

**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
June 7, 2019**

**AIR PRODUCTS AND CHEMICALS, INC.
COMMENTS ON PROPOSED RULES FOR REQUESTS FOR PROPOSALS**

Air Products and Chemicals, Inc. ("Air Products") respectfully submits the following comments pursuant to the Resolution R-19-110, regarding the draft rules prepared by the Council Advisors for future requests for proposals ("RFP") issued by Entergy New Orleans, LLC for generation resources or purchase power agreements ("Draft RFP Rules"). Air Products appreciates the opportunity to comment on the Draft RFP Rules, as follows:

Section III.A. Notice of Intent to Issue RFP

A. Notice of Intent to Issue RFP

Upon determining that the acquisition of an additional generating resource(s) or purchase power agreement(s) is necessary for the Company to fulfill its obligation to provide reliable, safe electric and gas service to its customers at the lowest reasonable cost, ENO shall inform the New Orleans City Council ("Council"), its utility Advisors, and the Council's Utilities Regulatory Office ("CURO") in writing of its intent to develop and issue an RFP for a new resource(s) or PPA(s). A public version of ENO's Notice of Intent to Issue an RFP ("NOI") shall be posted on the Company's website and CURO shall cause the NOI to be posted on the

Council's website. ENO shall also circulate the public version of the NOI to the Official Service List in Council Docket No. UD-18-05.

Air Products Comments: Air Products questions why would there be a confidential version of the NOI. AP requests that ENO and/or the Advisors identify the type of confidential information they anticipate would be included in the NOI and explain how a stakeholder could receive access to the confidential version of the NOI, if one is necessary.

Section III.B. Content of NOI

ENO's NOI shall include the following:

1. A clear and thorough explanation of the Company's stated resource needs and specific goals to be outlined in the draft RFP. The proposed scope of the RFP shall be clearly described and an explanation supporting the RFP's scope shall also be provided. This explanation shall include all specifically defined generating characteristics required (i.e. peak, baseload, geographic location, etc.) for resource proposals and should also specifically identify the interconnection and/or delivery points that would most benefit the transmission and distribution systems in terms of reliability. ENO shall also identify a reasonable range of capacity (in megawatts) that it intends to include as the range sought in the RFP.

The Company shall also explain whether the RFP will contain sufficient flexibility in the eligibility of resources to meet the capacity and energy need and whether the capacity and energy need could be met through one or more resources without pre-determined limitations on locations, fuel source, technologies, project structures or other constraints, in order to attract competitive options that allow the lowest reasonable cost resource(s) to be selected. If it is anticipated that the RFP will not contain sufficient flexibility to meet ENO's identified need, then the Company shall explain, in detail, why the RFP should be drafted more narrowly to attract resources that would meet ENO's need.

An all-source RFP should be utilized if there is a general need for additional capacity and there are no specific resource characteristics identified by ENO that would prohibit the use of an all-source solicitation. The Company shall state in the NOI whether an all-source solicitation may be made in the proposed RFP. If an all-source solicitation cannot or should not be made, then ENO shall publically provide a detailed explanation in the NOI to the Council and its Advisors as to why certain resources will not meet ENO's needs for new generating capacity.

Air Products Comments: The last paragraph of Section III.B.1. above suggests that ENO would only be required to provide to the Council and its Advisors a detailed explanation as to why certain resources will not meet ENO's needs for new generating capacity if an all-source solicitation cannot or should not be made. However, this requirement is included in Section III.B, regarding "Content of NOI." Thus, it would seem the explanation would be included in the NOI. Further, AP submits that such information should be included in the NOI and available as public information to allow all stakeholder to be made aware of ENO's reasons for excluding certain types of resources from participating in an RFP.

3. A detailed proposed schedule of milestone events and dates including a reasonable time period for the Company to conduct the RFP process and for ENO to perform its due diligence and negotiations with the selected bidder(s). This proposed schedule, beginning upon public issuance of the RFP and ending upon the filing of an application by ENO seeking Council approval of the selected resource(s), shall not exceed a period of twelve (12) months except for extraordinary or unforeseen circumstances. If the Company is unable to make a filing at the Council seeking approval of a selected resource(s) within this 12-month period as a result of extraordinary or unforeseen circumstances, ENO shall notify the Council in writing, immediately upon learning that a filing within the 12-month period cannot be made and provide a detailed explanation to the Council and its Advisors, subject to any material designated by the Company as Highly Sensitive Protected Material ("HSPM"). The public version of the written notice and explanation shall be received by the Council at a Regular Meeting (with a copy of the public version of the notice and explanation available through the Agenda of the Regular meeting), posted on the RFP website by ENO, and served by ENO on shall also circulate a public version of the written detailed explanation to

the Official Service List in Council Docket No. UD-18-05. The confidential version of the notice and explanation shall be provided to parties to Docket UD-18-05 upon the signing of an appropriate non-disclosure certificate.

Air Products Comment: Paragraph 3 above indicates that if ENO is unable to make a resource certification filing at the Council within 12 months of the public issuance of an RFP, that ENO shall notify the Council and its Advisors. Air Products questions how other stakeholders will be informed of the circumstances. Air Products submits that such notice and explanation should be in writing and posted on ENO's website and also received by the Council at a Regular Meeting, such that the written notice is available to the public. Further, the confidential version of the notice and explanation should be available to stakeholders who sign appropriate non-disclosure certificates.

Section III.D. Independent Monitor

1. After the Council adopts these rules and prior to the issuance of ENO's next RFP for either a generating resource or PPA, the Council shall issue a Request for Qualifications ("RFQ") for the purpose of determining one or more qualified respondents who could perform the duties of an Independent Monitor ("IM") consistent with the criteria outlined in the RFQ. Once the qualified respondent(s) have been identified by the Council, through its RFQ process, the Council, or its designee, shall create a list of qualified potential IMs from whom ENO shall request bids through its RFP process for the selection of an IM ("IM List"). The IM List shall be posted on the Council's website. The Council retains the discretion to disqualify any person include on the IM list upon determining that circumstances warrant the disqualification.

The Council may, in its discretion, conduct subsequent RFQs no less than every five (5) years to update the list of qualified respondents who could perform the duties of the IM. Once bids are received by the Company, ENO shall make the selection of the IM. ENO shall inform the Council, in writing, within seven (7)

days of its selection of the IM. ENO may not select the same person to serve as IM in more than two consecutive RFPs.

In a subsequent RFP conducted pursuant to these rules, ENO shall solicit bids from the list of qualified respondents (IMs) which will have already been determined by the Council through the above RFQ process and any updates thereto.

Air Products Comment: Air Products requests that the list of persons determined to be qualified to serve as an IM be posted on the Council’s website. Further, Air Products requests that an additional sentence be added to the first paragraph of Section III.D.1, above, to make explicit that the Council retains the discretion to remove a person from the list of qualified IMs if the Council determines that circumstances warrant the person’s disqualification.

Air Products further suggests that the second paragraph of Section III.D.1, above, be revised to indicate that the Council may, at its discretion, conduct subsequent RFQs *no less than* every five years to update the list of persons qualified to serve an IM. Air Products submits that the Council cannot know at this time how frequently the list may need to be updated - - whether due to the retirement, disqualification, work load, or change of interest of a person qualified to serve as IM.

In addition, Air Products requests that the section above be revised to prohibit ENO from selecting the same person to serve as IM in more than two consecutive RFPs.

3. The IM and the Council’s Advisors may communicate with each other on matters relating to the RFP process without restriction. Such communications may be confidential as needed and do not require the participation of Entergy Services, LLC (“ESL”) or ENO. The IM shall make public, periodic written reports to ENO and the Council, subject to any confidentiality agreements between

ESL or ENO and the IM, as part of and at the conclusion of each phase of the RFP process. The IM will also provide a public final report to the Council subject to any confidentiality agreements between ESL or ENO and the IM, stating the IM's analysis of and conclusions regarding the RFP process, including any suggestions for improvement. The public version of the periodic reports and final reports shall be received by the Council at a Regular Meeting, such that the reports are available to the public through the Agenda of Council's Regular Meetings, posted on the RFP website, and served on parties in Docket UD-18-05. The confidential versions of the periodic reports and the final report shall be provided to the Councils' Advisors and parties to Docket UD-18-05 who sign appropriate non-disclosure certificates, contemporaneously with the public versions being provided to the Council.

Air Products Comment: As written, it is not clear to Air Products whether Paragraph 3 above will require the IM to provide stakeholders with a copy of the periodic reports and final reports that are provided to the Council and Council Advisors and/or post such reports on the RFP website. Air Products requests that this paragraph require the public version of the reports to be received by the Council at a Regular Meeting, such that the reports are available to the public through the Agenda of Council's Regular Meetings, posted on the RFP website, and served on parties in Docket UD-18-05. Parties to Docket UD-18-05 who have signed the necessary non-disclosure agreement should also be allowed access to the confidential version of the reports.

Section III.E. Periodic Status Reporting by ENO

Subsequent to ENO's issuance of the NOI, the Company shall provide a written update to the Council's Advisors and all other parties to Docket No. UD-18-05 that have properly executed ENO's Non-Disclosure Certificate (pursuant to the Council's approved Protective Order) every sixty (60) days regarding the status of the RFP process. These periodic status reports shall be held confidential in accordance with the Council's approved Protective Order for utility regulatory proceedings. The status

reports shall be submitted throughout the entire RFP process and shall provide the current status of the process, including a detailed explanation of any meaningful developments in the process within the prior 60-day period. The status reports shall also include an explanation of any delays or events that could cause a delay in the overall RFP process.

Air Products Comment: It is not clear to Air Products why there should not also be public versions of the status reports, with such public versions received by the Council at a Regular Meeting (and available through the Agenda of the Regular Meeting), posted on the RFP website, and served on all parties to Docket UD-18-05. Air Products requests that the need for these reports to solely be confidential be provided and additional opportunity be provided to comment on whether such reports should also be publically available, including served on parties to Docket UD-18-015, posted on the RFP website and received by the Council at a Regular Meeting.

Section IV. Development of Final RFP Documents

A. Draft RFP Comment Process

ENO shall post all draft RFP documents to a public website for the purpose of allowing the Council, the Council's Advisors, potential bidders, and other members of the public the opportunity to comment on the documents. ENO shall provide written notice of the availability of the RFP documents to the Council, with the notice received by the Council at a Regular Meeting (and available through the Agenda of the Regular Meeting), and serve such written notice on the parties in Docket UD-18-05.

AP Comment: Air Products requests that notice of the availability of the RFP documents should be provided to the Council and received by the Council at a Regular Meeting (and available through the Agenda of the Regular Meeting) and also served on the parties in Docket UD-18-05.

2. A period of thirty (30) days after the draft documents have been received by the Council at a Regular Meeting posted to the public website shall be established for the Council, the Council's Advisors, potential bidders, and other members of the public to submit written questions to ENO regarding the draft documents. Answers shall be posted on a rolling basis but not later than 15 days after the conclusion of the 30-day period for submission of written questions. Questions may be submitted related to a variety of topics, including ENO's proposed timeline, the RFP's scope, technical aspects of the RFP, proposal requirements and evaluation criteria. Other inquiries regarding non-price factors such as locational value, reliability, transmission/distribution impacts, and resource diversity may also be submitted.

AP Comment: Air Products requests that the 30-day period for submitting comment on draft RFP documents commence from the time that the draft RFP documents are officially received by the Council, rather than posted to the RFP website. This will allow for maximum opportunity for stakeholders to have notice of the documents availability and opportunity for stakeholders to participate in providing comments.

B. Public Meeting and Technical Conference

ENO shall host a minimum of one public meeting and one technical conference for the purpose of allowing the Company to further explain the draft documents and receive additional questions, concerns and feedback from the Council, the Council's Advisors, stakeholders and members of the public. ENO shall provide written notice of each of the public meeting and the technical conference at least thirty (30) days prior to the date of the public meeting and technical conference, respectively, by means of (i) the Council receiving the written notice at a Regular Meeting, with the notice available through the agenda of the public meeting, (ii) ENO posting the notice on the RFP website, and (iii) ENO serving parties to Docket UD-18-05 with a copy of the notice.

AP Comment: Air Products requests that written notice of the public meeting and technical conference be required of ENO, and that such notice be received by the Council at a

Regular Meeting (and available through the Agenda of the Regular Meeting), posted on the Council website and RFP website, and served on parties to Docket UD-18-05, at least 30 days prior to the date of the public meeting and technical conference, respectively.

Section V. Issuance and Post Issuance of the RFP

A. Safeguard Provisions

1. Safeguard provisions are necessary in the RFP process to assure a fair and competitive solicitation. ENO has participated as a self-bidder in prior RFP processes and may participate as a bidder in future RFPs. The following safeguards shall be implemented and maintained throughout the solicitation, selection and negotiation processes:

...

(d) submission and lock-down of the self-build several days before other proposals ~~are~~ ~~were~~ submitted;

...

AP Comment: AP requests the above non-substantive change be made to subpart (d) of Section V.A.

B. Periodic Reporting by the IM

At the conclusion of each phase in the RFP process, as listed in section III, D, 2 above, the IM will prepare one or more interim reports and a final report (including confidential and public versions) at the conclusion of the RFP process stating the IM’s analysis of and conclusions regarding each phase of the RFP process, including any expected delays in the schedule, reasons for the delays and any suggestions for improvement. These reports shall be subject to the Council’s approved protective order and any other confidentiality agreements that may be executed by the negotiating parties. The confidential versions of the reports shall be provided to ENO, the Council’s Advisors and any stakeholder that has affirmatively demonstrated no affiliation with any (i) for-profit companies that either compete with bidders or are themselves bidders in RFPs for generating resources, (ii) trade organizations that are composed of and represent the interests of such for-profit entities, and/or (iii) non-profit organizations

that accept direct financial contributions from and, at times, directly advocate for the interest of such entities. The public versions of these interim reports and the public final report shall be provided to the Council, the Council's Advisors and the Official Service List in Docket No. UD-18-05. The public reports shall also be posted on ENO's public RFP website and the Council's website upon release by the IM.

AP Comment: Air Products offers the above edit to subpart (iii) of Section V.B., which Air Products believes is consistent with the intent of the provision.

RESPECTFULLY SUBMITTED:



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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 7th day of June, 2019.



Carrie R. Tournillon