no preferential treatment of utility or affiliate offers?* ENO agrees with the importance of adopting the kinds of safeguards described herein, which is why the 2016

Renewables RFP contained safeguards of this nature. The safeguards incorporated into the ENO RFP included: (1) separation of the self-build team from the evaluation team; (2) application of a Code of Conduct and Affiliate Rules; (3) designation of an RFP Administrator as a single point of contact with bidders; (4) submission and lock-down of the self-build several days before other proposals were submitted; (5) requirement that all bidders, including the self-build, submit the same proposal information to ensure each proposal was consistently evaluated; (6) use of bidder, proposal, and project ID numbers to eliminate any potential bias in the evaluation; (7) blinding of bid information and redaction of bidder names of other non-pertinent information when distributing information to the bid evaluation teams; and (8) inclusion of an active role for the IM. As noted in the Final IM Report, “The IM found that the implementation of the safe-guards instituted in the process exceeded industry standards. Furthermore, the safe-guards were diligently maintained throughout the solicitation process.” To the extent the Council wishes to adopt rules that formalize safeguards necessary to achieve this objective, the safeguards utilized in the 2016 Renewables RFP provide a good model for such requirements.

Topic 3.c. *What provisions are necessary to provide increased confidence in the market and provide a reasonable level of certainty that the RFP process and regulatory approval will be conducted in a timely and efficient manner and in accordance with the Council's RFP rules? As noted above, ENO followed procedures designed to meet these objectives for the 2016 Renewables RFP. To the extent the Council wishes to adopt formal requirements to help ensure these objectives are met in future RFPs, ENO recommends that such requirements be focused on regular communication with the Advisors and Council and, where appropriate, other stakeholders. Adopting formal substantive requirements in a “one size fits all” fashion may do a disservice to future RFPs, which will be as varied as the needs that may arise for ENO and its customers at any*

given time. Rules that focus on communication and collaboration can help to keep the Council informed and allow for it to make decisions and take actions that are tailored to a specific RFP or proposal, rather than having to work within rigid substantive rules that may not fit the given situation.

With regard to the timeliness of regulatory approvals, the Council can consider continuing its recent practice of adopting procedural schedules geared toward investigating the possibility of settlement prior to engaging in full-scale litigation of resource applications – which was helpful in gaining a unanimous settlement and regulatory approval just over 8 months after ENO filed its Application in Docket No. UD-17-05. The Council could even consider formalizing a more streamlined process for resource applications where any formal RFP rules adopted by the Council have been followed. For example, the Council could enact a policy that resources selected through a Council-compliant RFP process are presumed to be in the public interest and necessity unless proven otherwise by an opposing party.

Topic 3.d. *What provisions should the Council consider regarding the issuance and distribution of the RFP such that it encompasses a sufficiently wide range of vendors who may be qualified to perform the work required by the RFP?* As noted above and discussed in the Final IM Report for the 2016 Renewables RFP, “the bidder outreach and communication activities implemented by ESI were designed to encourage market participation by informing a large number of potential participants about the RFP. ESI maintains a large database of potential suppliers, power marketers and others and informed those entities of the development and issuance of the RFP. ESI also publicized the RFP via industry trade publications that regularly include reference to RFPs. Furthermore, throughout the process, bidders were informed about the solicitation through bidder and technical conferences and Notifications posted to ENO’s website for the RFP.”

In the IM's opinion, these efforts resulted in "robust" response to the RFP "with over 16 times the amount of nameplate capacity proposed relative to the amount requested." Despite the success of this aspect of the 2016 Renewables RFP, ENO is open to ideas for how to ensure even better participation in future solicitations. Again, ENO cautions that the desire for robust participation must also be balanced against the potentially competing goals of obtaining proposals targeted to ENO's unique needs and achieving timely completion of RFP selections and negotiations.

d. Post-Issuance of the RFP

Topic 4.a. *Can the RFP process be made more transparent by requiring ENO to provide periodic updates to the public without compromising the Company's negotiations with bidders and without releasing Highly Sensitive Protected Materials? What specific reporting requirements should be imposed?* ENO agrees that improved transparency and communication with the Council and its Advisors are important goals for future RFPs and an area in which ENO can improve following the 2016 Renewables RFP. However, providing information related to ongoing solicitations and negotiations in a public forum could compromise negotiation positions for various reasons and result in a longer timeline for the RFP process. ENO suggests that requiring ENO to periodically report to the Advisors on the status of negotiations and proposal evaluations while utilizing the Council's Standard Protective Order Non-Disclosure Certificate would be a reasonable measure to help achieve this objective. ENO is concerned, however, about extending these periodic reports to other intervenors. Many intervenors in Council utility dockets are (i) for-profit companies that either compete with bidders or are themselves bidders in RFPs for renewable resources, (ii) trade organizations that are composed of and represent the interests of such for-profit entities, and/or (iii) accept direct financial contributions from and, at times, directly advocate for the interest of such entities. As such, ENO would suggest that any Council rules requiring

ENO to provide updates to parties other than the Advisors also require such third-parties to affirmatively demonstrate no affiliation with any of the types of entities described above as a pre-condition to being eligible to receive such commercially sensitive information. A precautionary measure of this nature will be essential for ensuring broad participation in future RFPs because potential bidders will want to be assured that the Council's rules protect the market sensitive information they submit into RFPs from being disclosed to competitors, their affiliates, and/or advocates.

Topic 4.b. *What provisions should the Council consider regarding evaluation methods and criteria for bid selection?* As noted above, the 2016 Renewables RFP clearly disclosed the methods and criteria for the evaluation of proposals. The Final IM Report also found that “proposal evaluation models and methodologies were appropriate and reasonable for the cost and risk analysis undertaken by ESI.” ENO looks forward to reviewing suggestions from parties on how evaluation methodologies can be improved, while also facilitating the goal of completing evaluations in a timely, expeditious, and cost-conscious manner.

III. Conclusion

ENO appreciates the opportunity to submit comments on the Council's areas of concern related to future RFPs and to discuss the lessons learned from, as well as the successes of, the 2016 Renewables RFP. ENO looks forward to reviewing the comments of other parties and working with those parties, the Advisors, and the Council as the Council considers whether to adopt formal RFP requirements and how such potential requirements can balance the competing goals of broad participation and detailed and thorough proposal evaluations, on the one hand, and, on the other hand, receipt of proposals targeted to ENO's specific needs and the expeditious and cost-conscious evaluation and negotiation of agreements for proposals. ENO also hopes that any proposed rules

will focus on creating a flexible and adaptive framework for communication and collaboration for future RFPs, and not adopt rigid substantive rules that may not be well suited to a given situation or industry changes triggered by the rapid evolution of technology.

Respectfully submitted,



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CERTIFICATE OF SERVICE

Docket No. UD-18-05

I hereby certify that I have served the required number of copies of the foregoing report upon all other known parties of this proceeding, by the following: electronic mail, facsimile, overnight mail, hand delivery, and/or United States Postal Service, postage prepaid.

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