

**RESOLUTION  
R-17-622**

**CITY HALL: December 14, 2017**

  
**BY: COUNCILMEMBERS WILLIAMS, HEAD, GUIDRY, BROSSETT AND GRAY**

**APPLICATION OF ENTERGY NEW ORLEANS, INC. FOR APPROVAL TO  
CONSTRUCT DISTRIBUTED GENERATION-SCALE SOLAR PHOTOVOLTAIC  
SYSTEMS AND REQUEST FOR COST RECOVERY AND RELATED RELIEF**

**RESOLUTION AND ORDER ESTABLISHING A PROCEDURAL SCHEDULE FOR  
THE CONSIDERATION OF THE APPLICATION OF ENTERGY NEW ORLEANS,  
INC. FOR APPROVAL TO CONSTRUCT DISTRIBUTED GENERATION-SCALE  
SOLAR PHOTOVOLTAIC SYSTEMS AND REQUEST FOR COST RECOVERY AND  
RELATED RELIEF**

**DOCKET NO. UD-17- \_\_**

**WHEREAS**, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans ("Charter"), the Council of the City of New Orleans ("Council") is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the City of New Orleans; and

**WHEREAS**, pursuant to its powers of supervision, regulation, and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities; and

**WHEREAS**, Entergy New Orleans, LLC<sup>1</sup> ("ENO" or "Company") is a public utility providing electric and natural gas service to all of New Orleans; and

**WHEREAS**, ENO is a wholly-owned subsidiary of Entergy Corporation ("Entergy"). The other four operating companies are Entergy Arkansas, Inc. ("EAI"), Entergy Louisiana, LLC

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<sup>1</sup> Pursuant to a Council-approved restructuring, that was effective December 1, 2017, Entergy New Orleans, Inc. is now operating as Entergy New Orleans, LLC.

("ELL"), Entergy Mississippi, Inc. ("EMI"), and Entergy Texas, Inc. ("ETI"). These five operating companies are referred to collectively as the "Operating Companies"; and

**Background**

**WHEREAS**, as a result of the lack of data in the 2015 Triennial IRP Proceeding regarding costs, availability, and operational characteristics of renewable resources delivered to New Orleans, the Advisors strongly encouraged ENO to conduct a Request for Proposals ("RFP") for renewable power generation to assess what renewable resources might be available and potentially beneficial to New Orleans; and

**WHEREAS**, ENO has also committed to adding 100 MW of renewable resources to its generation portfolio; and

**WHEREAS**, on March 22, 2016 Entergy Services, Inc. ("ESI") published a public notice that ENO intended to issue a renewables-specific RFP, and on July 13, 2016 ENO released the RFP; and

**WHEREAS**, ESI, acting on behalf of ENO, developed a self-build project involving the construction of multiple, distributed generation scale ("DG-scale") solar photovoltaic ("PV") systems in New Orleans; and

**WHEREAS**, on October 6, 2017, ENO submitted its *Application of Entergy New Orleans, Inc. for Approval to Construct Distributed Generation-Scale Solar Photovoltaic Systems and Request for Cost Recovery and Related Relief* ("DG Application"); and

**WHEREAS**, ENO's DG Application explains that the proposed project resulted from the 2016 Renewables RFP and was one of three solar PV resource proposals selected by ENO from the RFP; and

**WHEREAS**, ENO states that it initially received 17 proposals, of which all conforming bids were for solar PV resources. With respect to the bids received in the RFP, ENO states that only one proposal -- ENO's 5 MW self-build project described in the DG Application -- involved DG-scale solar PV systems; and

**Proposed Project**

**WHEREAS**, ENO's DG Application requests approval of ENO's plan to construct multiple DG-scale solar PV systems (the "Project") with a total combined capacity of approximately 5 MW<sub>AC</sub><sup>2</sup> in the City of New Orleans; and

**WHEREAS**, ENO further explains that each individual solar PV system comprising a portion of the Project must be at least 100 kW<sub>AC</sub> and all will be located at sites within Orleans Parish and will interconnect at distribution voltage (less than or equal to 13.2 kV) on ENO's side of the host site's electric meter; and

**WHEREAS**, ENO states that the Project will focus on utilizing rooftops of existing buildings and properties, including customer-owned sites that will be secured under long-term leases and one ENO-owned site (the Dwyer Road service center); and

**WHEREAS**, ENO states that several important potential benefits of the Project include: (1) helping ENO achieve its commitment to add up to 100 MW of renewable resources to its generation portfolio; (2) allowing ENO to gain real-world experience with operating and maintaining DG-scale solar PV systems; (3) achieving distribution grid benefits; (4) facilitating opportunities for future energy storage (*e.g.* battery) investments; (5) providing economic development benefits to Orleans Parish through increased local investment and use of local labor;

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<sup>2</sup> "AC" stands for alternating current.

and (6) allowing ENO to work directly with its customers to help achieve their goals related to sustainability and/or carbon reduction; and

**WHEREAS**, ENO explains in the DG Application that on a pure cost comparison basis, based on the pricing submitted into the 2016 RFP, the Project is more expensive than the other two solar PV proposals also selected. However, ENO notes, it was the only distributed-generation scale project and one of only two proposed projects that would site renewables within Orleans Parish; and

**WHEREAS**, ENO also explains that it has, through a separate RFP process, selected Brightergy Louisiana LLC ("Brightergy") as the solar development company to serve as the engineering, procurement, and construction ("EPC") contractor; and

**WHEREAS**, ENO states that since Brightergy's founding in 2010, it has completed more than 1,400 commercial-scale solar projects, making it one of the most experienced commercial solar companies in the U.S. Brightergy will provide all project development, design, and project management for the individual solar PV systems and will lead efforts to negotiate host site lease arrangements. ENO states that Brightergy plans to outsource most aspects of electrical work and hire local companies, subject to input from ENO and consistent with long-standing efforts to support diverse suppliers that meet Brightergy's qualification criteria for structural reviews and installation services; and

**WHEREAS**, ENO states that Brightergy has conducted a screening process and identified approximately 50 buildings as possible sites for the Project; and

**WHEREAS**, under the EPC Agreement, Brightergy will have principal responsibility for identifying and developing sites and negotiating the commercial lease terms, but ENO and its legal

counsel will be involved during the process and ENO will have final say on the terms of the leases and the acceptability of the overall agreement prior to execution; and

**WHEREAS**, the DG Application states that the final estimated installed cost of the Project is \$14.8 million, the majority of which is the EPC Agreement with Brightergy (\$12.3 million). ENO states that the \$2.5 million in non-EPC costs includes estimated ESI and ENO direct labor costs, indirect costs, overheads, projected Allowance for Funds Used During Construction, and contingency. ENO also states that the final cost estimate accounts for installing roughly 6.4 MW<sub>DC</sub><sup>3</sup> in order to yield approximately 5 MW<sub>AC</sub>; and

**WHEREAS**, ENO indicates in the DG Application that it will propose the recovery of costs related to the Project in the 2018 Combined Rate Case. ENO indicates that the Project is expected to be placed into service during Period II, or the proformed rate-effective period, of that proceeding, but that for any costs of the Project incurred beyond that period, ENO expects to request, also as part of the 2018 Combined Rate Case, recovery through an applicable capacity rider and/or any formula rate plan ("FRP") authorized as a result of that proceeding; and

**WHEREAS**, in the Combined Rate Case the Council will determine the appropriate cost recovery methodology and rate mechanism which will provide ENO with the opportunity to recover any prudently any incurred project costs and the opportunity to earn a fair rate of return on its investment; and

**WHEREAS**, ENO explains in the DG Application that there is an important development affecting the entire solar industry that may materially affect the cost of imported solar panels, and thus the cost of the Project. That development is a complaint filed by Suniva (a Georgia-based solar panel manufacturer) at the U.S. International Trade Commission alleging unfair trade

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<sup>3</sup> "DC" stands for direct current.

practices by foreign manufacturers of solar cells and solar modules ("Suniva Complaint"). The complaint seeks duties to be imposed on imported cells and a price floor on imported modules from all foreign countries, which, if granted, could materially affect the cost of imported solar panels; and

**WHEREAS**, ENO explains that in order to mitigate the risk created by the Suniva Complaint, it has authorized Brightergy to dedicate existing solar panels in their inventory to the construction of a project demonstration site at ENO's Dwyer Road facility, but that it is unable to attempt to further mitigate the risk absent Council approval to proceed with the Project; and

**WHEREAS**, ENO seeks a Council finding that the Project is in the public interest, and also requests that the Council approve its cost recovery requests; and

**WHEREAS**, the Council intends to provide the residents of the City of New Orleans with an open and transparent process that will allow an opportunity for interested parties to participate fully in the proceeding; and

**WHEREAS**, in the Application, ENO does not seek approval of all of the projects selected as part of ENO's 2016 Renewables RFP; and

**WHEREAS**, in the Application, ENO limits its Prayer for Relief to the Company's plan to construct multiple DG-scale solar PV systems with a total combined capacity of approximately 5 MW<sub>AC</sub> located in the City of New Orleans; and

**WHEREAS**, the limited nature of ENO's request in this Docket and the interest of stakeholders and members of the public in renewables and distributed generation in the City of New Orleans that has been expressed from time to time in other dockets, suggest that this docket may be ripe for timely review and settlement; and

**WHEREAS**, due to the limited nature of ENO's request, New Orleans ratepayers may be better served by an expedited procedure leading to a settlement as opposed to a lengthy and costly litigated proceeding; and

**WHEREAS**, the Council therefore encourages all parties to engage in good faith settlement negotiations to ascertain whether this proceeding may be resolved expeditiously through a settlement among the parties; and

**WHEREAS**, the Council also deems it prudent to establish a procedural schedule to govern the proceedings in the event that settlement negotiations fail, in order to create a fully developed and complete evidentiary record resulting from an open and transparent public process upon which the Council may rely in rendering its decision; now therefore:

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

1. The Council establishes Docket No. UD-17-\_\_ to consider the *Application of Entergy New Orleans, Inc. for Approval to Construct Distributed Generation-Scale Solar Photovoltaic Systems and Request for Cost Recovery and Related Relief*.
2. The Honorable Jeffrey Gulin is hereby appointed as Hearing Officer in this docket to preside over the proceedings and rule on procedural disputes, including motions and discovery, and shall, for good cause shown and as required by the circumstances of the proceeding, have the authority to change or amend the procedural dates set forth herein.
3. To the extent that the City Clerk's office closes before 5:00 pm on the date of any deadline contained herein or otherwise set by the Hearing Officer, the deadline shall be extended to the next business day.
4. The Council adopts the following procedural schedule:

- a. By January 12, 2018, ENO shall conduct an initial public meeting where it presents the proposed Project to the public and responds to questions from the public regarding the proposed Project. ENO shall provide 30 days' notice of the meeting, and such notice shall be published in *The Times Picayune*, *Gambit*, *The New Orleans Advocate*, *The New Orleans Tribune*, and on ENO's website. ENO shall have a portal on its website for questions and comments concerning the proposed Project to be submitted until 7-days following the public meeting. During the 7-day period following the public meeting, ENO must respond to each question concerning the proposed project on a rolling 5-day basis. For purposes of the 5-day response requirement, questions submitted after 3:30 p.m. will be considered as received on the following business day. To the extent ENO receives questions that are, in ENO's judgment, after consulting with the Advisors and obtaining their consensus, not germane to the Project, ENO shall have no obligation to respond.
- b. ENO and the Council's Advisors are designated as Parties to this proceeding. Other interested parties shall intervene in the case by January 26, 2018. Persons desiring to intervene shall do so by filing a motion to intervene with the Clerk of Council and paying the applicable filing fee, unless such fee is waived pursuant to Council Resolution R-16-365, with a copy submitted to Director, Council Utilities Regulatory Office, Room 6E07 City Hall, 1300 Perdido Street, New Orleans, LA 70112. The Council's requirements for motions to intervene may be found in the City Code (which is available on



the Council's website) at sections 158-236, 158-240, 158-286, 158-287, 158-322, and 158-324. Objections to intervention requests shall be filed within five days of such requests. Timely-filed intervention requests not objected to within that time period shall be deemed GRANTED.

- c. No later than February 9, 2018, ENO, the Intervenors and the Council's Advisors shall participate in a Settlement Conference, to allow ENO to present the technical details of its application and to answer any questions from the Parties regarding the Application or the information presented at the Settlement Conference. During the Settlement Conference the Parties will identify any areas upon which settlement may be attained.
- d. To allow an opportunity for discovery and for further settlement discussions between the Parties, no later than March 5, 2018, ENO, any Intervenors, and the Council's Advisors shall participate in a second Settlement Conference, to allow the Parties to ascertain where settlement may be attainable and to develop the language of a proposed Agreement in Principle to be filed with the Council.
- e. To the extent that full or partial settlement is attained between the Parties, whether contested or uncontested, ENO shall file no later than March 19, 2018, a proposed Agreement in Principle with the Council.
- f. To the extent that the Parties are unable to reach a settlement, then each Party shall by April 13, 2018 file for the Council's consideration comments on the DG Application including that Party's proposal for a procedural

schedule for further proceedings, if any, necessary to resolve any outstanding disputes.

- g. A discovery period shall commence upon the issuance of this Resolution and run until the filing of an Agreement in Principle with the Council or until 8 days prior to the date of the Evidentiary Hearing in the event the parties are not able to reach settlement. Discovery requests must be made in time that responses may be received prior to the close of the discovery period. Responses to such data requests shall be made on a rolling basis and shall be due in hand within 10 calendar days of receipt. Parties are encouraged to submit their data requests and responses electronically, where appropriate. Any documentary discovery responses that are readily available for production upon request and are not the subject of a timely objection shall be produced by the responding party as soon as practicable notwithstanding the 10 calendar day deadline established herein. Objections to data requests shall be filed within 5 days of receipt. Vague and non-specific objections are disfavored and all applicable statutes and rules governing discovery shall be liberally and broadly construed to facilitate a comprehensive evaluation of the DG Application. All parties are strongly encouraged to provide complete, unambiguous and non-evasive responses to requests for information. Failure to do so could cause unnecessary discovery disputes and may disrupt the procedural schedule outlined herein.

h. The parties are encouraged to attempt to resolve their discovery disputes amicably prior to seeking the intervention of the Hearing Officer or appealing to the Council. It is anticipated that during discovery, the parties may be required to produce documents or information that is deemed confidential and/or highly sensitive and, accordingly, the Council adopts for use in this docket its Official Protective Order adopted by Resolution R-07-432, a copy of which can be obtained from CURO.

5. ENO shall keep the Council apprised of developments in the Suniva Complaint case and shall inform the Council, Advisors, and parties to the case in a timely manner of any impacts the outcome of that case has on the proposed Project.

**THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS;**

**YEAS:** Brossett, Cantrell, Gray, Guidry, Head, Ramsey, Williams - 7

**NAYS:** 0

**ABSENT:** 0

**AND THE RESOLUTION WAS ADOPTED.**