



Entergy Services, Inc.  
Legal Department  
639 Loyola Avenue  
P.O. Box 61000  
New Orleans, LA 70161  
Tel 504 576 2984  
Fax 504 576 5579  
hbarton@entergy.com

Harry M. Barton  
Senior Counsel  
Regulatory

March 27, 2017

**By Hand Delivery**

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

Re: **In Re: Rulemaking to Establish Integrated Resource Planning Components  
and Reporting Requirements for Entergy New Orleans, Inc.  
Docket No. UD-17-01**

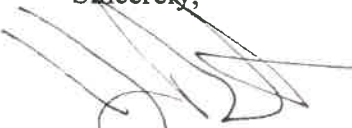
Dear Ms. Johnson:

Entergy New Orleans, Inc. ("ENO") respectfully submits its Reply Comments Concerning the Proposed Modifications to the Council of the City of New Orleans' (the "Council") Integrated Resource Planning ("IRP") Requirements and Process Submitted by Intervenors to this Docket.

Please file an original and two copies into the record in the above referenced matter, and return a date-stamped copy to our courier.

Should you have any questions regarding the above, I may be reached at (504) 576-2984. Thank you for your assistance with this matter.

Sincerely,



Harry M. Barton

HMB/bkd  
Enclosures

cc: Official Service List (via email)

RECEIVED  
MAR 27 2017

BY: *Angela Parker*

MAR 27 4 34

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

***EX PARTE: IN RE: RULEMAKING TO )  
ESTABLISH INTEGRATED RESOURCE )  
PLANNING COMPONENTS AND )  
REPORTING REQUIREMENTS )  
FOR ENTERGY NEW ORLEANS, INC. )  
)  
)  
)***

**DOCKET NO. UD-17-01**

**ENTERGY NEW ORLEANS, INC.’S REPLY COMMENTS CONCERNING THE  
PROPOSED MODIFICATIONS TO THE COUNCIL’S INTEGRATED RESOURCE  
PLANNING REQUIREMENTS AND PROCESS SUBMITTED BY INTERVENORS**

Entergy New Orleans, Inc. (“ENO”) respectfully submits its Reply Comments Concerning the Proposed Modifications to the Council of the City of New Orleans’ (the “Council”) Integrated Resource Planning (“IRP”) Requirements and Process Submitted by Intervenors to this Docket. The Council established this Docket with Council Resolution No. R-17-32 (the “Resolution”) to allow Parties to “submit specific language which amends or modifies the Council’s IRP Requirements or improves the Council’s IRP process” in order to improve the Requirements and process. Taking the Council’s directives to heart, ENO submitted specific language and proposed modifications (“ENO’s Proposal”) carefully designed to achieve certain improvements, *i.e.*, (i) focusing the IRP Requirements on planning for ENO’s continued ability to provide reliable, low-cost service to its customers across a wide range of possible future scenarios, (ii) increasing opportunities for meaningful Stakeholder input and public engagement, and (iii) improving the efficiency of the IRP process both in terms of time and customer resources spent on each triennial cycle. ENO believes its proposed improvements could provide the added benefits of increasing the timeliness, relevance, and flexibility of future IRP cycles and reports, as well as decreasing the potential for the contentiousness, acrimony, and political and public controversy observed during the 2015 IRP cycle. In working toward these goals, ENO considered and incorporated feedback that the Council, the Advisors, and Stakeholders provided during and following the 2015 IRP cycle. ENO’s Proposal will address many Stakeholder concerns, while balancing those concerns with ENO’s customers’ needs.

Although ENO believed it had reached consensus with certain Stakeholders on common goals for improvements to the IRP Requirements and process, a number of the Intervenor Proposals<sup>1</sup> appear designed to achieve very different results from ENO's Proposal. Rather than focusing the IRP on planning for providing low-cost, reliable service to ENO's customers, the Intervenor Proposals seek to greatly expand the scope of the IRP to encompass issues that do not bear on ENO's ability to provide such service, or the costs of doing so. Rather than making the process more efficient and shorter, the Intervenor Proposals would make the 2018 IRP cycle even longer, and more expensive for ENO's customers, than the 31-month cycle in 2015. Rather than providing opportunities for meaningful and productive input from Stakeholders and the public, some aspects of Intervenor Proposals seek to create a novel framework that would result in a more acrimonious and politically-charged atmosphere for future IRP cycles. Some of the Intervenor Proposals even seek to implement changes that would not be legally permissible and contemplate issues beyond the scope of the Resolution. ENO will specifically address these issues, as well as some aspects of the Intervenor Proposals with which ENO could agree under certain conditions. However, it is important to first review two firmly established principles of regulatory law that govern the outcome of this Docket: (1) parties proposing changes in a rulemaking proceeding must support their recommendations, and (2) other parties do not have the right to manage a utility's business.

**I. Parties Proposing Changes in a Regulatory Rulemaking Bear the Burden of Proof for Supporting Their Proposed Changes.**

The Resolution established a formal rulemaking proceeding to allow parties to submit proposed changes to the IRP Requirements and process and to "allow all proposals to be more fully

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<sup>1</sup> On the February 27, 2017 deadline for submitting proposals, ENO received filings from the Sewerage and Water Board of New Orleans ("S&WB"), the Deep South Center for Environmental Justice ("DSCEJ"), and the Alliance for Affordable Energy (the "Alliance"). On March 1, 2017, ENO received comments from the unregulated, for-profit energy services company, PosiGen, LLC ("PosiGen"). PosiGen's comments were apparently filed by the February 27, 2017 deadline, but not served on that day, contrary to the signed representation in the certificate of service attached to PosiGen's comments. On March 6, 2017, 350 Louisiana submitted late-filed comments, which were ultimately allowed into the record. These five filings are collectively referred to as the "Intervenor Proposals." A series of emails from Dr. Myron Katz, along with an unsolicited filing from February 3, 2017, were stricken from the record in this Docket by a March 10, 2017 Order from the Hearing Officer, the Honorable Judge Jeffrey S. Gulin. Dr. Katz's comments are not discussed in this filing.

vetted.”<sup>2</sup> A well-established principle of administrative law concerning formal rulemaking proceedings dictates that, “[e]xcept as otherwise provided by statute, the proponent of a rule or order has the burden of proof” to support the proposed rule, or as is the case in this Docket, modifications thereto.<sup>3</sup> ENO fulfilled this obligation by citing to documentary evidence and providing thorough explanations of the reasoning underlying each of its proposed modifications – including extensive discussions of the benefits that would result from ENO’s proposed modifications. Some Intervenors failed to make any attempt to do the same.

**A. Intervenors Failed to Support Many Proposals with Evidence, Analysis, or Even an Explanation.**

The most apparent failure to provide support for suggested modifications can be seen in the Alliance’s proposal.<sup>4</sup> The Alliance proposes to essentially rewrite the Council’s IRP Requirements, but does not even attempt to meet its burden to support the modifications it submitted for approval. The Alliance’s filing contains only a brief summary of a few of its desired outcomes, and provides no evidence to indicate how its proposed modifications could achieve these goals or result in benefits to ENO’s customers. Although the Alliance purports to reserve the right to meet this burden, and propose additional changes, in its reply comments,<sup>5</sup> parties are normally disallowed from raising new issues or evidence in replies because of the unfair disadvantage to other parties to a matter who would have no opportunity to evaluate or address the new arguments or evidence.<sup>6</sup> Because the Alliance failed to meet its burden of proof or provide support for the proposed modifications in its initial comments, the Council should reject them.

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<sup>2</sup> See the Resolution at pg. 13.

<sup>3</sup> See 5 U.S.C.A. § 556 (West 2017). Although the Administrative Procedures Act is a Federal statute, the Council looks to such statutes as instructive where the Home Rule Charter or the Code of the City of New Orleans do not establish procedural rules. See, e.g. New Orleans City Code, 1995, Sec. 158-234.

<sup>4</sup> It appears that much of the Alliance’s proposed language was copied and pasted from a report from the Regulatory Assistance Project (“RAP”). The Alliance makes no effort to meet its burden to demonstrate why these policies are appropriate for New Orleans.

<sup>5</sup> See AAE Comments at pg. 3.

<sup>6</sup> See, e.g., *United States v. Ramirez*, 557 F.3d 200, 203 (5th Cir. 2009) (“This court does not entertain arguments raised for the first time in a reply brief.”)

The Alliance’s unsupported proposal for hiring an “Independent Evaluator” or “IE” to perform certain tasks is a glaring example of the failure to meet the burden of proof for supporting proposed modifications.<sup>7</sup> At page 7 of its filing, the Alliance defines the proposed IE as “an independent consultant retained by the Council to evaluate aspects of utility planning or programs...” The Alliance then suggests that the Council assign various tasks to the IE, such as “verifying” the assumptions and analyses used in the modeling conducted by ENO – a task currently performed by the Council’s Technical Advisors.<sup>8</sup> However, the Alliance makes no effort to explain why the Council should hire another third party to undertake work currently performed by the Advisors.<sup>9</sup> The Alliance’s proposal contains no discussion of a method of funding the hiring of an “Independent Evaluator” to perform this duplicative task, nor does the Alliance identify a process or criteria through which the Council would issue a Request for Qualification (“RFQ”) to solicit the services of the IE. The Alliance also fails to propose a timeline for such an RFQ or discuss the impact of the inevitable delays to the 2018 cycle that would result from waiting for such a process to be completed. As the Council and Advisors well know, the practice of hiring customer-funded, third-party utility consultants has been under increasing scrutiny and the Council and its Utility Regulatory Office (“CURO”) have made significant efforts to reduce spending in this regard. The Alliance proposes to increase such spending by an indeterminate amount for the purpose of duplicating work performed by the Technical Advisors, yet provides no evidence or analysis to meet its burden to support such a proposal. Instead, the Alliance simply “red-lined” the Council’s existing IRP Requirements to include an extra-jurisdictional policy recommendation without attempting to demonstrate the appropriateness, costs, or benefits of its proposal for the Council’s IRP process. This approach to regulatory rulemaking is neither helpful to the Council nor permitted under laws applicable to such proceedings.

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<sup>7</sup> This proposal also seems to have been lifted from a RAP document related to other jurisdictions; no analysis has been provided as to what benefits adopting the RAP’s model could provide to New Orleans.

<sup>8</sup> The Alliance also proposes to vest the Independent Evaluator with authority to make many business decisions for ENO. Such proposals are not legally permissible and are addressed later in this filing.

<sup>9</sup> To the extent the Alliance is suggesting that the IE replace the Technical Advisors in the IRP Docket, such a proposal is unfounded and well beyond the scope of issues germane to this rulemaking Docket.

Many other suggestions from the Intervenor Proposals also lack the evidentiary or analytical support necessary to meet the burden of proof required for the Council to consider adopting such proposals. ENO provides this brief, non-exhaustive list of such unsupported proposed changes to the Council's rules:

- Removal of the Ratepayer Impact Measure (“RIM”) test from the DSM Criteria: The RIM test provides transparent information on the cost and cost-effectiveness of DSM programs. The Alliance provides no evidence to support the claim that the measure is inappropriate for long term resource comparison. *See*, Alliance comments at pg. 6.
- Creation of the “Interested Party,” a new class of IRP participant: The Council's bar for Intervenor participation has been significantly relaxed of late, and public participation in utility dockets has never been more active. The Alliance makes no attempt to demonstrate why a new classification is necessary, does not define a criteria or process through which such Parties would be vetted prior to gaining “approval” to access HSPM information under its proposal, and fails to propose any safeguards for ensuring the security and safety of the HSPM information. *Id.* at 8.
- Removal of the “Directly Quantifiable” requirement for DSM benefits: Requiring that only “Directly Quantifiable” DSM benefits are evaluated ensures that customers are not burdened with costs that lack directly-related benefits. The Alliance proposes to change “directly quantifiable” to “reasonably quantifiable” without proposing specific language to define the new “reasonable” metric or discussing impacts to customers. *Id.* at 6.
- Redefining “Supply-Side Resources” to include assets that do not generate electricity: Generation resources are distinctly different from transmission or distribution assets in that the former can generate power, while the latter cannot. No explanation is provided for shoehorning these dissimilar assets into the category of Supply-Side Resources. *Id.* at 8.
- Redefining “Least-Cost Planning”: The Alliance's modified IRP Requirements contain several new definitions of Least-Cost Planning that appear to be cobbled together from different sources. Least-Cost Planning is a straightforward concept; the Alliance makes no effort to support its novel definitions. *Id.* at 8, 19.
- Expanding the IRP to Include Supply Planning for Natural Gas Customers: DSECEJ proposes that, for the first time in the history of the Council's process, the IRP be expanded to include planning for natural gas service. No evidence is provided to support the necessity of this change, which was pulled from a RAP publication, or demonstrate any benefits to ENO's customers that would result from this recommendation. *See*, DSCEJ comments at pg. 5.
- Replacing the Council's IRP Requirements with the RAP “Best Practices”: DSCEJ's proposal appears to advocate that the Council entirely do away with the IRP Requirements that the Council, ENO, the Advisors, and several Intervenor developed through joint efforts long before DSCEJ even began participating in Council utility dockets. Yet, DSCEJ provides no evidence or rationale to support this radical change and, as such, fails to meet its regulatory burden of proof. *Id.* at 5-7.
- Creating an Unfunded, Duplicative Role of DER/DSM Consultant: PosiGen, an unregulated, for-profit company that trades in Distributed Energy Resource (“DER”) and

Demand Side Management (“DSM”) products and services, proposes that the Council hire a consultant to ensure adequate integration of the products PosiGen sells and/or leases into IRP portfolios. Yet, PosiGen proposes no budget or funding source for the newly created position and provides no evidence or analysis suggesting that the Council’s Advisors cannot perform such a function if required. *See*, PosiGen comments at pg. 6 of 13.

- Focus on Past IRPs and Load Forecasts: The Alliance adds requirements that ENO provide extensive discussions and comparisons of prior load forecasts and IRP projections and recommendations to historical data. The Alliance does not state what purpose or benefit such historical comparisons could provide for forward-looking planning. *Id.* at 12-14.
- Adoption of the California Total Resource Cost Test: The Alliance proposes that a standard developed for a jurisdiction with some of the highest rates in the nation (California) be used to value DSM programs in New Orleans, a jurisdiction with rates well below the national average. The Alliance cites no evidence or analysis to support this proposal. *Id.* at 15.

The above list contains but a few examples of many unsupported proposals for changes to the Council’s IRP Requirements. In this proceeding, as in any rulemaking, where the proponent of a rule change fails to meet its burden of proof, the proposed change should be rejected.

**B. Many Intervenors Did not Meet the Burden to Provide the “Specific Language” Required by the Resolution.**

The Council initiated this rulemaking primarily because, during the 2015 IRP cycle, the Alliance filed an “Integrated Resiliency Plan” that proposed many new criteria for evaluating IRPs. The Advisors noted that evaluating the 2015 IRP on these new criteria would not be appropriate because, among other reasons, the new standards had not been precisely defined at the start of the cycle.<sup>10</sup> The precise definition of the IRP Requirements and evaluation criteria before the start of a cycle is necessary to provide advance notice of the metrics on which the IRP Report will be judged. As such, the Resolution mandated that any proposed changes to the IRP Requirements or process be set forth with “specific language.”

Despite these clear instructions, many of the Intervenor Proposals are not accompanied by

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<sup>10</sup> *See* Advisors’ Report Regarding ENO’s Final 2015 IRP, filed in Docket No. UD-08-02, (“Advisors’ 2015 IRP Report”) at pg. 69. (“In order to promote fairness to all parties and due process under the law, the 2015 Final IRP must be evaluated against the legal standard[s] set in place at the time it was filed, which are the Council’s IRP Criteria. To the extent that parties seek to argue that the Council’s IRP Criteria should be changed, the appropriate manner of doing so would be to conduct a rulemaking process that could affect a change to the IRP criteria prior to the next triennial IRP filing (expected in 2018).”).

such “specific language.” For example,<sup>11</sup> although the Alliance seeks to interject evaluations of “resilience” into the IRP Requirements, the Alliance fails to propose any specific language defining the concept of “resilience” or the criteria under which a portfolio’s ability to provide “resilience” is to be judged. This failure is particularly noteworthy because the Advisors previously recommended rejection of the Alliance’s “Resiliency Rubric” as it was “unsupported by the type of analysis needed to serve as a viable IRP.”<sup>12</sup> The Advisors also stated that the instant rulemaking would be initiated to provide the Alliance an opportunity to more precisely define and support its “Resiliency Rubric.” The Alliance chose not to take advantage of the opportunity. In fact, the Alliance suggests that the criteria can be developed by the Council and the Working Group, during the IRP cycle.<sup>13</sup> This proposal would not provide specific language in this proceeding to define the IRP criteria and requirements before the cycle starts. This failure warrants rejection of its proposed modifications to include the still-undefined and unsupported “Resiliency Rubric” in the IRP Requirements.

## **II. Regulation of a Public Utility Does not Extend to Management of that Business.**

The Resolution accurately notes that the Council “is the governmental body with the power of supervision, regulation, and control over” ENO as a public utility providing service within the Council’s jurisdiction. The Council is vested with broad authority as ENO’s regulator. However, that authority is not without limits. A long-established principle of regulatory law holds that,

Regulation must not be so far extended as to constitute management or operation, and the right of a utility honestly and in good faith to carry on its business and direct its affairs may not be wrested from it under the guise of regulation.<sup>14</sup>

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<sup>11</sup> Many other elements of the Intervenor Proposals suffer this same lack of specificity and should likewise be rejected. ENO will endeavor to call attention to other similarly deficient proposals in this filing.

<sup>12</sup> See Advisors’ 2015 IRP Report, at pg. 7. (“The Advisors do not recommend that the AAE’s Resiliency Rubric be adopted at this time. The Resiliency Rubric makes no reference to the Council’s criteria for an Integrated Resource Plan and is unsupported by the type of analysis needed to serve as a viable IRP. In addition, in the interests of fairness to the parties and due process, ENO’s 2015 Final IRP should be evaluated based on the criteria that were in place when it was proposed, the criteria should not be changed mid-process. Should the Council wish to modify its IRP criteria to include any elements of the AAE’s Resiliency Rubric for future IRPs, the appropriate vehicle to do so would be to undertake a rulemaking proceeding.”).

<sup>13</sup> See Alliance comments at pg. 11 and FN 7. The same issue exists with the Alliance’s desire to incorporate the loosely defined term “Council goals” into the IRP criteria. “Council goals” change over time; the Alliance even suggests the Council could change them mid-cycle through an Interim Action. Moving the goal posts, so to speak, mid-cycle must be avoided and proposals inviting this potential must be rejected.

<sup>14</sup> See, 73B Corpus Juris Secundum, *Public Utilities* § 14 (West 2016).



Numerous judicial opinions confirm that a regulatory agency is not permitted to substitute its judgment for that of the utility with regard to the operation of the utility's business.<sup>15</sup> One such opinion frames the principle in a context applicable to this Docket, by noting that,

Business judgment must be employed to anticipate reasonable future needs and to make provision for them in advance. This is essentially a matter of business management which may not be arbitrarily interfered with [by a regulator].<sup>16</sup>

The operation of ENO's business, as relevant to this Docket, involves providing reliable electric service to its customers at the lowest reasonable cost. While the Council oversees, and may call into question the prudence of, ENO's decision making and planning in this regard, ENO ultimately bears the obligation to fulfill this responsibility and make the business decisions necessary to do so. The reason for this division of responsibility is simple – if the lights go out, or costs go up, ENO is the only party ultimately held responsible. The Council and its Advisors have always carefully balanced the exercise of the Council's authority in order to adhere to these principles when regulating ENO's activities.

In contrast to the Council's historically measured approach, several of the modifications to the IRP Requirements contained in the Intervenor Proposals would, if adopted, violate these principles by substituting the Council's judgment, or that of Intervenor as sanctioned by the Council, for ENO's judgment with regard to business decisions. The most glaring example of such a legally-impermissible rule change is the Alliance's proposal that the Council select a preferred resource portfolio, with ENO being required to develop, submit, execute, and report on the progress of an "Implementation Action Plan" for making resource acquisitions and other capital investments

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<sup>15</sup> See, *Missouri ex rel. Southwestern Bell Telephone Co. v. Pub. Serv. Comm'n of Missouri*, 262 U.S. 276, 289 (1923) (stating that "it must never be forgotten that, while the state may regulate with a view to enforcing reasonable rates in charges, it is not the owner of the property of public utility companies, and is not clothed with the general power of management incident to ownership" and that the commission "is not empowered to substitute its judgment for that of the directors of the corporation..."); see also *State Pub. Util. Comm'n v. Springfield Gas & Elec. Co.*, 125 N.E. 891, 900 (Ill. 1919) (stating that "extensive as the powers granted to the commission are, they do not take away from the corporation its power of control upon a question of financial policy. The discretion of a utility commission cannot override the discretion of the officers of the corporation in the management of its affairs"); See, *Fred Harvey v. Corp. Comm'n of Okl.*, 1924 OK 716, 102 Okla. 266, 229 P. 428, 431 ("Regulation must not be so far extended as to constitute management or operation.") (emphasis in original).

<sup>16</sup> See, *Pac. Tel. & Tel. Co. v. Whitcomb*, 12 F.2d 279, 288 (W.D. Wash. 1926), *aff'd sub nom. Denney v. Pac. Tel. & Tel. Co.*, 276 U.S. 97, 48 S. Ct. 223, 72 L. Ed. 483 (1928)

dictated by the Council's portfolio selection. If such a proposal were adopted, and withstood the inevitable legal challenges, it would turn a century's worth of regulatory legal precedent on its head by vesting the regulator, and not the utility, with the authority to make business decisions about the planning and capital investments necessary to serve ENO's customers' future needs.<sup>17</sup> Along these same lines, the Alliance's proposed requirement that the Council exclusively select the portfolios ENO will model for the IRP would also strip the utility of its autonomy in making business decisions about how to plan to meet such needs. Development and modeling of portfolios based on the utility's analysis of various factors is a vital business function. While the Council can and should exercise oversight of how the utility performs this function, it may not substitute its own judgment, or that of Intervenor, for that of the utility by exclusively defining the universe of portfolios ENO is allowed to model in the IRP analyses.<sup>18</sup> Similarly, the Alliance's proposal that the Council, through "Interim Action," select all of the inputs, scenarios, and assumptions to be used for modeling the IRP, is simply not permissible under the well-established principles of utility regulation.<sup>19</sup>

The Alliance's proposed "Working Group" model presents a similar issue. In this model, all inputs and assumptions for modeling would be developed through meetings between ENO, the Advisors, Intervenor, and "Interested Parties," and then selected by the Council, leaving the utility with no discretion to conduct modeling based on the inputs and assumptions developed by its System Planning & Operations ("SPO") Organization. This model would again interfere with ENO's legally-protected right to manage its business. ENO has no objection to, and even proposed a structure for, Intervenor to submit feedback on modeling inputs and even create their own Planning Scenario for analysis in the IRP. However, Stakeholder input on such issues cannot be mandated to

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<sup>17</sup> The Alliance's proposal also assumes that the Council should continue requiring a preferred portfolio be selected. ENO discussed the inappropriateness of continuing to require the selection of a preferred portfolio in its initial proposal and does so later in these reply comments. The present discussion is confined to the legally impermissible nature of the Alliance's proposal in this regard.

<sup>18</sup> As discussed in ENO's Proposal and below, ENO has no objection to Intervenor creating a Planning Scenario for portfolio optimization. However, the law requires that ENO be afforded the autonomy to also identify and select portfolios for modeling.

<sup>19</sup> Apart from the legal issues, the Alliance's proposed framework would also create a situation where, during every IRP cycle, the Council and its Advisors would be relentlessly lobbied by Intervenor to select the inputs, assumptions, and preferred portfolio that conform to Intervenor's point of view and desired IRP outcomes.

supplant the business judgment of the utility with regard to developing its own inputs, assumptions, scenarios, and portfolios for evaluation within the IRP. The Council must reject proposals that would impermissibly impinge on ENO's legally-protected right to make business decisions about supply planning.<sup>20</sup>

Apart from the legal and evidentiary deficiencies with the Intervenor Proposals, many of the proposed changes would harm the Council's IRP process, and ultimately ENO's customers. ENO will attempt to re-focus on the priorities of efficiency and long-term planning prior to identifying aspects of the Intervenor Proposals that simply fall outside the scope contemplated by the Resolution.

**III. The Council Desires, and Customers Deserve, an Efficient IRP Process that is Focused on Least-Cost Resource Planning to Meet Customer Needs While Remaining Flexible Enough to Foster ENO's Adaptability to Uncertain Futures.**

ENO noted in its initial filing in this Docket, and demonstrated through citations to evidence and documents, that the 31-month long 2015 IRP cycle was characterized by extensive delays and a highly contentious atmosphere. ENO also noted that, although it is the smallest Entergy OpCo, it spends more time and money on its IRP than any other OpCo. ENO's proposal sought to modify the Council's IRP Requirements to make the process shorter and more efficient and better tailor the Requirements to planning for reliable, low-cost electricity to ENO's customers across a range of possible futures. Unfortunately, many of the modifications set forth in the Intervenor Proposals would have the opposite effects of lengthening the process and de-prioritizing the evaluation of costs borne by ENO's customers for continued, reliable service.

**A. The Processes for Public and Stakeholder Input Must be Constructive.**

Several Intervenor Proposals, including those filed by DSCEJ, the Alliance and 350

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<sup>20</sup> In addition to the proposed rule changes discussed above, several other suggested modifications would represent an impermissible intrusion into ENO's legally-protected business judgment, such as requirements that (i) ENO "identify and include" all stakeholder input, (ii) "evaluation of [DSM] benefits must include all benefits as developed by the Working Group," (iii) the Council, rather than ENO, selects a third party to perform the DSM Potential Study to be used in ENO's supply planning, (iv) ENO must integrate its planning to serve its customers with "other New Orleans policy or utility planning, including but not limited to climate, resilience, water, gas, and coastal planning in order to meet stated goals of the City of New Orleans," and (v) mandate that the "minimum level of DSM resources in the IRP shall be the Council's DSM targets," regardless of achievability.

Louisiana, contain suggestions designed to foster “transparent public participation”<sup>21</sup> and the ability of Stakeholders to provide meaningful input for future IRP cycles.<sup>22</sup> ENO submitted its own proposal and “specific language” designed to increase opportunities for meaningful stakeholder input and public engagement. ENO believes its proposal adequately addresses these issues, however, it is willing to incorporate some ideas from the Intervenor Proposals that would help to foster productive and meaningful engagement with Stakeholders and the public. Other ideas from the Intervenor Proposals, however, would actually be counter-productive in this regard and would only serve to prolong the IRP process while providing little benefit to the public or ENO’s customers and such proposals should be rejected by the Council.

**1. An Intervenor Working Group Should be Created and Allowed to Provide Input on a Planning Scenario Where Consensus is not Possible.**

As discussed above, legal impediments prevent implementing the “Working Group” model proposed by the Alliance. While gaining Stakeholder consensus and Council agreement for these decisions are goals worthy of pursuing, these goals cannot be allowed to impede ENO’s ability to model the inputs and assumptions it deems necessary, through its business judgment, to create the best roadmap possible for serving its customers’ future needs. The Alliance’s Working Group proposal leaves ENO with no discretion to perform this necessary function, as the proposal requires all inputs, assumptions, and portfolios be recommended by the collective Working Group and chosen or approved by the Council. As a practical matter, the Alliance’s model would greatly prolong the IRP process. ENO’s SPO team spends months developing the inputs and assumptions that the Company believes it needs to model in order to engage in prudent resource planning. Requiring that these efforts be undertaken in collaboration with Stakeholders who have varying degrees of

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<sup>21</sup> See 350 Louisiana comments at pg. 3. Although 350 Louisiana expresses this as a desired outcome for the instant rulemaking proceeding, it fails to propose “specific language” designed to achieve the goal. Regardless, ENO believes that the specific language it proposed, as well as some of the suggestions from the Alliance and DSCEJ, will achieve this purpose.

<sup>22</sup> PosiGen’s comments mention public input in passing, only to state that ENO “must be closely watched to ensure adherence to the Council and stakeholders’ objectives.” See PosiGen comments at pg. 5. As noted above, regulatory mandates designed to require “adherence to stakeholder objectives” are illegal to the extent such “stakeholder objectives” are intended to supplant the business judgment of the utility. Indeed, PosiGen is a for-profit energy services company. Requiring ENO to adhere to PosiGen’s objectives, *i.e.*, generating profit for PosiGen, is hardly a worthy goal of the IRP.

understanding of the complexities of ENO's operations would hamper the efficiency and increase the cost of this necessary business function, ultimately to the detriment of ENO's customers. However, the Alliance's "Working Group" concept does have some merit, provided that it can be incorporated in a way that still allows ENO to efficiently perform its necessary business functions when creating and modeling Planning Scenarios and Portfolios. ENO believes a hybrid approach of the procedural model set forth in ENO's proposal and the Alliance's model can work.

In its proposal, ENO suggested that the first two technical conferences in Work Stream 2 (Inputs and Assumptions) be devoted to ENO presenting, answering questions about, receiving input on, and attempting to achieve consensus around the inputs, assumptions, and scenarios to be used for modeling analyses. ENO also proposed that, to the extent consensus is not achieved, that Stakeholders be given the opportunity to facilitate technical conferences to present the alternative inputs and assumptions for which consensus could not be achieved. It is during this step of the process that the Alliance's Working Group model could add value. ENO recognizes that not all Intervenor will hold the same views about the alternate inputs, assumptions, and scenarios that would be presented at the Stakeholder-facilitated technical conferences. However, by using the Alliance's proposed "Working Group" model, Stakeholders can coordinate their efforts, while working with the Advisors and CURO, to reach consensus on alternate modeling inputs and parameters to be used for a Stakeholder Input Scenario. Such a process would incorporate the legally-permissible aspects of the Alliance's Working Group model and comply with the spirit in which the Council proposed the concept of a Stakeholder Input Scenario, *i.e.*, "for use in areas where consensus seems unattainable."<sup>23</sup> ENO believes this structure represents an appropriate balance between ENO's proposed process and the legally-permissible aspects of the Alliance's proposed process. To the extent Intervenor also desire to use the Working Group concept as a vehicle for submitting joint Intervenor comments at applicable points in the procedural schedule, ENO also has

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<sup>23</sup> See the Resolution at pg. 11, stating in full that "While future IRPs should still attempt to seek consensus among stakeholders on all modeling parameters, the concept of developing an additional macroeconomic scenario early on in the IRP process which includes stakeholder input assumptions should be considered, especially for use in areas where consensus seems unattainable."

no objection to such a practice and believes it could decrease the cost of the IRP to ENO's customers.

## **2. CURO Management of Public Meetings and Oversight of Technical Conferences Can Improve the Process.**

DSCEJ and the Alliance both propose a more active role for CURO in managing the procedural aspects of future IRP cycles. ENO agrees, in principle, with the ideas of CURO (i) hosting technical conferences and consulting with the Advisors and ENO, or the Intervenors – as appropriate – about setting the agenda for the meetings,<sup>24</sup> (ii) hosting the Alliance's proposed "public hearing," (iii) facilitating the public meetings identified in ENO's proposal,<sup>25</sup> (iv) coordinating the timing of public meetings with ENO and reviewing any materials to be presented, (v) advertising and publicizing the public meetings, and (vi) recording attendance and comments made at the meetings. As part of CURO's oversight of these meetings, ENO also believes that it should be vested with the authority necessary to ensure meetings are held in an orderly fashion, agendas are followed, and all attendees adhere to a professional standard of decorum.

Despite the fact that ENO generally agrees with DSCEJ in the above-discussed regards, some aspects of DSCEJ's proposal lack the necessary "specific language" to merit implementation from the Council. For example, DSCEJ does not define the "time that is most convenient for people to attend."<sup>26</sup> As the Council knows, many individuals in New Orleans work so-called "9-to-5" jobs on weekdays, while many other New Orleanians work in the hospitality and service industry and do not adhere to the same kind of schedule, often working nights and weekends. DSCEJ did not propose a specific time that would solve this scheduling issue. Similarly, DSCEJ did not propose specific language to identify "a venue for the public meeting that is convenient, accessible, and convenient

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<sup>24</sup> See Alliance Comments at pg. 11. The Alliance proposes that the Independent Evaluator (the new position the Alliance proposes to create in order to duplicate the work of the Advisors) also be a part of this consultation. The Alliance failed to meet its burden in demonstrating the need for an Independent Evaluator or the benefits customers would incur in exchange for funding the hiring of such a party. As such, ENO opposes this aspect of the Alliance's proposal. Also, ENO believes that the Party primarily responsible for presenting materials at a technical conference should be consulted about the agenda, while observing parties should not. Thus, for Technical Conference 2(a), where ENO will present its inputs, assumptions and planning scenarios, ENO should be consulted about the agenda. For Technical Conference 2(c), where Stakeholders will present their alternate inputs, Stakeholders should be consulted in the same manner.

<sup>25</sup> See DSCEJ Comments at pg. 8. The remaining suggestions in this section are contained in the DSCEJ comments.

<sup>26</sup> See DSCEJ Comments at pg. 9.

[sic] for people to go to [sic] and allows for flexibility as to numbers of attendees.”<sup>27</sup> Nor does DSCEJ propose a budget to which CURO should adhere when booking such venues.<sup>28</sup> Regardless, DSCEJ’s failure to fully define certain aspects of its proposal does not change the merit in considering CURO-facilitated public meetings and CURO-administered technical conferences.

### **3. The Threat of Perjury Charges and Investigations will not Lead to a Transparent or Open Process.**

In a proposal that can best be described as puzzling, DSCEJ submits that “written or verbal statements [made by the utility or its representatives] to the public shall affirm under penalty of perjury the statements are believed to be true.” DSCEJ cites to no examples of other jurisdictions that have adopted such bizarre practices, nor does it propose a legal framework within which the City of New Orleans would become the first jurisdiction to do so. More importantly, DSCEJ does not explain why such a practice would be appropriate for an IRP process that relies heavily on assumptions, predictions, and estimates about a wide variety of unknown and unknowable future variables. Making predictions, even when those predictions are based on thorough research and scientific analyses, that turn out to be less than 100% accurate does not fall into the same category as “the voluntary violation of an oath or vow either by swearing to what is untrue or by omission to do what has been promised under oath.”<sup>29</sup> Finally, ENO notes that DSCEJ does not propose that this new and novel standard be applied equally to all Parties in the IRP proceedings, but only to the utility. If the Council does require that statements must be made under oath for the IRP process – and, to be clear, ENO does not believe the Council should adopt this requirement – the requirement should at least apply equally to all parties in the Docket.

### **4. Public Input Should be Facilitated in a Manner that Benefits Planning.**

ENO’s Proposal for expanding public engagement in the IRP process included beginning and ending each cycle with public conferences for presentations, questions, and input related to the IRP.

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<sup>27</sup> *Id.* The Alliance’s proposal suffers from a similar lack of specificity when indicating that public meetings should be “broadly accessible” without offering any more specifics.

<sup>28</sup> ENO remains willing to host meetings at its facilities during business hours. However, ENO is unsure whether such locations and times for meetings would meet the nebulous criteria proposed by DSCEJ.

<sup>29</sup> <https://www.merriam-webster.com/dictionary/perjury>

ENO also proposed to accept input and address questions from its customers on an ongoing basis throughout the IRP cycle, via ENO's IRP web portal. ENO's proposed approach can strike the optimal balance between including the public in a process that affects them, while also ensuring that public participation will not impede the highly specialized work performed in technical conferences or unnecessarily lengthen the procedural schedule.

In the 2015 IRP cycle, ENO was required to host a public technical conference at each Milestone. Accommodating these conferences required building time into the procedural schedule, notice periods, and diverting ENO and SPO employees from performing the technical work required for the IRP to facilitate their attendance at the meetings. As ENO demonstrated in its September 29, 2016 filing in Docket No. UD-16-01, public participants in these meetings, more often than not, failed to provide any technical input that was germane to the Milestone at issue and frequently submitted questions or comments based on information and talking points provided to them by the Alliance. ENO believes that repeating this pattern of public engagement for future IRP cycles would waste customer resources and impede the efficiency of the planning work.

The Alliance's proposal contains various references to the need to facilitate public participation and input for the IRP process. Presumably, the Alliance desires that the Council expand upon the model used in the 2015 IRP cycle. Yet, the Alliance does not identify benefits associated with the model of public participation it proposes. It is easy to see why the Alliance benefits from this model. When the Alliance is provided an opportunity, at customers' expense, to arm its constituents and their family members with talking points about the Alliance's desired policy outcomes and have those individuals speak at public meetings, it creates the appearance that more than a small, vocal minority of New Orleans citizens supports pursuing these policy goals at the expense of reliable, low-cost energy. Yet it is difficult to see how customers benefit from such exercises. ENO receives input from the public on a 24/7 basis in the form of calls and emails from its customers. This public input is invariably concerned with two major issues: the reliability and cost of electric service. ENO believes that public input during the IRP process should be geared toward facilitating effective and efficient planning around these two issues. ENO's Proposal sets



forth a model that will accomplish that goal; many of the Intervenor Proposals do not.

**B. A Short, Efficient Process is a Council Priority and Would Benefit Customers.**

As ENO demonstrated in its initial filing, a shorter timeline for the IRP process is crucial to addressing stakeholder concerns over data becoming “stale” during the process and Council concerns about the length and delays associated with the process. To address this issue, ENO presented, and supported, a proposed timeline for developing the IRP. If adopted, ENO’s proposed procedural schedule would (i) allow for more efficient workflow, (ii) emphasize developing inputs and assumptions up front (thereby eliminating any need to debate inputs after the IRP Report is filed), and (iii) increase opportunities for meaningful Stakeholder contributions and public engagement. While ENO’s timeline provided specific language to define the process before the IRP Report is filed, ENO’s proposal would also reduce time devoted to the process after the IRP report is filed by: (i) eliminating the preferred portfolio<sup>30</sup> selection requirement, thereby eliminating the need to devote time to analyzing and debating the selection, (ii) modifying the scope of the Council’s action on the IRP Report to simply accepting the Report into the record, thereby eliminating any need for Parties to advocate for a substantive Council action, and (iii) clarifying that the acceptance of the IRP Report into the record in Docket No. UD-08-02 shall have no effect on any other Council Docket or decision. These proposals were also designed to remove the air of contentiousness from the IRP Docket by seeking to eliminate the possible perception that Council action on the IRP would constitute approval of the UPRP or any of its component parts that might otherwise require a separate certification filing.

The only other party to submit specific language related to the timeline of the process, the Alliance, took the opposite approach. The Alliance proposed modifications to lengthen the process and increase the fervor with which Parties will lobby the Council for specific actions and outcomes from the IRP. The Alliance proposes to expand upon the post-filing procedural schedule from the 11-12 month schedule in the 2015 cycle to approximately 16 months, or more depending on certain deadlines for which no “specific language” was submitted. Under the Alliance’s plan, following the

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<sup>30</sup> The Council’s IRP Requirements currently refer to this portfolio as the Utility Preferred Resource Plan (“UPRP”).

filing of the IRP Report, the schedule would presumably allow: (i) 2 months for Stakeholders to submit comments, (ii) 2 months for ENO to reply (iii) 1 month until the CURO-hosted Public Hearing,<sup>31</sup> (iv) 1 month for the preparation of transcript of the Hearing for the Advisors' review, (v) 2 months for the Advisors to prepare their report, (vi) at least 1 month between the Advisors' Report and Council Action, (vii) 2 months for the preparation of the Implementation Action Plan, (viii) 2 months for Stakeholders to submit comments on the Implementation Action Plan,<sup>32</sup> (ix) 2 months for the Advisors to prepare a report<sup>33</sup>, and (x) 1 month for the Council Action on the Implementation Action Plan. The Alliance made no attempt to provide proof of any need for or benefits of this expanded post-filing schedule.

Although the Alliance's proposal contains a general discussion of the process for its "Working Group" concept, it provides no "specific language" identifying a timeline for the "procedural schedule of milestones, to include technical conferences, updates on inputs, and written comments by the parties," that it proposes. The Alliance does not even identify a limit on the number of such Working Group meetings. Similarly, the Alliance does not identify any timeline for the Working Group to provide input to inform the Council Interim Actions it proposes, nor does it provide a deadline for the Council to take such actions or even quantify the number of Council Interim Actions contemplated. Absent such details, it is impossible to determine the exact effects the Alliance's Working Group model will have on the length of the pre-filing timeline for future IRP cycles. Presumably, since the Alliance is proposing to add an undefined number of Interim Council Actions to the model of the 2015 IRP procedural schedule, the pre-filing timeline would also increase under the Alliance's proposal. More significantly, since the Alliance proposes requiring work that

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<sup>31</sup> The Alliance did not submit "specific language" for the required delay between the Parties' receipt of ENO's post-filing reply comments and the CURO Hearing. However, since the Advisors' Report would need to consider the comments from the Hearing, presumably it must occur prior to the Advisor's Report being filed, but after all Parties have filed their post-filing comments so that the public may have the benefit of those comments at the Hearing.

<sup>32</sup> Once again, the Alliance did not submit "specific language" for the deadlines for Stakeholder or Advisor comments on the Implementation Action Plan. ENO assumes the same 60 day deadlines proposed for post-filing comments would apply.

<sup>33</sup> Under the Alliance's proposed schedule, the 15 month status report would be due at the same time as the presumed deadline for the Advisors' Report on the Implementation Action Plan. The 18 month recurring status report deadline would appear to very nearly coincide with the deadline for filing the next triennial IRP Report.

SPO normally performs months in advance of the start of an IRP cycle to be performed in the Working Group model, and be subjected to pre-approval from the Council, the Alliance's proposal will add an untold amount of time to the process. This result is the opposite of what the Council desires and what would best serve ENO's customers.

**C. Customer-Focused Resource Planning Requires Least-Cost Resource Planning.**

The Council has always emphasized the importance of least-cost resource planning for the IRP process by directing ENO to plan for providing reliable service at the lowest reasonable cost to customers. This approach to planning is widely accepted and particularly important in New Orleans where a large portion of ENO's customers are moderate-to-low income individuals. Recognizing the importance of this issue to the Council, ENO proposed modifications to the IRP Requirements to ensure that resource planning decisions be primarily evaluated based on their effects on costs to customers as reflected in the bills they pay. Along these lines, ENO proposed various minor changes to the current IRP Requirements to clarify that any costs and benefits should be assessed in terms of their impact on customers, and only to the extent that such impacts are directly quantifiable. These changes simply offer further assurance that a long-standing Council policy will be maintained in future IRP cycles. However, certain Intervenor Proposals seek to set aside the practice of least-cost resource planning in favor of a framework that provides, at best, questionable benefits to customers.

**1. Adding Subjective, Unrelated Criteria to the IRP Requirements will not Benefit Customers or Improve the IRP Process.**

Proposals from the Alliance and DSCEJ seek to circumvent the Council's expressed preference for least-cost resource planning by attempting to redefine that paradigm in a way that actually subverts it. These Intervenor seek to include several of their own policy goals, as well as some of the Council's non-utility-related policy goals, into the criteria for evaluating plans to provide electric service to ENO's customers. For example, DSCEJ proposes that a resource portfolio be evaluated on how it "conforms to City of New Orleans ordinances, budgeting priorities, policies, and programs pertaining to climate change, equity and non-discrimination, public health, affordable housing, environmental quality, flood and hurricane risks, reduction of the carbon footprint, and

sustainability.”<sup>34</sup> Similarly, the Alliance redefines the objective of least-cost planning as developing “least cost resource plans that meet customer needs and Council goals.”<sup>35</sup> If accepted, these proposals would greatly expand the scope of the IRP beyond planning for reliable, low-cost service to ENO’s customers and would do so to the detriment of the IRP process and ENO’s customers.

ENO agrees that the above-listed objectives should be a priority for any corporate citizen and participates in many voluntary initiatives to further these goals.<sup>36</sup> However, ENO does not believe that including the fulfilment of such objectives as a metric for evaluating IRP resource portfolios will improve the process for planning to provide reliable, low-cost service to its customers, nor will doing so aid in furthering the extraneous policy goals at issue. As an electric and gas utility, ENO’s primary obligation to its customers is to provide low-cost, reliable service, and providing such service is also ENO’s primary area of professional expertise. Expanding the IRP criteria to include policy objectives beyond ENO’s areas of expertise or sphere of control will only increase the cost<sup>37</sup> and decrease the effectiveness of the Council’s IRP process. Similarly, attempting to achieve Council or Intervenor goals around, for example, affordable housing and non-discrimination through long-term utility resource planning is not an effective way to further those objectives, nor would such efforts be an effective use of the time and resources of the Parties and the Council. Most importantly, adopting such a framework would not benefit ENO’s customers, who depend on ENO to provide low-cost, reliable electric service, and not to solve other social issues that may be important to the Council, Intervenors, or ENO in its capacity as a responsible corporate citizen.

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<sup>34</sup> See DSCEJ Comments at pg. 6.

<sup>35</sup> See Alliance Comments at pg. 19 (emphasis added). The non-utility-related goals defined by the Alliance in his regard include “climate, resilience, water, gas, and coastal planning.” *Id.* at 19.

<sup>36</sup> See, e.g., <http://entergy.com/environment/>  
[http://entergy.com/about\\_entergy/diversity\\_and\\_inclusion.aspx](http://entergy.com/about_entergy/diversity_and_inclusion.aspx)  
<http://www.entergy.com/csr/>  
<http://www.entergy.com/csr/awards.aspx>

<sup>37</sup> To the extent the Council expands the IRP criteria to include matters that are not directly and objectively quantifiable in terms of the cost to serving its customers, ENO will likely need to hire outside consultants to provide estimates of such quantifications, which would increase the cost of each IRP cycle.

## 2. The Intervenor Proposals Seek to Remove Consideration of Quantifiable Costs and Benefits to Customers from the Equation.

Even if the Council sees merit in evaluating resource portfolios based on their effects on goals other than providing low-cost, reliable electric service to customers, the Alliance's proposed revisions to the IRP Requirements are silent on the measurement of cost impacts borne by ENO's customers. As discussed above, the Alliance's novel and unsupported concept of least-cost planning defines the baseline goal of each resource portfolio as meeting customer needs **and** Council goals.<sup>38</sup> However, the Alliance's framework provides no method for comparing the cost of a portfolio that only meets customers' needs to the cost of a portfolio that fulfills both functions. At the very least, the Council should be able to evaluate, and the public should know, how much more customers will pay for resource portfolios that seek to achieve goals other than providing reliable electric service. The Alliance's proposed framework precludes such a comparison.

In addition to redefining the IRP Requirements in a way that deemphasizes the affordability of energy, the Alliance proposes several other modifications that would strip the objective consideration of costs to customers from the Council's IRP Requirements. Specifically, the Alliance proposes to (i) remove the RIM test, which measures the cost-effectiveness of DSM programs, from the criteria for evaluating DSM resources, (ii) change the threshold of defining benefits to customers from directly quantifiable benefits (*i.e.*, benefits reflected on the bills customers pay) to the undefined "reasonably quantifiable" threshold, and (iii) require that "all benefits developed by the Working Group" be included in evaluating the cost-effectiveness of DSM programs, regardless of whether such benefits would actually accrue to customers in the form of reduced bills.<sup>39</sup> Finally, the Alliance's proposed requirement that the "minimum level of DSM resources in the IRP shall be the Council's [2%] DSM targets," eliminates the ability of the Council to evaluate how much more

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<sup>38</sup> The Alliance engages in a similar tactic to redefine the purpose of portfolio development based on uncertainty analyses, requiring that each portfolio must serve customer's needs **and** meet any additional policy objective defined by the Council. *See* Alliance comments at pg. 6. ENO opposes this redefinition of the portfolio optimization criteria.

<sup>39</sup> ENO notes that the Alliance does not propose such a criteria modification with regard to considering the costs and benefits of traditional resources, which reinforces the argument ENO made in its Proposal in favor of modifying the IRP Requirements to allow for the evaluation of "social and environmental" costs and benefits only to the extent that such costs and benefits can be directly quantified and measured for **all** resource options.

achieving those targets will cost customers when compared to limiting DSM investment to cost-effective resources.<sup>40</sup> Such changes would ultimately be detrimental to ENO's customers and the Council's track record of maintaining low rates in the City of New Orleans. While the Alliance and other Intervenors may not believe that the affordability of reliable electric service in New Orleans is an important policy goal of the IRP, ENO believes it should remain the primary goal.

**D. Long-Term Resource Planning Should be Geared Toward Flexibility, not Selecting and Implementing a Specific Portfolio**

In ENO's proposal, it outlined the benefits of deemphasizing focus on a "preferred portfolio" or "UPRP" both from a process standpoint (*i.e.*, eliminating the temptation for Parties to litigate the merits of the portfolio selection), and from a substantive standpoint (*i.e.*, making the IRP better suited to keeping ENO flexible enough to adapt to several future scenarios). Instead of placing undue emphasis on the selection and vetting of a preferred portfolio, ENO's proposed structure would allow for equal consideration and thorough evaluation of multiple portfolios. The Alliance also proposes the evaluation of at least three "fully modeled Alternative Portfolios," yet, the Alliance's proposal places greater emphasis on the Council's selection, and ENO's implementation, of a "preferred portfolio." Subject to certain clarifications about how the Alliance would define a "fully modeled"<sup>41</sup> portfolio, ENO agrees that prioritizing the evaluation of multiple portfolios would make the IRP a more effective long-term planning tool. However, the Alliance's proposal to effectively "double down" on the UPRP requirement would defeat the purpose of both triennial planning and the evaluation of multiple portfolios.

**1. Thorough, but High-Level, Evaluations of Multiple Portfolios will Benefit the IRP Process and Outcomes.**

ENO proposed that between three and five portfolios be evaluated during each triennial cycle. ENO's suggested process for such evaluations would start by defining three to five future

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<sup>40</sup> The proposed modification also contravenes the intent of several Council Resolutions which direct ENO to include the 2% Target level of DSM programs "for evaluation by the Advisors, Intervenors and the Council." The Council cannot fully evaluate these goals without a base-level analysis that identifies a cost-efficient level of DSM investment for comparison.

<sup>41</sup> The Alliance's proposed modified criteria calls for at least three "fully modeled" Alternative Portfolios, but fails to provide "specific language" about what analyses are required to "fully model" a portfolio.

macro-economic scenarios (“Planning Scenarios”), followed by optimizing a Least-Cost Resource Portfolio for each Scenario, conducting several modeling exercises to test the adaptability of these Portfolios over a range of variables, and then detailing the performance of each Portfolio in the IRP Report.<sup>42</sup> By conducting such an exercise every three years, ENO and the Council would greatly broaden the perspective with which resource planning could be considered for New Orleans. This practice would also provide a transparent, and regularly updated, roadmap to the citizens of New Orleans for the energy future of the City.

Engaging in this broader type of resource planning, without dramatically increasing the cost of the IRP process, would necessarily mean eliminating some of the required analyses that were required only for the UPRP. As such, ENO proposed to model and report on “the annual total demand related costs, energy related costs, and total supply costs” for each Portfolio. These analyses would be substantial and thorough, while maintaining an appropriate level of granularity for general, long-term resource planning. ENO notes that the Alliance also favors modeling multiple portfolios, but its proposal did not eliminate any of the required analyses previously only required for the UPRP. To the extent the Alliance intended to define a “fully modeled Alternative Portfolio” as one subjected to the same rigorous analyses as the UPRP, ENO must oppose that modification as it would at least triple the time and cost required to complete analyses for every triennial IRP cycle. However, to the extent the Alliance intended to propose a less-granular, broader evaluation of multiple portfolios, then ENO and the Alliance are in agreement on this point.

## **2. Undue Focus on Selecting and Implementing One Resource Portfolio is Inconsistent with the Purpose of and Detrimental to the IRP.**

As noted above, several well-established legal principles prohibit adoption of the Alliance’s proposal for the Council to select, and then direct ENO to implement, a preferred resource portfolio. Such a regulatory framework would constitute an impermissible attempt by the Council to manage ENO’s business. As the Council and Advisors have stated on multiple occasions, the IRP is not a

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<sup>42</sup> ENO proposed to work with the Advisors and Stakeholders at every step of this process, and even proposed allowing the Stakeholders to create their own macro scenario, as suggested by the Council in the Resolution.

forum for making decisions around acquiring a specific resource,<sup>43</sup> much less for dictating the utility's acquisition of an entire resource portfolio. Aside from these impediments, such a proposal is fundamentally inconsistent with the practice of triennial resource planning.

Under the Alliance's proposed framework ENO would be required to move forward with, and report on the progress of, the Implementation Action Plan for executing on the Council's selection of a preferred portfolio in the 2018 IRP. The first status report ENO would be required to file on its progress with this Plan would be due to be filed during the planning cycle for the 2021 IRP. Yet, if ENO is to be held accountable for executing on the Implementation Action Plan from the 2018 IRP even as the 2021 planning cycle is in process, little room exists for ENO to adapt to changes in the world that will inevitably occur between the Council's selection of the 2018 preferred portfolio and the commencement of the 2021 cycle. The entire purpose of recurring, long-term resource planning is to allow the utility to plan and prepare for, as well as adapt to, a range of possible future scenarios. The proposed requirement that ENO remain accountable for developing and executing on an Implementation Plan from the 2018 cycle well into the 2021 cycle appears to defeat this purpose entirely.<sup>44</sup> ENO believes, and demonstrated with its Proposal, that the best path forward for fulfilling the purpose of long-term resource planning involves eliminating the UPRP requirement. The Alliance effectively demonstrates the wisdom of ENO's proposal by allowing the Council to consider the detrimental effects of moving in the opposite direction.

Apart from the substantive merits associated with eliminating the UPRP requirement, procedural benefits will be realized as well. The folly of the Alliance's proposal aids ENO in proving this point as well. As the Council knows, the 2015 IRP cycle was particularly contentious because Stakeholders held the inaccurate belief that approval of the 2015 preferred portfolio would constitute approval to proceed with construction of the New Orleans Power Station. Stakeholders lobbied the Council extensively and took on an increasingly combative tone in their discussion of the

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<sup>43</sup> See FN. 6 of ENO's Proposal.

<sup>44</sup> Perhaps some confusion as to the intent behind the Alliance's suggested modification exists due to the failure to provide any explanation of the proposed framework or any discussion of its possible benefits. Regardless, the Alliance had the burden to demonstrate such purpose and benefits in its initial filing. The onus to decipher any matters left unclear by the Alliance's initial filing is not on the Council or the Parties.



2015 IRP in an effort to influence a Council decision that ultimately had no precedential effect. The Alliance's new proposed framework not only vests the Council with the responsibility of choosing ENO's preferred portfolio, it gives that choice precedential effect by requiring that ENO implement the portfolio chosen by the Council. Such a framework would make the lobbying efforts and political tactics undertaken by Intervenors during the 2015 cycle look tame by comparison. By contrast, eliminating the choice of a preferred portfolio altogether has the potential to diffuse the charged atmosphere that surrounded the 2015 IRP cycle.<sup>45</sup> The Council and its Advisors have expressed great pride in the historical trend towards collaboration and compromise among the Parties in regard to utility proceedings. Eliminating the UPRP selection requirement for future IRP cycles can help to restore and foster such a productive regulatory climate in addition to improving the ability of the IRP process to meet its stated objectives.

**E. The IRP's Discussion of Transmission Issues Must Recognize the Realities of ENO's Membership in MISO While not Unnecessarily Duplicating MTEP Efforts.**

As ENO noted in its Proposal, all transmission planning for ENO now occurs in the MISO Transmission Expansion Planning ("MTEP") process. ENO did not believe any modifications to the IRP Requirements were necessary to reflect this reality. Some aspects of the Intervenor Proposals could be interpreted as requiring ENO to duplicate work performed as part of that process. Such duplication of efforts would produce no additional benefits for ENO's customers, as most transmission projects or upgrades must be approved in the MTEP process by the MISO Board of Directors, regardless of the outcome of any IRP cycle. ENO will briefly address these proposals.

S&WB proposes to add language requiring that "improvements to transmission and distribution systems" be evaluated in the IRP. Assuming that S&WB means that ENO should discuss and incorporate in the IRP the transmission improvements developed through the MTEP, this proposal does not present a problem. If S&WB is suggesting that the IRP serve as a duplicate forum for proposing and vetting transmission upgrades, the proposed language should be rejected as the practice would be a wasteful and fruitless duplication of the MTEP. Similarly, ENO is more than

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<sup>45</sup> When coupled with ENO's other proposed modification, that the Council take no substantive action at all with regard to future IRP cycles, an even greater potential exists for creating a less contentious process for future IRP cycles.

willing to discuss its distribution maintenance policies and improvements being vetted in other Dockets, *e.g.*, Docket No. UD-12-01. To the extent that S&WB is suggesting to use the IRP as an additional forum for analyzing such policies and planned improvements, the proposal is misplaced.

Similarly, the Alliance requests that transmission projects with the potential to reduce supply costs be “identified with sufficient detail”<sup>46</sup> in portfolio analyses. Yet, the intent of the modification is unclear. Economic transmission projects, *i.e.*, those with potential to reduce costs to MISO participants, are also evaluated and approved in the MTEP process. As a Transmission Owner, ENO has the obligation to pursue all economic transmission projects that are approved by MISO. ENO fulfills such obligations and any economic projects that have been approved by the MISO Board of Directors are already included in the analyses performed for the IRP. ENO is, again, willing to continue this process. If the Alliance is proposing that evaluations of the potential economic benefits of potential transmission projects be performed in the IRP, such a proposal is unnecessarily duplicative of the MTEP. If the Alliance is suggesting that the economic benefits that are already assumed for MTEP-approved projects should be separately incorporated into supply cost analyses for Portfolios, then the proposal is meritless, as the same benefits would be factored in twice.<sup>47</sup>

As stated previously, ENO does not believe any modifications to the IRP Requirements are necessary to reflect the reality of transmission planning in MISO. ENO is more than willing to provide information about the most current MTEP-approved plans to Intervenors and continue to incorporate those plans into its assumptions for the IRP. To the extent that Intervenors such as the Alliance or S&WB desire to take a more active role in transmission planning for ENO, the MTEP Stakeholder process is an open one, and they are free to participate in it.

#### **IV. Intervenor Proposals not Related to the IRP Process or Docket Should be Rejected.**

Despite the Council’s clear direction in the Resolution that Parties to this Docket were to

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<sup>46</sup> Again, the Alliance proposes no specific criteria for measuring “sufficient detail.”

<sup>47</sup> An additional point is that the Alliance frequently refers to NERC and MISO reliability standards conjunctively. MISO does not have a separate and distinct reliability standard; rather it plans the MTEP to be compliant with the NERC reliability standard and any other planning criteria that is utilized by individual Transmission Owners in MISO. The NERC TPL reliability standard, and ENO’s transmission plan for compliance therewith, are already included in the transmission plan assumed for use in the modeling that results in the IRP.

submit specific language amending the Council’s IRP Requirements or for improving its process, many Intervenors proposed ideas that have nothing to do with the IRP. Some of these proposals relate to matters in other Dockets. The Alliance goes so far as to attempt to bring such external matters within the purview of the IRP Docket, proposing that Parties “shall have the opportunity to identify any policy matters raised in the IRP process that may warrant Council action, including matters that extend beyond the scope of the present docket.”<sup>48</sup> Once again, the Alliance makes no attempt to meet its burden to demonstrate the benefits of this modification. Modifications that propose to expand the scope of the IRP Docket to include matters unrelated to general resource planning, some of which are covered in other Council Dockets, will only make the process more costly, less efficient, and duplicative of efforts undertaken elsewhere. The Council should reject these proposals. The following non-exclusive list discusses the most egregious examples of matters not germane to the instant Docket or Docket No. UD-08-02.

- Implementation of a Renewable Portfolio Standard: 350 Louisiana makes this proposal, which in no way relates to the Council’s IRP Requirements or process, and provides nothing to substantiate the request.
- Initiate a Community Solar Project: Again, this unrelated policy proposal from 350 Louisiana is provided without any support or attempt to explain its relevance to the IRP.
- Vet Deactivation Decisions in the IRP: S&WB complains that the decision to deactivate Michoud Units 2 and 3, which the Council considered in a separate proceeding, and which was vetted and approved through the MISO Attachment Y process, should have been evaluated in the IRP. It proposes to incorporate future deactivation decisions into the IRP, while identifying no reason for duplicating the MISO Attachment Y process or pointing to any deactivation decisions facing ENO for which the duplicative evaluation process might be applicable.
- Evaluate the Effects of ENO’s MISO Membership in the IRP: The Council evaluated and approved ENO’s proposal to join MISO in Docket No. UD-11-01.<sup>49</sup> As part of that approval, the Council required ENO to file annual “Post-MISO Integration Reports.” In these annual Reports, ENO is required to address the same issues S&WB proposes to fold into the IRP Requirements with its suggested modifications.<sup>50</sup> As these matters are fully vetted by the Council in Docket UD-11-01, no justification exists for performing a duplicate evaluation in the IRP Docket.

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<sup>48</sup> See Alliance Comments at pg. 21.

<sup>49</sup> See Council Resolution No. 15-139

<sup>50</sup> See S&WB Comments at pgs. 4-6.

- Address Alleged “Service Dips” Supposedly Affecting One Customer in the IRP: S&WB continues its campaign to divert blame from itself for the “boil water advisories” that it issues from time to time. Once again, S&WB rehashes allegations that “service dips” with regard to electric service are to blame. Setting aside the lack of merit or support for these allegations, the IRP is not the forum for addressing the alleged service issues of one customer.
- Redefining Appropriateness of Confidentiality and HSPM Designations: The Council adopted its Official Protective Order in Resolution No. R-07-432, dated September 20, 2007. This Resolution governs the use of HSPM and CONF designations. Resolution No. R-17-32, which initiated this Docket, did not authorize parties to propose revisions to the rules established in R-07-432. The Alliance’s proposal to dictate the appropriateness of using such designations in the IRP Requirements is misplaced.

Intervenors have also proposed amending the IRP Requirements to include criteria that are properly evaluated in resource certification proceedings. As ENO noted and demonstrated in its initial filing, and as the records in multiple Dockets show, Intervenors continue to have difficulty understanding that the IRP is not a resource certification proceeding. ENO proposed language to add to the IRP Requirements that attempts to underscore this distinction. Intervenors seem to desire to further blur the lines. The Council should reject proposals that seek to treat the IRP like a resource certification proceeding. Such proposals include:

- DSM-First Loading Order Criteria: The Alliance inserts a requirement for future resource certification proceedings to require that any needs identified in any IRP be first met through the acquisition of all DSM resources available. The proposal has no relevance to the IRP as no resources are acquired as a result of, or approved during, the IRP process.
- DER and DSM Consultant Requirement for Resource Certification Dockets: PosiGen, a for-profit energy services company that deals in DER and DSM products and services, suggests that in conjunction with any future resource certification filings ENO makes, the Council hire an “independent consultant” to confirm that resource need at issue in the future certification filing cannot be met through DER and DSM products and services.
- Resource Specific Environmental Impact Assessments: DSCEJ sets forth a list of environmental impact assessments, such as air quality, “Culture and quality of life of a residential area within five miles of the existing source or site(s) considered for any proposed source,” and various other undefined concepts, *i.e.* “sustainability,” “resilience,” etc., that it proposes ENO be required to describe for each resource within each Portfolio. Portfolios do not propose specific resources, thus it would be impossible to perform the analyses requested. Moreover, such analyses are not appropriate, if at all, outside the context of a specific resource certification proceeding.

Many other aspects of the Intervenor Proposals fail to recognize the distinction between the IRP and a resource certification docket. Such proposals should be rejected out of hand.

**V. Conclusion**

ENO took the Council’s directives from the Resolution to heart and proposed specific language designed to improve the IRP Requirements and Process. ENO was the lone Party to this Docket to adequately support its proposed modifications with evidence and analysis. As noted herein, ENO can agree to incorporate certain aspects of Intervenor Proposals despite the Intervenor’s failure to meet their regulatory burden in this Docket. Other aspects of the Intervenor Proposals are either not legally permissible, not beneficial to the IRP process or ENO’s customers, or simply are not germane to this Docket. Such proposals should be rejected not only for a lack of supporting evidence, but because they would detrimentally impact ENO’s ability to plan for providing low-cost, reliable electric service to the citizens of New Orleans.

Respectfully submitted:



BY:

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Timothy S. Cragin, Bar No. 22313  
Brian L. Guillot, Bar No. 31759  
Alyssa Maurice-Anderson, Bar No. 28388  
Harry M. Barton, Bar No. 29751  
639 Loyola Avenue, Mail Unit L-ENT-26 E  
New Orleans, Louisiana 70113  
Telephone: (504) 576-2984  
Facsimile: (504) 576-5579

**ATTORNEYS FOR ENTERGY  
NEW ORLEANS, INC.**

## CERTIFICATE OF SERVICE

### Docket No. UD-17-01

I hereby certify that I have this 27<sup>th</sup> day of March 2017, 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.

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

Pearlina Thomas, Chief of Staff  
W. Thomas Stratton, Jr., Director  
Council Utilities Regulatory Office  
City of New Orleans  
City Hall, Room 6E07  
1300 Perdido Street  
New Orleans, LA 70112

David Gavlinski  
Interim Council Chief of Staff  
New Orleans City Council  
City Hall, Room 1E06  
1300 Perdido Street  
New Orleans, LA 70112

Rebecca Dietz  
City Attorney Office  
City Hall, Room 5E03  
1300 Perdido Street  
New Orleans, LA 70112

Norman S. Foster  
Department of Finance  
City Hall, Room 3W06  
1300 Perdido Street  
New Orleans, LA 70112

Hon. Jeffery S. Gulin  
3203 Bridle Ridge Lane  
Lutherville, GA 21093

Clinton A. Vince, Esq.  
Presley R. Reed, Jr., Esq.  
Emma F. Hand, Esq.  
Dentons US LLP  
1900 K Street, NW  
Washington, DC 20006

Basile J. Uddo, Esq.  
J.A. "Jay" Beatmann, Jr.  
c/o Dentons US LLP  
The Poydras Center  
650 Poydras Street, Suite 2850  
New Orleans, LA 70130-6132

Walter J. Wilkerson, Esq.  
Kelley Bazile  
Wilkerson and Associates, PLC  
The Poydras Center, Suite 1913  
650 Poydras Street  
New Orleans, LA 70130

Joseph A. Vumbaco, P.E.  
Victor M. Prep  
Joseph W. Rogers  
Legend Consulting Group Limited  
8055 East Tufts Avenue  
Suite 1250  
Denver, CO 80237-2835

Errol Smith, CPA  
Bruno and Tervalon  
4298 Elysian Fields Avenue  
New Orleans, LA 70122

Kathryn J. Lichtenberg, Esq.  
Timothy S. Cragin, Esq.  
Brian L. Guillot, Esq.  
Alyssa Maurice-Anderson, Esq.  
Harry M. Barton, Esq.  
Entergy Services, Inc.  
Mail Unit L-ENT-26E  
639 Loyola Avenue  
New Orleans, LA 70113

Jeff Cantin, President  
Gulf States Renewable Energy Industries  
Association  
643 Magazine Street, Suite 102  
New Orleans, LA 70130

Rick Boyd  
The Folger Coffee Company  
14601 Old Gentilly Road  
New Orleans, LA 70129

Fred M. Mazurski, CEM, CDSM  
Energy USG Corporation  
550 West Adams Street  
Chicago, IL 60661-3676

Logan Atkinson Burke  
Alliance for Affordable Energy  
4035 Washington Avenue  
New Orleans, LA 70125

Gary E. Huntley  
Entergy New Orleans, Inc.  
Mail Unit L-MAG-505B  
1600 Perdido Street  
New Orleans, LA 70112

Seth Cureington  
Polly S. Rosemond  
Derek Mills  
Entergy New Orleans, Inc.  
Mail Unit L-MAG-505B  
1600 Perdido Street  
New Orleans, LA 70112

Joseph J. Romano, III  
Suzanne Fontan  
Therese Perrault  
Danielle Burleigh  
Entergy Services, Inc.  
Mail Unit L-ENT-4C  
639 Loyola Avenue  
New Orleans, LA 70113

Michael L. Winberry  
Jacobs Technology Inc.  
13800 Old Gentilly Rd., Bldg. 320  
New Orleans, LA 70129

Ernest L. Edwards, Jr.  
Beirne, Maynard & Parsons, L.L.P.  
601 Poydras Street  
Suite 2200  
New Orleans, LA 70130-6097

Joshua Smith  
Staff Attorney  
Sierra Club Environmental Law Program  
85 Second Street, 2nd Floor  
San Francisco, CA 94105

Mark Zimmerman  
Air Products and Chemicals, Inc.  
7201 Hamilton Boulevard  
Allentown, PA 18195-1501

Karla Loeb  
Benjamin Norwood  
Skelly McCay  
Posigen Solar Solutions  
2424 Edenborn Ave., Suite 550  
Metairie, LA 70001

Andreancecia Morris  
Ross Hunter  
Greater New Orleans Housing Alliance  
4640 S. Carrollton Ave., Suite 160  
New Orleans, LA 70119

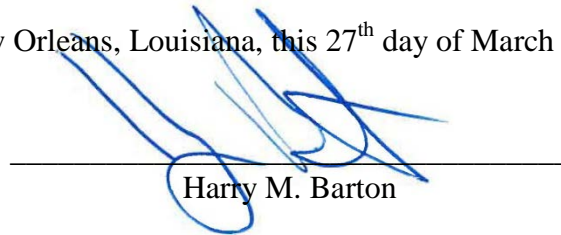
Robert L. Suggs, Jr., CEO  
South Coast Solar, LLC  
2605 Ridgelake Drive  
Metairie, LA 70002

Luke F. Piontek,  
Judith Sulzer,  
Roedel, Parsons, Koch, Blache, Balhoff  
& McCollister  
1515 Poydras Street, Suite 2230  
New Orleans, LA 70112

Myron Katz  
Building Science Innovators, LLC  
302 Walnut Street  
New Orleans, LA 70118

James E. Thompson III  
Sewerage and Water Board  
625 St. Joseph St., Room 201  
New Orleans, LA 70165

New Orleans, Louisiana, this 27<sup>th</sup> day of March 2017.



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Harry M. Barton