



October 19, 2018

By Hand Delivery and electronic mail

Ms. Lora W. Johnson,
CMC Clerk of Council
Room 1E09, City Hall
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In Re: Resolution and Order establishing a docket and opening a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or purchase power agreements issued by Entergy New Orleans, LLC shall be conducted.
(Docket No. UD-18-05)

Dear Ms. Johnson,

Please find enclosed an original and three (3) copies of the Alliance for Affordable Energy's Comments in the above-referenced docket. Please file the attached communication and this letter in the record of the proceeding and return one time stamped copy to our courier, in accordance with normal procedures. If you have any questions, please do not hesitate to contact me.

Thank you for your time and attention.

Sincerely,

Logan A. Burke
Executive Director
Alliance for Affordable Energy

Before

The Council of the City of New Orleans

**In Re: RESOLUTION AND ORDER
ESTABLISHING A DOCKET AND OPENING A
RULEMAKING PROCEEDING TO CONSIDER
THE PROCESS FOR HOW ANY FUTURE
REQUESTS FOR PROPOSALS FOR
GENERATING RESOURCES OR PURCHASE
POWER AGREEMENTS ISSUED BY ENTERGY
NEW ORLEANS, LLC SHALL BE CONDUCTED**

**Docket UD- 18-05
October 19, 2018**

Comments of The Alliance for Affordable Energy

Introduction

On August 23, 2018, the Council of the City of New Orleans passed Resolution No. R-18-355, (“the resolution”) opening the instant docket, and setting a procedural schedule for a rulemaking to consider how Entergy New Orleans, LLC (“ENO”) should conduct Requests for Proposals (“RFP”) for generating resources for their customers. The resolution highlights the long, opaque, and sometimes “deeply troubling” process of the utility’s first attempt at procuring large-scale renewable resources. The Alliance appreciates this opportunity to provide our responses to the questions laid out in the resolution. Furthermore, the comments below will outline the Alliance’s position on procurement in general.

Both The Council of the City of New Orleans and ENO have acknowledged an important fact: There are significant shifts in the utility business and New Orleans cannot be left behind. Every part of the equation is changing, from how we generate energy to how we move and use it. The utility space is transforming rapidly, year over year, with renewed focus on all three pieces of the Utility’s business: Generation, Distribution, and Transmission. This year, the Council created a new committee to consider some of these shifts, within the Smart and Sustainable Cities Committee. Entergy has begun to develop messaging about the power and value of a different kind of energy system, within their rate-case, applications for renewable resources, and Smart Cities report. Therefore, the Alliance believes that where resources are needed to provide reliable and cost-effective service to customers, large capital expenditures, which will be paid for by

those customers, should be subject to the same rules that govern traditional supply side resources.

For example: On February 8, of this year, ENO was given approval¹ to spend \$75M² on an entirely new metering, distribution monitoring, and customer service system, collectively called Advanced Metering Infrastructure (“AMI”), which promises to revolutionize how customers interact with energy, and how the utility communicates with customers, not to mention the energy savings and overall benefits which will accrue to customers. However, all aspects of this major service-transforming asset were selected and contracted without any transparency. The Council, Intervenors, and the public had no certainty that the resource for which customers will eventually pay, was contracted at a fair market price, was the best type for New Orleans, or if the technology chosen would provide ENO and their customers with the most valuable information. It wasn’t until the application proceeding was underway, Council Docket UD-16-04, well after the technology was chosen, that many specifications of the new meters and their software were discussed.

Lacking transparency and unclear timelines in the renewables RFP, the AMI selection process and others, including the Third-Party Administrator for Energy Smart, have caused concern among both the Council and the public. We believe that as more and more spending on Entergy’s system will fall outside the realm of traditional large centralized generation resources, any new rule directing an RFP or procurement policy should apply to a broader range of resources, with some reasonable exceptions. Furthermore, in order to ensure the customers of New Orleans are receiving reliable and cost-effective service from the resources that best fit the city’s needs, the Alliance recommends the Council adopt a style of request for proposal guidelines that require competitive, all-source solicitations.

Council Jurisdiction

¹ Council of the City of New Orleans, Resolution R-18-37

² This figure accounts only for the cost of the AMI system, and does not include the amortization of continuing costs for the retiring old meters.

As outlined in resolution No. R-18-355, “The New Orleans City Council is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the City of New Orleans.” Thus, there should be no question of the authority of the City Council resolving to supervise and direct ENO’s procurement of new resources. Indeed, the Louisiana Public Service Commission (“LPSC”), the other regulatory jurisdiction in the state, first took on a supervisory role related to Requests for Proposals in 2002³. The Market Based Mechanism Order (“MBMO”) is intended to supplement the Commission’s 1983 General Order, which requires utilities to receive a certificate of convenience and necessity from the Commission when a utility wants to construct or contract for generating power.

The Commission exercises their jurisdiction in this matter pursuant to Article 4, Section 21, of the Louisiana Constitution, and La. R.S. 45: 1163(A)(1) detailed below:

- Louisiana Constitution, Article 4, Section 21 provides in pertinent part:
 - The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall *adopt and enforce* reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law. (emphasis added)
- La. R.S. 45:1163 provides in pertinent part:
 - A. (1) The Commission shall exercise all necessary power and authority over any street, railway, gas, electric light, heat, power, waterworks, or other local public utility for the purpose of fixing and regulating the rates charged or to be charged by the service furnished by such public utilities.

Based on the above-mentioned jurisdictional assertion from both the Louisiana Constitution and Louisiana Revised Statute, the Commission’s MBMO was passed in order to demonstrate that applications for the construction and/or acquisition of additional regulated generation

³ Louisiana Public Service Commission, General Order, April 10, 2002, “Market Based Mechanism Order”

requested by utilities is the least cost alternative and in the public interest. Just as the LPSC uses its authority to require a specific request for proposal process, in order to ensure the public interest, the City Council of New Orleans should use its authority to do the same, and require transparent and competitive bidding.

All-Source Solicitation

The Alliance has previously stated our support for competitive all-source solicitation in testimony filed in Council Docket UD-16-02. The testimony of Philip Henderson, attached here as Appendix A, provides further illumination on the background of the structure. The top benefits for all-source competitive solicitation for resources line up exactly with the problems outlined in the Council’s resolution opening this docket: lack of information and slow pace. In addition, all-source solicitation provides solutions to the concerns and desires voiced by many in the New Orleans community over the last two years including up to date market information about alternatives, credible outcomes, fairness. All-source solicitation allows a market to fairly and transparently answer the call to resolve a utility’s resource needs with solutions that are tailored to the needs and policies, and at the least cost. Such a policy means all stakeholders can have greater confidence in resource selection.

Examples of All-Source Solicitation Requirements

Many states require specific procurement plan procedures in order to ensure fairness and transparency. One example is Colorado, whose Code of Colorado Regulations lays out the priorities of the state: to “ minimize the net present value of revenue requirements”, and “give(s) the fullest possible consideration to the cost-effective implementation of new clean energy and energy-efficient technologies.”⁴ To this end the Commission included a competitive acquisition process to the rules that “afford(s) all resources an opportunity to bid, and all new utility resources (to) be compared in order to determine a cost effective resource plan (i.e., an all-source solicitation.)⁵ The Code states that utilities may propose an alternative to all-source solicitation, when filing a procurement plan, but shall provide a cost-benefit analysis to show why the public

⁴ Code of Colorado Regulations, Resource Planning, Rule 3601 at: <https://drive.google.com/file/d/0B8qvU2knU8BkcEJneE93YkNRQmM/view>

⁵ Code of Colorado Regulations, Utility Plan for Meeting the Resource Need, Rule 3611

interest would still be served using the alternative process. The use of all-source solicitation in Colorado has proven to successfully test the market and put downward pressure on new resource costs, including renewables and energy storage.^{6 7}

New York is another state which has used public, transparent solicitations to resolve system needs. Consolidated Edison (ConEd) used a competitive solicitation process but was ordered by the New York Public Service Commission to constrain one solicitation to use only demand-side resources, while allowing for flexibility and innovation. The resulting Brooklyn Queens Demand Management program (“BQDM”) has successfully delayed the need for a \$1 billion substation, using efficiency, demand response, customer sited solar, and batteries at much lower cost to customers. In order to gather a sense of the available resources, ConEd first used the more loosely structured Request for Information, or what could be described as a “step one” in a two-step process of procurement.⁸

A competitive solicitation may also include information about Council policy that could weight a selection. This is not like the above BQDM program, as it does not preclude certain resources. For example, California Energy Action Plan: establishes preference of order of resources selected. Utilities are to reduce demand through energy efficiency and demand response, followed by new needs with renewable and distributed resources, and finally met with traditional generation. This is referred to as a “loading order” and may be a constraint of a solicitation. If a council policy like this is in place, this information should be shared with the bidders.

⁶ January 8, 2018, *Xcel solicitation returns ‘incredible’ renewable energy, storage bids*. Utility Dive. at <https://www.utilitydive.com/news/xcel-solicitation-returns-incredible-renewable-energy-storage-bids/514287/>

⁷ August 29, 2018, *Xcel to Replace 2 Colorado Coal Units with Renewables and Storage*, Greentech Media, at <https://www.greentechmedia.com/articles/read/xcel-retire-coal-renewable-energy-storage#gs.2GYPk5g>

⁸ July 15, 2014. Consolidated Edison, Request for Information, Innovative Solutions to Provide Transmission and Distribution System Load Relief and to Reduce Generation Capacity Requirements. http://legacyold.coned.com/energyefficiency/pdf/Demand_Management_Project_Solicitation-RFI-Reopen_ver2.pdf

In response to the specific concerns considered in the resolution, the Alliance provides the following comments:

1) PRIOR TO DEVELOPING RFP DOCUMENTS

Items a-d)

It is the Alliance's position that Requests for Proposals, and procurement in general, should be informed directly by the Integrated Resource Plan ("IRP"). In particular, a clear and precise understanding of the needs of New Orleans should be an outcome of the IRP, and as we have stated in prior comments, the IRP should be a process that encompasses the broad portfolio of resources the utility uses to meet customer needs, including the distribution system. So for example, if the utility expects a need that is not related to capacity (which the IRP is currently most suited to solve) then the utility should use the IRP to provide an assessment of actual needs (reliability, capacity, resilience, etc) that will eventually be resolved with resources through a competitive process. This is to say, a request for proposal or information should be informed by the public process, and should not render "surprises" of need to the Council or other stakeholders. The timeline and specific milestones should be known by all parties. An all-source competitive solicitation provides for wider participation and innovation with the suite of resources currently available in the market.

The beginning phases of the RFP process should be available on a website of the City Council, including the utility's initial announcement of intent to conduct a solicitation. The Council's website (or CURO website) should be a reliable place for the public to receive information that will impact their energy bills. Entergy has an RFP website that appears to be managed by an affiliate, that is, not in the direct control of Entergy New Orleans: spofossil.entergy.com. If the Council's website keeps updated information needed for decision making and public engagement, the utility should use their own website to house documents related to their business, including various technical documents needed for bidders. The Council's rule should direct ENO to utilize its own RFP website.

The inequities in New Orleans local economy plays a role in every aspect of our city's prosperity, therefore resource procurement for the city should recognize this problem and seek to

improve it. We are supportive of a provision outlined in the resolution that requires a plan to comply with local disadvantaged business enterprise (“DBE”) goals for the City.

Independent Monitor

Greater independence and transparency is required of an Independent Monitor to give more confidence in the RFP process. At present, it is hard to call a monitor who is selected, paid, and managed by the utility “independent.” Some jurisdictions require the an Independent Monitor (or Evaluator) to have a more balanced relationship to various parties. For example, Colorado’s rules allow for the utility to file for approval of a selected IE, who is then jointly proposed by the utility, the Commission Staff, and the Office of Consumer Counsel,⁹ before the Commission approves the Evaluator. This IE may eventually be retained by the Commission, who can receive advice and support on rendering a decision. The Council itself could select an Independent Monitor to conduct the investigation, or as other states have done, build in greater confidence in a utility-hired Independent Monitor with explicit requirements from the regulator on publicly filed reports to the Commission. The long-form template provided by the California Public Service Commission is attached as Appendix B. Whether the hiring of the Independent Monitor is done by the utility or the regulator, the Alliance believes that standardized reporting to the Council should be part of the Council’s final rule.

Modifications to Entergy’s Procurement Policy,

The Alliance is aware that Entergy updated its procurement policy in 2017, but as the policy is not publicly available on the utility’s website, or the Request for Proposal portal, at <https://spofossil.entergy.com>. We decline to comment on this policy but reserve the right to consider the Policy’s standards, expectations, and requirements in a future filing.

2) DEVELOPMENT OF FINAL RFP DOCUMENTS

The development of the draft RFP process should include a public technical conference. This opportunity for stakeholders to provide insight into the breadth of the solicitation is a useful step

⁹ Code of Colorado Regulations, Independent Evaluator, Rule 3612

in encouraging transparency. A technical conference and opportunity for input outside of a formal comment process increases transparency and lowers the barriers to engagement by the public. The Alliance believes one of the Council's roles as regulator is to set policies that guide utility resource procurement. Where the Council creates policy, like an energy efficiency goal or a Renewable Portfolio Standard, or even a preferred Loading Order, as described above, they are providing guidance to the utility on their priorities that will be adhered to through eventual solicitation and procurement. Occasionally, the Council may be inclined to provide further guidance to the utility, as the New York PSC did in directing ConEd to constrain a solicitation to a variety of Demand Side projects, described above as the BQDM program. The Council should be kept informed of RFP developments and where guidance is warranted, resolve to give direction formally. Council Staff, either via the Council Utilities Regulatory Office (CURO) or the Advisors, should be involved to ensure transparency and that the Council's existing policies are, in fact, adhered to. When the utility files an announcement of intent to conduct a solicitation, a Council staff member or advisor should be assigned to the matter.

The Alliance is not opposed to a two-step process, *if* it can keep the procurement timeline on track, however we do not believe it is necessary in every situation, and the utility should be given the flexibility to choose whether this is needed or not. We do support the use of occasional Requests for Information in order to inform current and future decision-making.

The Alliance believes every effort should be made to increase transparency related to any factor impacting weighting of offers, especially where those factors are related to the utility and its affiliates as opposed to third party bidders. If "non-price" factors are used in weighting and scoring bids, then those expected factors must be disclosed in the original RFP documents.

Some basic information that should be required in the RFP documents

- 1) The utility should describe the need (or problem to solve) clearly, whether it is capacity need, energy, peak shaving, transmission or distribution concerns.
- 2) Criteria the utility will use to rank bids. Disclosure of all non-price factors that the utility will use in scoring final bids, including Council policy, corporate goals, and local system information.

- 3) Links to the utility's most recent Integrated Resource Plan.
- 4) Reasonable estimates of transmission costs for resources located in different areas including a detailed description of how the costs of future transmission will apply to bid resources;
- 5) The dispatchability requirements of bid resources
- 6) ENO's proposed model contracts including contract term lengths
- 7) Employment metrics including the Council and City's policy on Disadvantaged Business Enterprises.

3) *ISSUANCE OF THE RFP*

In order to ensure market participation is robust, the final RFP documents should be widely shared, rather than selectively offered to a handful of potential bidders. In addition, where there is a need to "refresh" a bid, as occurred in the Renewables RFP, this process should be done transparently, and should be known to the Council and stakeholders.

The success of a solicitation depends on it not over-prescribing the RFP. This is why we support the use of all-source competitive bid process, which does not narrow the field of potential resources, but allows for flexibility and innovation. It may be appropriate to include guidelines in order to efficiently fill the resource need. For example, if 350 MW of capacity is needed, the total need may be filled with multiple bids, (150 solar, 100 wind, 50 demand response, and 50 energy efficiency), but the RFP may include guidelines that require a bid to satisfy at least 30 MW of capacity toward the total need. This kind of bidding guideline should be part of the development of the RFP documents.

Transparency and precision around the utility's resource need and system requirements will provide greater confidence in the fairness of a solicitation. Where the market has an opportunity to provide creative solutions to the utility's requirements

In order to build confidence in the Entergy New Orleans marketplace for third party bidders, the Alliance recommends reports be presented by the Independent Monitor at certain milestones. While we understand that negotiations and confidentiality will hinder communication of some details, the Monitor should be aware of the Council's (and public's) interest in the efficiency and timeliness of the RFP process. Therefore, the rules should lay out clear guidelines for reporting. These reports should be filed with the Council and should be viewable on the Council's website. The Council may choose to build a timeline for all RFPs into the rules, for example, ENO may be required to execute final contracts within a certain time period after receiving bids. The rapidly changing marketplace, especially for renewable and efficiency, requires fairly short turnaround in order to ensure the resources are the best possible fit for the city.

We are aware that the bid price in ENO's 2016 Renewables RFP was a constraint on applicants, but that the interconnection costs, development costs, site costs, and more all provide the kind of barrier to entry that would dissuade "unserious" bidders, rendering a \$5,000 bid fee unnecessarily burdensome. We suggest a bid fee of \$1000 or less per bid.

4) POST-ISSUANCE OF RFP AND EVALUATION OF BID PROPOSALS

Evaluation of bid proposals should be conducted collaboratively with the independent monitor. As described above, a template for reporting by the monitor should be included in the rules. While the utility may argue all information should remain confidential, bidders in the national utility industry are accustomed to such reporting, as are Independent Monitors.

Conclusion

The Alliance appreciates this opportunity to provide our perspective on the process of future resource acquisition in New Orleans. These comments are not an exhaustive survey of the procurement regulations that could be used effectively, but they do provide a way forward to encourage transparency and confidence in the regulation of utilities in the City. We look forward to further work in this docket, and we would encourage a technical conference of the parties to discuss a framework.

**In Re: RESOLUTION AND ORDER ESTABLISHING A DOCKET AND OPENING A
RULEMAKING PROCEEDING TO CONSIDER THE PROCESS FOR HOW ANY
FUTURE REQUESTS FOR PROPOSALS FOR GENERATING RESOURCES OR
PURCHASE POWER AGREEMENTS ISSUED BY ENTERGY NEW ORLEANS, LLC
SHALL BE CONDUCTED**

I hereby certify that I have this 19th Day of October, 2018, served the required number of copies of the foregoing correspondence upon all other known parties of this proceeding, by USPS or electronic mail.



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