

November 16, 2018

**VIA HAND DELIVERY**

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

RE: *Resolution and Order Establishing a Docket and Opening a Rulemaking Proceeding to Consider the Process for How Future Requests for Proposals for Generating Resources or Purchase Power Agreements issued by Entergy New Orleans, LLC Shall Be Conducted*  
CNO Docket UD-18-05  
Our File No.: 7717-43

Dear Ms. Johnson:

Please find enclosed the original and three copies of Reply Comments on behalf of Air Products and Chemicals, Inc. which we request you file into the record in the above-referenced matter. Please file an original and two copies into the record and return a date-stamped copy to my office in accordance with normal procedures.

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

Very truly yours,



Carrie R. Tournillon

CRT/mpk  
Enclosure

cc: Official Service List UD-18-05 (via electronic mail)

**BEFORE THE  
NEW ORLEANS CITY COUNCIL**

**IN RE: RESOLUTION AND ORDER  
ESTABLISHING A DOCKET AND  
OPENING A 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.**

**DOCKET NO. UD-18-05  
November 16, 2018**

**AIR PRODUCTS AND CHEMICALS, INC.  
REPLY COMMENTS**

Air Products and Chemicals, Inc. ("Air Products") respectfully submits the following reply comments pursuant to the Resolution and Order Establishing a Docket and Opening a 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 (Resolution R-18-355).

Air Products generally agrees with many of the initial comments of the Alliance for Affordable Energy ("Alliance") and Entergy New Orleans, LLC ("ENO") that support the Council's adoption of rules to promote selection of resources from a competitive bidding process, improve notification of a request for proposal ("RFP") for generation resources or purchase power agreement ("PPAs"), create more transparency in the RFP

process, create better opportunity for stakeholders to review and comment on draft RFPs, require identification of all non-price factors to be used in evaluation of proposals, establish parameters for selection and use of an Independent Monitor (“IM”), and develop and identify safeguards for ENO to implement before and during an RFP process to assure that there is a level playing field for all bidders without preferential treatment provided to ENO or an ENO affiliate. Air Products respectfully submits these reply comments to identify certain areas of concern and/or disagreement with the initial comments of the Alliance and ENO in this proceeding.<sup>1</sup>

### **Use of a “Loading Order”**

In its initial comments, the Alliance indicates that competitive solicitation of resources could include information about Council policy that could weight a selection (but not preclude certain resources), which the Alliance indicates is referred to as “loading order” and may be a constraint of solicitation.<sup>2</sup> Air Products appreciates that any Council policy for selection of certain types of resources will need to be recognized in the selection of a resource. However, such “policy” should be one that is clearly established through resolution of the Council or through a Council mandate for the “policy” to impact the weighting of resources. Any weighting of resources that ignores cost (pricing factors) would frustrate the objective of the competitive bidding process of

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<sup>1</sup> In these reply comments, Air Products is addressing certain areas of concern or disagreement with positions stated by the Alliance and ENO in their respective initial comments. However, given the scope of the parties comments, Air Products is not addressing every issue and Air Products’ not addressing a particular position or comment of the Alliance or ENO should not be construed as Air Products’ agreeing with such position or comment. Air Products reserves the right to supplement these comments over the course of this proceeding, as appropriate.

<sup>2</sup> Alliance Initial Comments, page 5 (October 19, 2018).

an RFP in determining the least cost option to reliably meet the capacity and/or energy needs of a utility.

### **Regulatory Approval of Resources**

ENO suggests that, as a means of achieving more timely regulatory approval of resources selected in an RFP, 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.<sup>3</sup> Air Products strongly objects to this suggestion.

Air Products objects to the adoption of rules that shift the burden to stakeholders to prove that approval of the acquisition or construction of a generation resource (and thus inclusion in rate base) is not in the public interest or necessity. Further, Air Products objects to the adoption of rules that allow a determination of ENO's compliance with a Council-prescribed RFP process based on ENO's checking the box for such requirements. Whether a resource that ENO selects from an RFP was selected in an impartial manner, is the least cost option to reliability provide needed capacity and/or energy, and is in the public interest cannot be determined prior to evaluation of the generation resource and the evaluation of ENO's capacity need and the decisions and actions of Entergy leading up to the selection, which is appropriately done through a regulatory proceeding initiated following conclusion of the RFP, specific to the resource selected in the RFP.

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<sup>3</sup> ENO Initial Comments, page 16 (October 19, 2018).

ENO should carry the burden of proving that its proposed construction or acquisition of a generation resource is in the public interest and necessity. Such generation resources typically are very expensive and a decision to approve the resource as in the public interest and necessity (and includable in ENO's rate base) will result in ENO's ratepayers paying for the cost of the asset for many years. Such decision should not be presumed to be in the public interest and necessity and should require more than a high-level determination that ENO has complied with timelines or other procedural requirements of Council rules. Whether ENO should be allowed to acquire or construct a generation resource that was selected from an RFP process should thoroughly consider and evaluate ENO's (and/or any affiliated operating company's or shared services company's) performance in of each step of the RFP process, including the evaluation of the bids and selection of the winning bids, which would be undertaken at the time that ENO seeks to approval to build and/or acquire the resource.

### **Selection of IM**

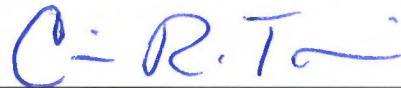
In its initial comments, ENO suggests that, at the time of publication of RFP notifications, Council Rules could require ENO to notify the Council of the entity that ENO selected to serve as IM and afford the Council a reasonable amount of time (i.e., 30 days) to express concerns with the selection or request that ENO submit another choice to the Council.<sup>4</sup> Air Products does not agree that ENO's suggestion goes far enough. At a minimum, the Council should be notified of the entity selected to serve as IM. However, as Air Products indicated in its initial comments, rules should be adopted that

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<sup>4</sup> ENO Initial Comments, pages 9-10 (October 19, 2018).

ensure independence of the IM. Air Products continues to recommend that any rules adopted by the Council require the Council to issue an RFP for qualified consultants for serving as the IM and to select from bidders an IM that is independent from ENO. ENO should not be allowed to choose the IM, and the IM should not be in any way affiliated with ENO. Further, the rules should prohibit any prior contractor of ENO within the last 10 years from serving as an IM.

RESPECTFULLY SUBMITTED:



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Katherine W. King (#7396)  
Randy Young (#21958)  
Carrie R. Tournillon (#30093)  
KEAN MILLER LLP  
Post Office Box 3513  
Baton Rouge, LA 70821  
(225) 387-0999  
*Attorneys for Air Products and Chemicals, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by hand delivery to the Clerk of Council with a copy to the Director, Council Utilities Regulatory Office, and upon the Official Service List via electronic mail.

New Orleans, Louisiana this 16<sup>th</sup> day of November, 2018.



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Carrie R. Tournillon