

November 30, 2018

BY HAND DELIVERY

Ms. Lora W. Johnson
Clerk of Council
Council of the City of New Orleans
City Hall, Room IE09
1300 Perdido Street
New Orleans, LA 70112

In Re: *A Rulemaking Proceeding to Establish Rules for Community Solar Projects,*
CNO Docket UD-18-03

Dear Ms. Johnson:

Enclosed please find an original and four (4) copies of the *Advisors' Report Regarding Proposed Community Solar Rules* in the above referenced docket, which we are requesting that you file into the record along with this letter in accordance with your normal procedure.

Sincerely,



Jay Beatmann
Counsel

JAB/dpm
Enclosures

cc: Official Service List for UD-18-03

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

**IN RE: A RULEMAKING)
PROCEEDING TO ESTABLISH)
RULES FOR COMMUNITY SOLAR) DOCKET NO. UD-18-03
PROJECTS)**

**ADVISORS REPORT
REGARDING PROPOSED COMMUNITY SOLAR RULES**

November 30, 2018

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The Council of the City of New Orleans (“Council”) has long supported the efficient use of clean, sustainable technology to improve the quality of life for citizens and business in New Orleans, including the adoption in 2007 of Net Energy Metering (“NEM”) rules, allowing New Orleans residents and businesses to put solar panels on their rooftops and net out on their energy bills their energy use against their energy production. In further support of this goal, on June 21, 2018, the Council issued Resolution No. R-18-223 establishing a docket to consider establishing a community solar program to create another option for those unable to participate in NEM to offset their energy use in whole or in part through local solar. In Resolution No. R-18-223, the Council sought comments on a White Paper and Proposed Rules submitted to the Council by the Utility Advisors.¹

Comments on the Advisors’ White Paper and Proposed Rules were filed by Entergy New Orleans, LLC (“ENO”), Air Products and Chemicals, Inc. (“Air Products”), the Alliance for Affordable Energy (“AAE”), and 350 New Orleans. Reply Comments were filed by ENO, AAE, and Air Products. The Advisors are pleased to report that there are several areas of significant consensus among the parties, including treatment of Low-Income Customers, consumer protections and enforcement thereof, transparency and reporting, safety and reliability, the appropriate treatment of ENO’s community solar proposal in the Combined Rate Case, and the incorporation of community solar into ENO’s triennial Integrated Resource Planning (“IRP”) analysis. There do remain areas of significant difference between the parties that will require some policy decisions from the Council, particularly with respect to bill credits, treatment of unsubscribed energy, capacity limits for both the total amount of community solar capacity and for the capacity of individual projects, and the length of commitment required for customers.

The Advisors wish to clarify that the purpose of the Advisors’ Proposed Rules is to establish a clear and streamlined path to the development of community solar programs in the City of New Orleans that would allow developers to proceed with such projects without the need to petition the Council for approval of each individual project and await the outcome of that decision. The Proposed Rules are not meant to be a determination of the one and only way that distributed generation (“DG”) may enter New Orleans. There is nothing in the Advisors’ Proposed Rules that would prevent ENO, or any other party from proposing a new DG project or program with a different structure to the Council for approval.

That said, the Advisors would view with disfavor any proposed project that appears to simply be an attempt to circumvent the Council’s Community Solar Rules. The Advisors would expect that any party proposing a DG project with community participation would be required to demonstrate why a differently structured project would bring more benefits to ratepayers than a project structured in accordance with the Community Solar Rules. Similarly, the Advisors believe that there may be circumstances where it is appropriate for a party to be granted an exemption from a particular requirement, but the party seeking such exemption would need to demonstrate to the Council why granting the exemption would be beneficial to ratepayers.

Thus, for example, if ENO wants to develop a DG program that would create a new path for industrial customers to install on-site generation that would work better for both ENO and

¹ White Paper of the Council’s Utility Advisors Regarding Community Solar and Other Shared Distributed Energy Resources, June 2018 (“White Paper”).

industrial customers than these proposed Community Solar Rules, nothing in these rules should be interpreted as a bar to such a proposal. Similarly, if a college campus wishes to work with ENO to develop a microgrid for their campus that is not a community solar project as defined under the Proposed Rules, the creation of Community Solar Rules should pose no bar to such an effort, the parties would simply need to submit a proposal to the Council for review and approval.

The Advisors do not anticipate that there will be only one model for adding DG to ENO's grid. The purpose of the creation of these rules is to create a structure for community solar projects that is clearly and easily understood by developers, ENO, and the community, that will allow such projects to proceed without further individual examination and approval by the Council so long as the requirements of these Proposed Rules are met.

BACKGROUND

The Council has long expressed an interest in encouraging the increased use of energy from renewable resources, including renewable generation resources in the City of New Orleans. The NEM program that the Council established over 10 years ago has been popular and there continues to be interest in the City in increasing the penetration of rooftop solar into New Orleans and allowing utility customers to reduce their utility bills by self-generating electricity. There are many customers, however, unable to participate in NEM because they do not own a building with a suitable roof on which to install solar panels, are not in a position to make a long-term commitment, or live or are located in an area of the City where rooftop solar is not allowed or cannot be accommodated. The Advisors, therefore, recommended to the Council in our White Paper that establishing rules to enable and govern community solar, a program whereby ratepayers are offered the opportunity to invest in a solar project in exchange for a credit on their energy bills, is another method of encouraging increased development of renewable DG in the City and providing more supply options to customers.

A community solar program has been defined as a voluntary business model where multiple subscribers pay for a share of a specified solar project and receive credit on the electricity bill for their portion of the power produced. It allows customers who cannot put solar panels on their own roof and participate in the NEM program to pool their resources with those of other customers to fund a solar project located somewhere else in the City to offset the energy use of their home or business.

Some widely-circulated industry sources who have analyzed what makes a “successful” community solar program (usually defined in terms of MW of solar installed) have determined that the drivers have less to do with the specifics of the program design and more to do with factors such as (1) an involved utility with a strong Renewable Portfolio Standard (“RPS”)² and/or commitment to solar resources, both utility-scale and customer owned/leased; (2) a state/regulatory jurisdiction with high electricity rates and good sunlight exposure that may also have issues with ideal solar roof types; and (3) a state with a high number of utility-scale projects

² An RPS is a regulation that requires the increased production of energy from renewable energy sources, such as wind, solar, biomass, and geothermal. Twenty-nine states, Washington, D.C., and three U.S. territories have adopted an RPS.

and solar farms that can attract the attention of prospective third-party providers.³ Other industry sources point to the underlying demand from ratepayers for clean energy, and the ability for customers to see a return on their investment over the life of a community solar contract as key factors for success.⁴ The Advisors recognize that while New Orleans possesses some of those factors (underlying demand for clean energy, good sunlight exposure), it lacks others (high electricity rates relative to the cost of solar, a state with a large number of utility-scale projects and solar farms). Having lower electricity rates than many other states, in particular, may make it harder for customers investing in solar to achieve a significant return on their investment, at least not without significant subsidization from non-participating customers, though we expect this to improve over time as the costs of installing solar continue to fall relative to the rates for energy from conventional sources. Because of the high energy burden in New Orleans, rather than proposing a model where non-participating ratepayers subsidize community solar projects through the Subscriber Credit, the Advisors have endeavored to create rules that set the Subscriber Credits at a level that properly compensates the community solar Subscribers for the value of the avoided capacity and energy costs, but does not require significant subsidization. Instead, the Advisors' proposed structure would allow considerable flexibility for developers to experiment with various business models for community solar to determine what would be attractive to New Orleans customers and avoids creating unnecessary obstacles for developers, while putting in place protections for consumers to ensure that Subscribers are fully aware of the costs and have a reasonable expectation of what the benefits to them will be when they invest in a community solar facility.

DISCUSSION

I. Areas of Significant Consensus Among Intervenors

There were several areas where the parties appear to be significantly in consensus, particularly with respect to low-income participation, consumer protection, transparency and reporting, safety and reliability, and the interaction of Community Solar Rules and projects with both ENO's proposed community solar project in the Combined Rate Case docket and ENO's IRP planning process.

A. Opportunities for Low-Income Customers

There appears to be general consensus among the parties that the definition of Low-Income Customer should be clarified and that the capacity set-aside for Low-Income Customers should be increased, though the parties differ somewhat on how to accomplish these objectives.

³ Energy Sage: Top Community Solar States: Minnesota vs California, Massachusetts Colorado Community Solar <https://news.energysage.com/comparing-top-community-solar-states-minnesota-california-massachusetts-colorado/>.

⁴ Utility Dive: What makes a successful utility-led community solar program? <https://www.utilitydive.com/news/what-makes-a-successful-utility-led-community-solar-program/442663/>.

1. Definition of “Low-Income Customer”

The Proposed Rules defined “Low-Income Customer” as a Customer whose gross annual household income is at or below 175% of the federal poverty level for the year of subscription or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 175% of the federal poverty limit.⁵

Rather than the Federal Poverty Level definition of low income, the AAE recommends using the same methodology utilized by the Housing Authority of New Orleans, Louisiana Housing Corporation, and Louisiana Department of Health, namely, those customers living at or below 50% of Area Median Income.⁶ ENO, on the other hand, argues that the rules should utilize the applicable standard used by the Low Income Home Energy Assistance Program, which is 150% of the federal poverty level.⁷ In its reply comments, ENO states that it does not believe that the definition of Low-Income Customer needs to be changed beyond the clarifications it offers, but states that the definition the Council ultimately adopts should be a widely accepted standard with very specific language as opposed to a generic vague definition that could be open to multiple interpretations.⁸

The Advisors agree with the general principle that the definition of “Low-Income Customer” should be a definition that is widely understood, clear, and that is utilized commonly by other programs. This will assist program participants in understanding whether they are eligible for “Low-Income Customer” designation and may provide Subscriber Organizations with additional methods of verifying that a Subscriber is a “Low-Income Customer” where the Subscriber can demonstrate they have been accepted by other programs using the same standard. Where there are multiple definitions of “Low-Income Customer” that are widely accepted by other agencies and entities, the Advisors recommend the definition that would include the greatest number of customers, particularly where, as here, there is a minimum amount of the overall community solar capacity reserved for Community Solar Facilities that provide service to a minimum threshold of Low-Income Customers. To that end, the Advisors recommend that the Council use the following definition of “Low-Income Customer”:

“Low-Income Customer” means a Customer whose gross annual household income is at or below 50 percent of the Area Median Income for the year of subscription or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 50 percent of the Area median Income.

⁵ White Paper, Appendix B, Proposed Rules, Definitions.

⁶ Alliance for Affordable Energy Comments on Council Advisor’s White Paper and Proposed Rules, Docket No. UD-18-03, at 3 (Sept. 28, 2018) (“AAE Comments”).

⁷ Entergy New Orleans, LLC’s Response to White Paper and Proposed Rules of the Council’s Utility Advisors Regarding Community Solar and Other Shared Distributed Energy Resources, Docket No. UD-18-03, at 22-23 (Sept. 28, 2018) (“ENO Comments”).

⁸ Entergy New Orleans, LLC’s Reply Comments Regarding Proposed Community Solar Rules, Docket No. UD-18-03, at 12 (Oct. 31, 2018) (“ENO Reply Comments”).

2. Capacity Reserved For Low-Income Customers

The Proposed Rules would set aside 30% of the total Community Solar Capacity Limit for Community Solar Generating (“CSG”) Facilities that provide a minimum of 10% of their output to Low-Income Customers. The parties commenting on this issue felt that this is too little, and the set-aside for Low-Income Customers should be increased.

350 New Orleans argues that the proposed set aside of 30% of the capacity limit for community solar projects is too small.⁹ The AAE also recommends that 20% of each project be reserved for low-income subscriptions, rather than a percentage of a percentage of total projects being reserved, because as the rules are proposed, only 3% of the total community solar capacity would be reserved for Low-income Customers.¹⁰

ENO also argue that while the Proposed Rules indicate that 30% of the total community solar capacity limit be reserved for Low-Income Customers, it appears that there are no specific requirements that each CSG Facility have a portion reserved for Low-Income Customers.¹¹ ENO recommends that the Proposed Rules require that 30% of the total capacity from each CSG Facility be reserved for Low-Income Customers, similar to requirements that have been placed on real estate developers to help ensure availability of low income housing in the City.¹²

AAE states that there is consensus among all parties that every project should reserve a significant percentage of access for qualified Low-Income Customers.¹³ AAE notes that this means that projects will not then be able to provide two 40% blocks of capacity to large commercial/municipal customers and suggests reducing the limit to not more than 30% of any single project.¹⁴

ENO states that it agrees with AAE and 350 New Orleans regarding the need to reserve a significant percentage of every CSG Facility for Low-Income Subscribers, and suggests the Council consider a range of 20-30%, as suggested by the parties.¹⁵

The Advisors are amenable to generally increasing the amount of community solar reserved for Low-Income Customers above the initially proposed threshold. However, the Advisors are concerned that applying a minimum low-income threshold to every community solar project may deter certain types of developers, and this is an area where a trade-off will need to be made.

While increased attention has been given in recent years to encouraging low-income participation in community solar programs, best practices have not yet been determined. For example, in its Model Rules for Shared Renewable Energy Programs, the Interstate Renewable Energy Council (“IREC”) writes:

⁹ 350 New Orleans’ Response to the Council’s Utility Advisors’ White Paper, Docket No. UD-18-03, at 2 (Sept. 28, 2018) (“350 New Orleans’ Comments”).

¹⁰ AAE Comments at 4.

¹¹ ENO Comments at 15.

¹² ENO Comments at 15.

¹³ Alliance for Affordable Energy’s Reply Comments on Parties Preliminary Comments, Docket No. UD-18-03, at 5 (Oct. 31, 2018) (“AAE Reply Comments”).

¹⁴ AAE Reply Comments at 5.

¹⁵ ENO Reply Comments at 3.

Ultimately, encouraging participation by low-income energy consumers or siting guidelines requires creative thinking about program design. However we are actively considering how to encourage participation in shared solar by low-income energy consumers and we hope to be able to offer more information on this front going forward.¹⁶

The Advisors also note that of the seventeen state policies/regulations that we reviewed in the development of our White Paper and Proposed Rules,¹⁷ only one contained a provision that would require all CSG Facilities to reserve 20-30% of their capacity for Low-Income Customers, and there is no available data on whether that requirement has proven successful.

350 New Orleans is correct that a few states have adopted low-income participation carveouts greater than the 3% proposed by the Advisors (and the Advisors are amenable to increasing the total carveout to 15% as discussed below), however, 350 New Orleans' statement that "Colorado demands 5%, Oregon 10%, Connecticut 20%, Hawaii 50%, Maryland 30% and NYC 20%"¹⁸ is not entirely accurate, and in any event many of those requirements are not on a per-project basis.

Colorado regulations provide that in each plan an investor-owned utility submits to acquire renewable energy and Renewable Energy Credits ("RECs") from the Community Solar Gardens, the investor-owned utility must reserve, to the extent there is demand for such ownership, at 5% percent of its renewable energy purchases from new Community Solar Gardens for eligible low-income Community Solar Garden subscribers.¹⁹ The regulations make clear that this may be through either dedicated (*i.e.*, 100%) low income Community Solar Gardens, or through Community Solar Gardens with low-income set-asides.²⁰ Therefore, while Colorado does reserve 5% of the community solar capacity for Low-Income Customers, it does not require each project to reserve 5% of its capacity for Low-Income Customers.

Oregon's law requires that its commission develop a methodology by which 10% of the total generating capacity of the community solar projects operated under the program will be made available for use by low-income residential customers of electricity.²¹ The Oregon Public Utility Commission ("PUC") adopted a requirement that at least 5% of each community solar project be allocated for use by low-income residential customers, and at least an additional 5% of the total program must be allocated to service low-income residential customers, but recognized that determining how to implement this would be challenging and require further input and development, and stated that their intent was to subsequently either reaffirm the 5% per project requirement and 5% additional program requirement or to adopt another approach.²² The

¹⁶ Interstate Renewable Energy Council: Model Rules for Shared Renewable Energy Programs, at 16, <http://www.irecusa.org/wp-content/uploads/2013/06/IREC-Model-Rules-for-Shared-Renewable-Energy-Programs-2013.pdf>.

¹⁷ The Advisors reviewed community solar statutes and/or regulations in the following states: California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, North Carolina, Oregon, Rhode Island, South Carolina, Vermont, Washington, and Washington, D.C. *See also*, NRRI, Tom Stanton, Kathryn Kline: The Ecology of Community Solar Gardening: A 'Companion Planting' Guide, at 15-18, Table 1, <http://nrri.org/download/nrri-16-7-community-solar/>.

¹⁸ 350 New Orleans' Comments at 2.

¹⁹ Colo. Code Regs. § 3665(d)(IV).

²⁰ Colo. Code Regs. § 3665(d)(IV)(B).

²¹ S.B. 1547, 78th Leg.(Or. 2016); Or. Rev. Stat., ch. 757 § 22(9)(a).

²² Oregon Public Utility Commission, Order No. 17-232, at 11, Docket No. AR 603 (June 29, 2017).

community solar program in Oregon is still under development, Oregon has chosen a model with a program administrator, and its competitive selection of the program administrator was still under way as of November 13, 2018,²³ therefore, as of yet, there are no results to report regarding the success of Oregon's requirement that every CSG Facility provide at least 5% of its total nameplate capacity to only qualifying residential Low-Income Customers.

Connecticut has no state law mandating that 20% of its community solar capacity be provided to Low-Income Customers, however, in its solicitation for providers to participate in its pilot program, the Connecticut commission did seek proposals that would provide 20% of the estimated annual output of the facility to low-to-moderate-income customers.²⁴ While the commission did receive and select bids that contain this amount of low-to-moderate income participation,²⁵ it is still too early to tell whether these projects will succeed in recruiting 20% low-to-moderate income customers. Insofar as the Advisors have been able to determine, none of the three selected projects have commenced operations yet.

Hawaii's requirement does not apply to all community solar developers. Hawaii is taking a different approach to how the utilities on Hawaii may participate in community solar. Hawaii is phasing in its community solar program, and in order to encourage the development of third-party community solar providers, it is limiting utility participation in the first two phases of the program.²⁶ In the first phase of Hawaii's program, utility participation is limited to that of program administrator (establishing administrative and information technology infrastructure, defining and verifying "low-to-moderate-income" customers, and overseeing capacity allocation), and in the second phase, a utility may only participate as a Subscriber Organization if its CSG Facilities serve at least 50% low-to-moderate-income customers.²⁷ Third-party community solar providers are required to have low-to-moderate-income marketing plans and will be subject to reporting requirements, but will not have a minimum requirement.²⁸ Phase 1 (first year of program) is limited to 8 MW of capacity,²⁹ while in Phase 2 (second year of program), 64 MW will be allocated, with only 9 MW going to utilities,³⁰ which means that of the 72 MW of capacity for the first two years of Hawaii's program only 4.5 MW, or 6.25% is actually reserved for Low-Income Customers. These rules were approved by the Hawaii Public Utilities Commission in December of 2017, so the program has not yet entered Phase 2 and provides little insight as to whether or not reserving the capacity for Low-Income Customers will be effective in facilitating low-income participation.

²³ Oregon Public Utility Commission Staff Report, Docket No. UM 1930, at 3 (Nov. 13, 2018).

²⁴ Connecticut Department of Energy & Environmental Protection, Request for Proposals from Private Developers for Shared Clean Energy Facilities (Revised), Section 3.8 (Mar. 28, 2017).

²⁵ Connecticut Department of Energy & Environmental Protection, Notice of Final Determination, at 3 (June 28, 2017).

²⁶ Public Utilities Commission of Hawaii, Decision and Order No. 35137, at 87, Docket No. 2015-0389 (Dec. 22, 2017).

²⁷ Public Utilities Commission of Hawaii, Decision and Order No. 35137, at 88, Docket No. 2015-0389.

²⁸ Public Utilities Commission of Hawaii, Decision and Order No. 35137, at 90, Docket No. 2015-0389.

²⁹ Public Utilities Commission of Hawaii, Decision and Order No. 35137, at 6 Docket No. 2015-0389, Attachment A, Community-Based Renewable Energy: A Program Framework (Dec. 22, 2017).

³⁰ *Id.* at 11.

Maryland set aside about 60 MW of capacity out of its 193 MW statewide cap (approximately 30%) for projects focused on low and moderate income customers.³¹ However, it is important to understand that to qualify for this category, a project must serve more than 30% of its output to low or moderate income customers, of which Low-Income Customers receive a minimum of 10% of output. This means that in reality, Maryland reserves about 9% of capacity for moderate or Low-Income Customers and approximately 3% exclusively for Low-Income Customers. Thus the amount of capacity reserved for Low-Income Customers by Maryland is similar to that proposed by the Advisors in the White Paper.

New York broke its community DG program into two phases and prioritized for the first phase two types of projects: (1) projects that locate at sites where they will bolster grid reliability or provide other locational benefits; and (2) projects where 20% of the subscribers are Low-Income Subscribers.³² Unfortunately, no projects with 20% low-income participation were developed in Phase 1 of New York's community DG implementation³³ and even after subsequent phases of the program, after hundreds of community solar projects had been built in the state, the New York Public Service Commission ("PSC") noted that extending solar access to Low-Income Customers remains a challenge.³⁴ After a PSC Staff-led low income working group process -- having apparently abandoned the capacity set-aside concept -- Staff recommended and the PSC approved three programs to encourage and support low-income participation: (1) allowing Low-Income Customers to use a portion of their monthly affordability program bill discount to purchase community solar, coupled with a guarantee from developers that the credits the Low-Income Customer receives would be equal to or greater than the foregone portion of the bill discount (placing the risk on developers);³⁵ (2) extending the New York State Energy Research and Development Authority's income verification service to developers to assist them in more easily identifying and verifying the eligibility of Low-Income Subscribers;³⁶ and (3) the creation of a loss reserve fund that would be public funds set aside to cover potential losses that developers may incur if Low-Income Subscribers default on their subscriptions.³⁷

Further to the states identified by 350 New Orleans, the Advisors' research found that Rhode Island allows Low-Income Customers to be eligible for community solar credits³⁸ and Washington, D.C. requires that developers promote participation among Low-Income Customers.³⁹ California requires utilities to actively market community solar to Low-Income Customers, and allows varying subscription levels.⁴⁰ Delaware, Maine, Minnesota, New Hampshire and Vermont appear to have no measures to encourage low-income participation in their programs. Thus, there are few, if any examples of other states that have successfully implemented a per-project minimum

³¹ Maryland's Community Solar Program, <https://www.psc.state.md.us/electricity/community-solar-pilot-program/>.

³² New York Public Service Commission, Case No. 15-E-0082, Order Establishing a Community Distributed Generation Program and Making Other Findings, at 19, 22 (July 17, 2015).

³³ New York Public Service Commission, Case Nos. 15-E-0751 and 15-E-0082, Staff Report on Low-Income Community Distributed Generation Proposal, at 4-5 (Dec. 15, 2017).

³⁴ New York Public Service Commission Case Nos. 15-E-0751 and 15-E-0082, Order Adopting Low-Income Community Distributed Generation Incentives, issued July 12, 2018, at 3.

³⁵ *Id.* at 4-5.

³⁶ *Id.* at 7.

³⁷ *Id.* at 8.

³⁸ S.B. 2450 Substitute B, § 39-2.1.2 (R.I. 2013).

³⁹ Community Renewable Energy Amendment Act of 2013, (D.C. Law 20-47, Oct. 17, 2013).

⁴⁰ S.B. 43, ch. 7.6 § 2833 (Cal. 2013).

low-income participation threshold for the Council to evaluate. There is simply little to no data available regarding the impact that such a threshold has on the deployment of community solar or the success it has in increasing low-income participation, and there may well be a downside to the requirement.

Establishing a minimum low-income participation requirement for each project will certainly result in a higher percentage of community solar capacity being made available to Low-Income Customers, which the Advisors agree is a desirable result. However, the Advisors believe that requiring every project to include Low-Income Customers will most likely reduce the total number of community solar projects built by creating a deterrent for potential project owners such as large apartment buildings, condominium associations and homeowners associations who wish to create a project specifically for the residents of their building or neighborhood, but who do not have a sufficient number of low-income residents interested in participating. Those entities may decide not to build a project if they have to go beyond the building or neighborhood the project is meant to serve in order to recruit low-income participants, or have to pay an additional fee to the developer they are working with for that service. In addition, large industrial customers who wished to join in creating a community solar project together with two or three other large, sophisticated industrial customers on an industrial site may balk if they are required to recruit Low-Income Customers because it substantially complicates the logistics of establishing a project. It was for this reason that the Advisors proposed establishing a carve-out related to the total capacity available for community solar rather than a requirement for each project.

Given the willingness of the parties to accept a minimum requirement for each project, even in light of the anticipated deterrent effect on certain types of project developers, the Advisors believe that could be a reasonable approach for the Council to take. If the Council moves in that direction, the Council could also consider exempting projects from that requirement upon petition to the Council and for good cause shown.

However, the Advisors continue to believe that it would facilitate increased community solar development in New Orleans to allow some percentage of projects to proceed without being required to provide a certain percentage of the CSG Facility's output to Low-Income Subscribers. The Advisors do agree that the set-aside for low-income participation can be increased, and have revised our recommendation to be that the Council adopt a rule that would reserve 50% of the total community solar capacity for projects that provide a minimum of 30% of their output to Low-Income Subscribers. This would reserve a total amount of approximately 15% of the community solar capacity for low-income customers, which, according to the Advisors' research, would be the second highest low-income set-aside in the country. The Advisors also recommend that once the initial three-year phase of the program has passed, and the Council reconsiders the overall capacity limit, that the Council reconsider this requirement. At that time, the Council will have three years of data regarding low-income participation in community solar projects, and whether a requirement that projects have a certain percentage of low-income participation is successful in increasing low-income participation, or whether it is a significant deterrent to the development of community solar projects. Additionally, if and when the Council decides to lift a total capacity limit on community solar programs in New Orleans, it would be appropriate at that time to revise how the low-income participation requirement is determined, including whether or not to require that each CSG Facility include a certain percentage of low-income participation.

3. Other Mechanisms to Facilitate Low-Income Customer Participation

In addition to a specific capacity set-aside for Low-Income Customers, the Advisors' Proposed Rules would exempt Low-Income Customers from the requirement to subscribe to at least 1 kW of a CSG Facility's capacity, allowing them to invest at a lower level of commitment,⁴¹ and Subscriber Organizations may apply uniform income, security deposit, and credit standards to promote participation by Low-Income Customers that differ from the uniform standards applied to other customers.⁴²

The AAE does agree that participation by Low-Income Customers should be encouraged by allowing more flexible standards for income, credit and security deposit, but believes the risk involved in this flexibility should be carried by the project developer.⁴³

350 New Orleans also suggests including specific incentives to achieve low-income ratepayer participation, but makes no suggestion as to what those incentives should be other than a vague reference to financing green banks and cooperating with non-profit affordable housing providers.⁴⁴

ENO supports facilitation of Low-Income Customer participation, but states that the Proposed Rules lack the necessary specificity about how these benefits can be ensured.⁴⁵ ENO states concern that the language stating that opportunities to encourage low-income participation should be "guaranteed or underwritten by the utility" could require ENO's non-participating customers to subsidize third-party developers' community solar offerings that are poorly structured, designed, located, marketed, operated, or maintained.⁴⁶ ENO is concerned that many of the customers providing such subsidy would also be Low-Income Customers.⁴⁷ ENO proposes an additional requirement, that ENO will not be responsible for guaranteeing or underwriting any agreements or contracts that a Subscriber Organization enters into with a Low-Income Subscriber to encourage low-income participation.⁴⁸

ENO also agrees with 350 New Orleans' suggestion that the Proposed Rules need more detail on the funding sources for incentives to help with low-income participation and that the appropriate kinds of funding sources are non-profit organizations and other community benefit groups.⁴⁹ ENO argues that the current language of the Proposed Rules is susceptible to an interpretation that could result in other utility customers being charged with funding these incentives, and that this is troubling, because many of those other utility customers may also be Low-Income Customers.⁵⁰

The Advisors clarify that the Proposed Rules are not intended to require non-participating customers to subsidize participating Low-Income Customers through utility rates or in any other

⁴¹ Proposed Rules, Section V.B.(4).

⁴² Proposed Rules, Section XIV.E.(1).

⁴³ AAE Comments at 4.

⁴⁴ 350 New Orleans' Comments at 2.

⁴⁵ ENO Comments at 5.

⁴⁶ ENO Comments at 14, 22.

⁴⁷ ENO Comments at 14-15.

⁴⁸ ENO Comments at 22.

⁴⁹ ENO Reply Comments at 4.

⁵⁰ ENO Reply Comments at 4.

manner. The Advisors have not conducted a comprehensive survey of what non-profit organizations and community groups might be available to assist Low-Income Customers in participating in community solar projects. While the Council certainly has sufficient influence to attract and encourage such non-profits and community groups and draw their attention to the need of Low-Income Customers for support, but because the Advisors are unaware of any authority the Council may have to actually direct such organizations to subsidize low-income participation in community solar, the Advisors do not believe it is appropriate for such organizations to be discussed in the Proposed Rules. The Advisors suggest that the most effective way for such organizations to assist Low-Income Customers may be in working with developers to subsidize the cost for Low-Income Customers to subscribe to a CSG Facility, or to create low-cost CSG Facilities for Low-Income Customers, rather than through those customers' utility rates and would hope that the Council, ENO, and stakeholders will work to facilitate and encourage such relationships to develop between developers and non-profit organizations and community groups.

B. Need for Consumer Protections and the Enforcement Thereof

In the White Paper, the Advisors recommended that the Council adopt a comprehensive set of consumer protections to ensure that when community solar opportunities are presented to consumers, they are presented in a transparent manner that ensures that consumers correctly understand the commitment they are making and what they can expect to receive in exchange for that commitment.⁵¹

ENO states that it supports defined consumer protections and regulations, but argues that the Proposed Rules lack any specific mechanisms or processes for enforcement of the consumer protections proposed.⁵² ENO argues that the Proposed Rules should set forth penalties for violations of the consumer protection provisions and/or a process for assessing whether and how such penalties should be determined and enforced.⁵³ ENO also expresses concern with the language in the Proposed Rules referring to "other directly quantifiable costs," which does not provide adequate clarity as to what avoided costs exactly would fall into this category and how those costs should be calculated.⁵⁴ ENO argues that in the 2011-2013 time period, there were numerous complaints and lawsuits related to unfair and unethical business practices carried out by rooftop solar providers and that these companies were able to take advantage of New Orleans residents because adequate consumer protections and safeguards were not put into place, there were no mechanisms for enforcement and oversight was neglected.⁵⁵ ENO argues that in order to prevent such a situation from recurring, robust consumer protections, safeguards, and most importantly, enforcement mechanisms (and funding for those mechanisms) must be put in place before third-party operated community solar projects are allowed to move forward, followed up

⁵¹ White Paper at 19, Proposed Rules, Section XIV.

⁵² ENO Comments at 4.

⁵³ ENO Comments at 4-5.

⁵⁴ ENO Comments at 10.

⁵⁵ ENO Comments at 11, *citing* Thompson, Richard; Nearly \$2M lawsuit accuses Sade power Enterprises CEO Jon Sader of breach of contract; the New Orleans Advocate; January 13, 2015, *see,* https://www.theadvocate.com/new_orleans/news/business/article_9724cf30-da9f-57f8-a70f-e7fb4a300606.html.

by on-going, rigorous oversight and enforcement by the Council as the developers of such projects transact with New Orleans residents.⁵⁶

ENO states that it has significant concerns about the lack of specifics concerning which City agencies, entities, and/or personnel will be responsible for enforcing the Proposed Rules and requirements, and that despite significant language regarding monitoring and reporting, it does not appear that the Proposed Rules provide for direct consequences for any Subscriber Organization that breaks any of the Proposed Rules.⁵⁷ ENO suggests adding a section to the Proposed Rules that clearly establishes the Council's regulatory authority over Subscriber Organizations by providing that Subscriber Organizations recognize and consent to the Council's regulatory authority by voluntarily registering as a Subscriber Organization with the Council.⁵⁸ In addition, ENO suggests that the Council, as an additional component of this proceeding, devote consideration to (i) appropriate and necessary consequences for violations of the Proposed Rules, (ii) a process for enforcement of those consequences and through which Subscriber Organizations can remediate violations, and (iii) the dedication of appropriate staffing resources and funding to ensure that such enforcement can be achieved, prior to adoption of any final rules on community solar.⁵⁹ ENO suggests that there be an opportunity for stakeholders to comment on the enforcement process and that this occurs as an additional step in the procedural schedule within this docket prior to the submission of the Advisors' Report or that the Advisors' Report could set forth suggestions for additional components of the Proposed Rules that provide for enforcement mechanisms, and then parties could have an opportunity to comment upon those additional aspects of the Proposed Rules prior to the Council's adoption of the final Community Solar Rules.⁶⁰

ENO does not believe that the Proposed Rules adequately ensure the limitation of risk borne by ENO's customers that choose to participate in community solar projects, and suggests a change to the Proposed Rules to clarify that a participant's risk is limited to the loss of the funds they commit to invest in the project.⁶¹

ENO agrees with the AAE regarding the importance of consumer protections and shares the view that any rules adopted should resolve questions regarding which department(s) within the City will be responsible for enforcing the protections and how resources will be allocated to ensure that adequate enforcement is possible.⁶² ENO also agrees that the additional systems and resources required for enforcement of the Council's rules need to be determined in this proceeding.⁶³ AAE also agrees that fully enforcing consumer protections are necessary to ensure developers do not work in bad faith, and believes that the Council Utility Regulatory Office ("CURO") office should be charged with administering such protections.⁶⁴ They also agree with ENO's comments regarding appropriate staffing resources and funding for enforcement, and encourage the Council to continue to work with Civil Service to ensure these resources are available.⁶⁵ However, contrary

⁵⁶ ENO Comments at 12.

⁵⁷ ENO Comments at 12.

⁵⁸ ENO Comments at 13, 16-17.

⁵⁹ ENO Comments at 13, 27.

⁶⁰ ENO Comments at 13-14.

⁶¹ ENO Comments at 17.

⁶² ENO Reply Comments at 2.

⁶³ ENO Reply Comments at 2-3.

⁶⁴ AAE Reply Comments at 6.

⁶⁵ AAE Reply Comments at 6.

to ENO, the AAE does not recommend the addition of a set of prescribed penalties.⁶⁶ The AAE notes that ENO has no such set list of penalties applicable to it for violations or grievances, and argues that establishing a fixed set of penalties would reduce the Council's jurisdictional authority to address violations on a case-by-case basis.⁶⁷

Air Products agrees with ENO's concern that the Proposed Rules do not include any penalties for violations of consumer protection components of the Proposed Rules or identify department or agencies within the City to address and enforce the protections.⁶⁸

The Advisors agree that CURO should have oversight of the community solar consumer protections, with the assistance of a Hearing Officer to adjudicate disputes and violations to ensure that due process is afforded to all parties. These will be entirely new roles for CURO and a Hearing Officer, and therefore will most likely require some level of new budget funding to enable these functions. The Advisors believe that it would be reasonable for the Council to charge a fee for initial registration and annual reporting to maintain the registration in order to help defray some of the costs of the increased budget. The income from such a fee would not be predictable, however, until the rate of adoption of community solar projects becomes apparent, so the Advisors would anticipate that most likely only a portion of the administrative costs would be covered through such fees. Charging a fee would, however, still help ensure that at least a portion of those costs are paid for by Subscriber Organizations, and do not have to be flowed through to ratepayers or taxpayers.

On the topic of appropriate penalties, the Advisors suggest that a compromise may be available to the Council to address both ENO's and AAE's concerns and create administrative efficiency. For the Council to address every complaint on a case-by-case basis could take up a considerable amount of Councilmember time, and result in aggrieved consumers having to wait a considerable period of time to resolve their complaint. Rather, the Advisors suggest the Council could set parameters and fines that, after providing the parties with appropriate due process, CURO and/or a Hearing Officer would have authority to administer on the Council's behalf. The Council could then also provide the right to appeal that decision to the Council, and also the ability for CURO and the Hearing Officer to refer any matter up to the Council for further action where CURO and/or the Hearing Officer believe that the ordinary penalty is insufficient, or where they see a persistent, recurring pattern of behavior that in their opinion requires the Council's attention. The Advisors believe that this process would allow for speedier relief for aggrieved customers and a more streamlined process for addressing the majority of complaints while preserving the Council's ability to take action on a case-by-case basis for grievances that cannot effectively be addressed by the usual complaint process.

⁶⁶ AAE Reply Comments at 6.

⁶⁷ AAE Reply Comments at 6.

⁶⁸ Air Products and Chemicals, Inc. Reply Comments on Council Utility Advisors' White Paper and Proposed Rules for Community Solar Projects, Docket No. UD-18-03, at 3 (Oct. 31, 2018) ("Air Products Reply Comments").

C. Transparency and Reporting

1. *Utility and Subscriber Organization Registration*

The Advisors' Proposed Rules included requirements that Subscriber Organizations register with the Council and maintain certain information on file with CURO for the duration of its operation.⁶⁹

ENO argues that, in order to achieve the Council's objectives of strengthening the solar industry in New Orleans and the New Orleans economy, the Council should add a requirement that Subscriber Organizations must submit a business address located within Orleans Parish as well as a new requirement that Subscriber Organizations submit proof of their valid Occupational or Business License from the City's Bureau of Revenue to help ensure that third-party developers commit to growing the Orleans Parish economy and customers have a locally-sited point of contact.⁷⁰

The AAE agrees with the Advisors that community solar should be opened to third-party developers of projects in New Orleans, and that every effort should be made to preserve equitable opportunity for non-utility developers.⁷¹ The AAE supports the proposed Subscriber Organization registry and agrees it would most likely fit inside the CURO, although, the AAE notes, it will require additional administrative systems and support for CURO which should be accounted for in the final rules.⁷²

The Advisors believe that the requirement in the Proposed Rules for Subscriber Organizations to provide the name of a registered agent in Orleans Parish should be sufficient, and that a Orleans Parish business address does not need to be provided. While it is the Advisors' hope that Subscriber Organizations will either have or open a business office in New Orleans, we recognize that there are several national organizations providing community solar projects in other parts of the country who may have an interest in developing community solar projects in New Orleans but may not be willing to open an office until they are assured of having enough business in New Orleans to warrant an office. The Advisors do not wish to deter such organizations from conducting business in New Orleans by putting a more onerous requirement into place, and believe that it should be sufficient to require that such businesses be properly registered to conduct business in the state and the City and have a registered agent in Orleans Parish, as well as proof of a sufficient level of insurance. The Advisors believe that ENO's suggestion that Subscriber Organizations be required to submit proof of their valid Occupational or Business License from the City's Bureau of Revenue is reasonable and should be added. The purpose of this requirement should be to require that the Subscriber Organization demonstrate that it has met all ordinary criteria for conducting business in Orleans Parish, and not to create additional hurdles not applicable to other businesses in Orleans Parish.

⁶⁹ Proposed Rules, Section VII.

⁷⁰ ENO Comments at 18.

⁷¹ AAE Comments at 3.

⁷² AAE Comments at 3.

2. *Utility and Subscriber Organization Reporting and Publicly Available Information*

The Proposed Rules also contained requirements of information the utility must maintain and publish on its website and an annual reporting requirement.⁷³

ENO states that Air Products and the AAE both discuss the need for transparency and making certain information about CSG Facilities publicly available, however they differ on who should maintain the publicly accessible information.⁷⁴ ENO believes that the AAE's suggestion that CURO maintain this information is more appropriate than Air Products' suggestion that ENO maintain it.⁷⁵

AAE supports ENO's recommendation for annual reporting by Subscriber Organizations to ensure that customers are not "gaming" a system.⁷⁶

The AAE also believes that consumer information should be available on the Council's website, including the standards for marketing, contracts, and deceptive acts and that the standard cover page, minimum contract requirements, and a consumers bill of rights for community solar should be available through the Council's website, and suggest an information portal devoted to all renewable programs approved by the Council.⁷⁷ The AAE fully agrees that transparency is vital to any consumer protection, and supports the requirement of consumer disclosure standards to ensure customers are given fair and accurate information.⁷⁸

Air Products recommends that parameters for the tariffs and Community Solar Plan to be developed by ENO be established in this rulemaking and that the Proposed Rules expressly require that ENO's Community Solar Plan and tariffs must be approved by the City Council.⁷⁹ Air Products also argues that ideally draft tariffs and a plan would be developed in this rulemaking proceeding.⁸⁰

Air Products also requests that the City Council maintain a public database of participating Subscriber Organizations who have registered with the City Council, and that ENO should be required to maintain on its website a publicly accessible database of Subscriber Organizations whose applications for a particularly CSG Facility have been approved, with a copy of the contract between ENO and the Subscriber Organization publicly accessible.⁸¹ Air Products would also like information regarding the level of subscription of each CSG Facility and such Facility's

⁷³ Proposed Rules, Sections VIII.E. and F.

⁷⁴ ENO Reply Comments at 11.

⁷⁵ ENO Reply Comments at 11.

⁷⁶ AAE Reply Comments at 2.

⁷⁷ AAE Comments at 8; AAE Reply Comments at 6-7.

⁷⁸ AAE Comments at 8.

⁷⁹ Air Products and Chemicals, Inc. Comments on Council Utility Advisors' White Paper and Proposed Rules for Community Solar Projects, Docket No. UD-18-03, at 5 (Sept. 28, 2018) ("Air Products Comments").

⁸⁰ Air Products Comments at 5.

⁸¹ Air Products Comments at 5.

performance in the prior calendar year should also be publically available, including the extent to which ENO is the Subscriber Organization for a CSG Facility.⁸²

The Advisors agree that the Council's website should maintain a list of Subscriber Organizations registered with the Council, along with the Council's Consumer Protections and how consumers can submit a complaint to the Council. The Advisors also recommend that the Council's website include the name of any Subscriber Organization whose registrations have been revoked by the Council.

The Advisors also believe it would be appropriate for ENO's website to contain a link to the Council's web page regarding Subscriber Organizations, as well as a list of specific projects for which ENO has received applications, and the status of those projects in the approval and interconnection processes as well as the current subscription levels of the projects. Subscriber Organizations should provide ENO with updated subscriber information on a monthly basis.

D. Safety and Reliability

The Proposed Rules state that Subscriber Organizations, and where relevant, third-party owner/developers, are responsible for ensuring that the CSG Facilities are constructed, maintained, and operated in compliance with all relevant local, state, and federal laws, rules and regulations, including, but not limited to, zoning, permitting, occupational safety and health, and environmental laws, rules, and regulations.⁸³

The AAE agrees with all Advisors' recommendations for Safety and Reliability protocol and requirements, and looks forward to hearing from ENO any other technical concerns related to safety or reliability that should be considered.⁸⁴

ENO agrees that these are important concerns and notes that the recommendations in the White Paper do not seem to be adequately articulated in the Proposed Rules.⁸⁵ ENO recommends that, if the Council adopts a version of the Proposed Rules, additional language should be added to incorporate the White Paper's recommendations related to safety and reliability.⁸⁶ ENO suggests that the 1,000 kW limit contained in Section IV.B(5) of the Proposed Rules to also function as a limit on the amount of capacity that can be located on a single feeder, as an initial rule.⁸⁷ ENO also argues that another important safeguard is ensuring that Subscriber Organizations are required to adhere to the policies and practices enumerated in ENO's interconnection policy.⁸⁸

The Advisors are amenable to adding to the rules any further language needed to ensure that CSG Facilities are operated in a safe and reliable manner and do not negatively impact the reliability of the grid. It is the Advisors' expectation that the Standard Interconnection Process proposed by ENO would include an evaluation of any potential negative impact upon reliability resulting from

⁸² Air Products Comments at 5-6.

⁸³ Proposed Rules, Section VII.B(6). *See also* White Paper at 19.

⁸⁴ AAE Comments at 8.

⁸⁵ ENO Reply Comments at 5.

⁸⁶ ENO Reply Comments at 5.

⁸⁷ ENO Reply Comments at 5.

⁸⁸ ENO Reply Comments at 5.

the interconnection and operation of the CSG Facility, and would expect that any upgrades required to ensure that the CSG Facility can be safely interconnected would be the responsibility of the Subscriber Organization/developer, and would not be a cost passed on to ratepayers. The Advisors believe that this clarification should resolve ENO's concern about overloading any particular feeder.

E. Treatment of ENO's Community Solar Proposal in the Combined Rate Case

In its September 21, 2018 Combined Rate Case,⁸⁹ ENO proposed, *inter alia*, a Community Solar Offering, under which participants would voluntarily pay for a specific allocation of offsite solar PV projects, and in return for an upfront or ongoing payment, would receive a credit on their monthly electric bill, tied to the actual output of the solar photovoltaic ("PV") project.⁹⁰

In its comments in this proceeding, ENO expresses its hope that its efforts to develop a community solar project that resulted in the project proposed in the Combined Rate Case will be treated as an additional option for customers, and not be precluded by the adoption of these rules.⁹¹ ENO is concerned that some of the Proposed Rules contain provisions that would effectively disallow new ideas like the community solar offering ENO proposed in the Combined Rate Case.⁹²

ENO argues that the community solar project proposed in the Combined Rate Case would initially be supported by assets with 6 MW of total capacity, which could disqualify it if the Proposed Rules limit such facilities to 2 MW.⁹³ The AAE argues that if such a 2 MW cap exists, it should apply to specific installations, not to a portfolio of projects such as that ENO proposed in the Combined Rate Case.⁹⁴

ENO argues that the efforts of the Proposed Rules to create a "level playing field" ignores the unique benefits that regulated utilities like ENO may be able to bring to a community solar offering that a non-regulated entity cannot bring.⁹⁵ ENO argues that rather than attempting to create a "one size fits all" approach, the Council's community solar framework could seek to foster multiple kinds of community solar offerings and leverage value and create multiple options for New Orleans residents by applying separate requirements to ENO's offerings and those from Subscriber Organizations.⁹⁶ ENO proposes that the Council utilize the instant docket to define the rules applicable to offerings from unregulated, third-party Subscriber Organizations and ENO's duties towards those organizations and consider ENO's proposed community solar offering in the Combined Rate Case.⁹⁷ ENO believes that sufficient distinction exists between its "Utility-Scale Community Solar" offering and the "Developer-Scale Community Solar" offering set forth in the

⁸⁹ Application of Entergy New Orleans, LLC for a Change in Electric and Gas Rates Pursuant to Council Resolutions R-15-194 and R-17-504 and for Related Relief ("Combined Rate Case Application"), Docket No. UD-18-07 (Sept. 21, 2018) ("Combined Rate Case").

⁹⁰ Combined Rate Case Application at 39.

⁹¹ ENO Comments at 2-3.

⁹² ENO Comments at 4.

⁹³ ENO Comments at 6.

⁹⁴ AAE Reply Comments at 7.

⁹⁵ ENO Comments at 5, 17.

⁹⁶ ENO Comments at 6.

⁹⁷ ENO Comments at 6.

Proposed Rules that the two kinds of offerings could complement each other rather than compete with each other.⁹⁸ For example, ENO notes, the community solar project proposed in the Combined Rate Case would initially be supported by assets with 6 MW of total capacity, whereas the Proposed Rules limit such facilities to 2 MW.⁹⁹ ENO also argues that the option for customers to participate in “Utility-Scale” offerings would help to offset the revenue requirements associated with ENO’s commitment to add up to 100 MW of renewable energy to its generation portfolio.¹⁰⁰ ENO suggests that the Council consider pursuing parallel, non-mutually-exclusive, paths on community solar in this docket and in the 2018 Rate Case and, in doing so, look to create multiple avenues through which New Orleans residents can support renewable resource development.¹⁰¹ ENO proposes that the Council remove the restriction in the Proposed Rules that prohibits ENO from giving itself any preferential treatment as a developer of a community solar project, or use ratepayer funding for its community solar projects in any manner not available to other developers.¹⁰²

ENO argues that there is no reason given for the Proposed Rules to bar ENO from rate basing any portion of a utility-owned and operated CSG Facility, while requiring ENO to dedicate significant labor and related costs like software, billing systems, distribution system analyses, reporting, etc. to administering parish-wide community solar with an unknown number of projects and participants.¹⁰³ ENO argues that the Proposed Rules provide a number of advantages and subsidies to third-party developers, who are not presently subject to Council regulation and oversight, at a significant potential cost to ENO and all of its customers, particularly with respect to which costs may and may not be recovered from ratepayers.¹⁰⁴

AAE argues that while they do not disagree that community solar could be an avenue to reduce the overall revenue requirement of ENO in reaching 100 MW of renewables, they also believe that community solar should be part of the City’s overall effort to reach a larger renewables goal for New Orleans, giving non-utility owned assets an avenue to participate in such a goal.¹⁰⁵ As to the suggestion of parallel tracks for ENO’s proposed Community Solar Offering within their Combined Rate Case, AAE’s position is to allow both tracks to continue, and, as long as the rules in the community solar docket are not “held up” by the conclusion of Council Docket No. UD-18-07, they see no reason to insist that the rules established in this docket impact the utility’s community solar mechanism in that docket.¹⁰⁶ AAE acknowledges that ENO’s proposal in Docket No. UD-18-07 may well be an example of the benefits the utility’s considerable resources can provide that developers cannot, which may be a reason to develop separate tracks, but states that any rules related to the function, administration, reporting, and consumer protections that are finalized within the community solar docket must apply equally to ENO.¹⁰⁷

⁹⁸ ENO Comments at 6.

⁹⁹ ENO Comments at 6.

¹⁰⁰ ENO Comments at 7.

¹⁰¹ ENO Comments at 7, 17-18.

¹⁰² ENO Comments at 17-18.

¹⁰³ ENO Comments at 7-8.

¹⁰⁴ ENO Comments at 7.

¹⁰⁵ AAE Reply Comments at 3.

¹⁰⁶ AAE Reply Comments at 3.

¹⁰⁷ AAE Reply Comments at 3.

Air Products agrees with ENO's recommendation to distinguish the Proposed Rules adopted in this docket as applying to "developer-scale community solar," and allowing ENO's Community Solar Program, as proposed in ENO's Combined Rate Case, to be separately considered for approval in the Combined Rate Case as "utility-scale community solar," with voluntary subscriptions that can be used to offset costs associated with ENO's 5 MW DG solar program approved in Docket No. UD-17-05.¹⁰⁸

The Advisors do not believe that the establishment of Community Solar Rules should preclude any party from proposing specific projects that differ from those rules to the Council for the Council's consideration. The establishment of Community Solar Rules is simply meant to establish an efficient framework and criteria that developers may use to establish a community solar project without the need for the Council to individually review and approve each specific project. To the extent that ENO or any other developer wishes to propose a DG project that is structured differently, the Advisors believe they should be welcome to propose such projects to the Council for consideration. However, the Advisors do recommend that to the extent the proposal is a community solar project that will not follow certain or all of the rules established in these proceedings, the entity proposing the project (including ENO) must demonstrate to the Council why deviation from these rules creates more benefits for New Orleans ratepayers than a program under the rules would bring. The Advisors would not look with favor upon proposals meant to circumvent the rules and gain an advantage over other developers. The Council would then have the opportunity to determine whether the potential benefits to be achieved by such projects warrant their approval by the Council.

F. Inclusion of Community Solar in ENO's IRP

ENO expresses concern that the Proposed Rules do not provide any details regarding how any community solar offerings available through Subscriber Organizations would interact with ENO's obligations related to IRP and ENO's continued ability to provide safe and reliable electric service to its customers at the lowest reasonable cost.¹⁰⁹ ENO states that there does not appear to be any language in the Proposed Rules that would give ENO timely insight into project locations, capacity or expected amounts of energy in advance to be considered in ENO's long-term planning process.¹¹⁰ ENO argues that, similar to the net metering tariff, having limited visibility into such matters only at the time interconnection requests are being submitted will make long-term planning and forecasting more difficult for ENO potentially on a much larger scale, and could indirectly increase costs for all customers.¹¹¹ ENO argues that developers should be required under the rules to provide all necessary data regarding CSG projects to ENO so that ENO can incorporate that information into its planning processes at the appropriate time.¹¹²

The AAE agrees that IRP must take into account the addition of CSG projects during the planning process as an energy, capacity, and grid related resource.¹¹³ The AAE states that it is unclear from

¹⁰⁸ Air Products Reply Comments at 3.

¹⁰⁹ ENO Comments at 5.

¹¹⁰ ENO Comments at 15.

¹¹¹ ENO Comments at 15-16.

¹¹² ENO Comments at 16.

¹¹³ AAE Reply Comments at 8.

ENO's comments what data ENO needs developers to provide, but AAE fully supports any efforts by both ENO and other parties to ensure IRPs in New Orleans are consistent with resource needs.¹¹⁴

The Advisors agree that ENO needs as much advance information regarding the deployment of Community Solar as is possible in order to improve the results of the IRP process. The Advisors are also conscious, however, that there are a significant number of factors that may impact whether and when a particular community solar project will be constructed, both before and after an interconnection request is made. For example, in transmission planning, independent system operators, such as the Midcontinent Independent System Operator, Inc. (“MISO”), must develop planning protocols that account for the fact that a certain percentage of generation projects in the interconnection queue never get constructed.

The Advisors would hope that as any given project is being developed, the developers would be in communication with ENO regarding the potential location and size of the project in order to identify as early as possible any potential impacts of the project on the distribution system. The Advisors recommend that community solar developers should be required to formally communicate a project’s location, capacity, and expected amounts of energy to ENO as soon as the project is sufficiently developed to begin soliciting subscriptions, or when an interconnection request is made, whichever occurs earlier in time. In order to prevent ENO from having a competitive advantage over other community solar developers due to the receipt of this information, ENO should make the list of all such announced projects publicly available on its website so that all community solar developers have access to this information. The Advisors believe such publication of the list of community solar projects under development in Orleans Parish would also assist potential Subscribers looking for a project or seeking to verify the status of a project and stakeholders in the IRP process trying to understand the potential impact on the Integrated Resource Plan. While this data will not be a perfect predictor of how much community solar energy and capacity will be built in any given year, over time, as ENO gathers enough data to begin identifying adoption rates and trends, the data will become increasingly useful in the IRP process.

II. Areas Where Significant Disagreement Among Parties Remains

While the level of consensus among the parties is very encouraging, there are some very important areas where the parties disagree, including the appropriate calculation of bill credits for Subscribers, the treatment of unsubscribed capacity, appropriate capacity limits, appropriate limits on customer participation, and the length of customer commitment that should be required.

A. Calculation of Subscriber Bill Credits

In the White Paper and Proposed Rules, the Advisors proposed that the subscriber credits be calculated as follows:

¹¹⁴ AAE Reply Comments at 8.

1. The avoided capacity, energy, and other directly quantifiable costs based on the utility's incremental cost of providing service;
2. The avoided energy costs will be the previous calendar year average hourly locational marginal prices available to the utility; and
3. The corresponding avoided capacity cost will be based on short-run marginal cost concept, and will be the current annual fixed cost revenue requirement of a peaking unit expressed in \$/kWh based on the typical annual energy output of a solar PV installed in Orleans Parish.¹¹⁵

ENO states concern that rather than creating a level playing field, the Proposed Rules as drafted create advantages and subsidies to third-party developers at the expense of ENO's customers to incur costs that should be allocated to the Subscriber Organizations.¹¹⁶

Air Products argues that the cost of participation in community solar should be borne by the Subscribers of CSG Facilities, and that this should be fully and clearly established in the Proposed Rules.¹¹⁷ Air Products requests that the Proposed Rules be revised to reflect that the cost of developing, owning, and operating a CSG Facility as well as ENO's costs for administering the program should be borne solely by the participants in the Community Solar Program.¹¹⁸ Finally, Air Products requests that the costs of any community solar program be recovered only on a demand basis and not on a per kWh basis.¹¹⁹ It is unclear, however, whether in order to implement this, Air Products is suggesting that residential customers that do not have a demand charge should be eliminated from the payments or whether residential rates should be reformed to include a demand charge, which would be beyond the scope of this docket. For this reason, the Advisors do not believe that recovering charges related to the community solar Program solely through a demand charge is a feasible method of cost recovery.

350 New Orleans argues that the subscription credits proposed by the Advisors are too low, but offers no alternative proposal as to how such credits should be calculated. Rather, their comments appear to imply that the credit should be set at a level that guarantees customers participating in community solar that they will make a guaranteed return on their investment in a community solar project, and does not appear to give any consideration to the impact that would have on rates.¹²⁰ 350 New Orleans urges the Council to adopt some form of virtual net metering pricing.

AAE supports the argument of 350 New Orleans that creating solar customers who have "solar ready" rooftops differently from those who do not is a blatant continuation of an inequity these rules are intended to reduce.¹²¹ AAE recommends that if the Council insists upon creating a separate class of solar customers who cannot install solar on their own rooftop, then only excess

¹¹⁵ White Paper at 15.

¹¹⁶ ENO Comments at 4.

¹¹⁷ Air Products Comments at 3.

¹¹⁸ Air Products Comments at 4.

¹¹⁹ Air Products Comments at 4-5.

¹²⁰ 350 New Orleans' Comments at 2-3.

¹²¹ AAE Reply Comments at 2.

energy at the end of the billing cycle be credited at a lower rate, to be “rolled over” to the following month.¹²²

The AAE argues that Subscribers of community solar should not be penalized because they cannot participate in traditional NEM.¹²³ The AAE argues that the compensation policy for community solar should match that of existing solar NEM policy in New Orleans.¹²⁴ The AAE argues that the value of participation in a community solar project is diminished if the Subscriber does not receive the retail rate and that this will ultimately limit the number of solar developers willing to offer community solar.¹²⁵ The AAE also argues that the Proposed Rules in Section VII.G(3) already provide a method of cost recovery for distribution level and utility operations costs specific to each generating facility, and that reducing the value of distributed systems below the retail rate in order to ensure all distribution costs are covered would potentially allow the utility to recover some costs twice.¹²⁶ As an alternative, the AAE states that it could support an effort by the Council to determine the actual value of solar that takes into account the entire value stack of resources related to distribution and transmission cost reductions, emissions, etc.¹²⁷ The AAE argues that the principle of treating all customers generating renewable resources equitably requires that community solar customers receive the same compensation as NEM customers.¹²⁸

The AAE’s characterization of the Advisors’ proposal as discriminatory against consumers who cannot afford to put rooftop solar on their roof is disingenuous and fails to acknowledge that many states treat NEM differently than community solar for various reasons. Indeed, both IREC and the National Regulatory Research Institute (“NRRI”) acknowledge that pricing for NEM and community solar typically differ.¹²⁹ Moreover, IREC recommends a monetary bill credit for shared renewables like community solar rather than a kWh credit as is often used in NEM tariffs as potentially benefitting participants more over time. IREC explains that even if bill credits are somewhat less than the cost of community solar participation initially, locking in a compensation rate through the program may result in participants saving as electric rates are anticipated to rise over time to increasing utility fixed costs.¹³⁰

Air Products strongly opposes the recommendation of the AAE for calculation of Subscriber bill credits based on the electric utility retail rate.¹³¹ Air Products argues that this would provide a massive subsidy to the Subscriber and would credit full retail value to the Subscriber even though most of the costs recovered in the retail rate would not be avoided.¹³² Air Products supports calculation of Subscriber bill credits based on the electric utility’s avoided capacity and avoided

¹²² AAE Reply Comments at 2.

¹²³ AAE Comments at 5.

¹²⁴ AAE Comments at 5.

¹²⁵ AAE Comments at 5.

¹²⁶ AAE Comments at 6.

¹²⁷ AAE Comments at 6.

¹²⁸ AAE Comments at 6.

¹²⁹ Interstate Renewable Energy Council: Model Rules for Shared Renewable Energy Programs at 5-6, <http://www.irecusa.org/wp-content/uploads/2013/06/IREC-Model-Rules-for-Shared-Renewable-Energy-Programs-2013.pdf>; see also NRRI, Tom Stanton, Kathryn Kline: The Ecology of Community Solar Gardening: A ‘Companion Planting’ Guide, at 21, <http://nrri.org/download/nrri-16-7-community-solar/>.

¹³⁰ IREC, Model Rules for Shared Renewable Energy Programs at 4, 6, and 9.

¹³¹ Air Products Reply Comments at 1.

¹³² Air Products Reply Comments at 1.

energy costs (rather than the retail rate), but questions why ENO proposes to use the prior year's average locational marginal price ("LMP") instead of the LMP price of a current bill for calculating avoided energy costs.¹³³ Air Products recommends that current LMPs be used for calculation of avoided energy costs.¹³⁴

ENO supports the general concept of the Proposed Rules' bill credit framework based on a monetary credit and a cost-based calculation, but argues that the Proposed Rules lack an appropriate degree of specificity regarding the bill credits ENO (and non-participating customers) would be required to pay to Subscribers and/or Subscriber Organizations.¹³⁵ ENO argues that they may either provide a framework for fair compensation, or could create an inequitable situation in which all ENO customers are effectively required to enter (and pay for) the equivalent of an uneconomic power purchase agreement ("PPA") with Subscriber Organizations.¹³⁶ ENO is concerned that AAE and 350 New Orleans advocate for completely disregarding the Advisors' research and suggestions on best practices with regard to calculating appropriate amounts for bill credits to be paid to Subscribers.¹³⁷ ENO disagrees fundamentally with their proposal to extend the pricing for NEM to community solar.¹³⁸ ENO also argues that virtual NEM is not an appropriate or established method for calculating community solar bill credits.¹³⁹ ENO argues that, other than expressing a desire to see the highest possible credits applied to Subscribers' bills, regardless of the impact on non-participants, the AAE and 350 New Orleans do not set forth any valid reason to justify their refusal to work within the bill credit framework proposed by the Advisors.¹⁴⁰

ENO states that AAE's argument that ENO has not requested that the Council change its existing NEM policy is not entirely accurate.¹⁴¹ ENO notes that in Council Docket No. UD-13-02, it did request that the Council consider changes to the NEM policy, and ENO engaged in procedural process over the course of more than a year to determine what changes would be appropriate.¹⁴² ENO explains that the AAE was an active participant in this proceeding.¹⁴³ ENO's work in that docket demonstrated that the existing NEM policy of providing net metered customers a 1:1 retail credit on their bills for the energy they export to the grid, regardless of whether that energy is needed at the time, is inherently inequitable because it causes a shift in costs from NEM customers to all others.¹⁴⁴ This cost shift occurs because the current rate design for residential and small commercial customers does not adequately reflect, or ultimately recover, the costs necessary to provide electric service to customers who install net metered self-generation equipment.¹⁴⁵ ENO argues that it believes the NEM pricing structure creates unfair cost-shifting between participants and non-participants that contravenes well-established and longstanding principles of cost

¹³³ Air Products Reply Comments at 2.

¹³⁴ Air Products Reply Comments at 2.

¹³⁵ ENO Comments at 4; ENO Reply Comments at 6.

¹³⁶ ENO Comments at 4.

¹³⁷ ENO Reply Comments at 6.

¹³⁸ ENO Reply Comments at 6.

¹³⁹ ENO Reply Comments at 8.

¹⁴⁰ ENO Reply Comments at 8.

¹⁴¹ ENO Reply Comments at 9.

¹⁴² ENO Reply Comments at 9.

¹⁴³ ENO Reply Comments at 9.

¹⁴⁴ ENO Reply Comments at 9.

¹⁴⁵ ENO Reply Comments at 9.

causation and allocation.¹⁴⁶ ENO states that it was responsive to the feedback from the parties in the NEM docket that any changes to the inherently inequitable NEM credit rate should be supported by additional data, including a current cost-of-service study and data from all Advanced Metering Infrastructure meters, and as such, ENO sought to suspend that proceeding and hold its request for the Council to re-evaluate its NEM policy in abeyance, subject to a reservation of rights to propose any policy changes once additional data became available.¹⁴⁷ ENO states that its request to suspend the evaluation of necessary policy changes related to NEM resulted from ENO's responsiveness to stakeholder feedback, not a belief that current NEM policies are appropriate.¹⁴⁸ ENO states that it still firmly believes that current NEM policies are inequitable and cause a cost shift that disproportionately burdens non-NEM customers, many of whom like at or below the poverty line.¹⁴⁹ ENO accuses AAE of seeking to use ENO's responsiveness to stakeholder feedback in Docket No. UD-13-02 in an attempt to circumvent the framework proposed by the Advisors in this docket and extend those inequitable policies to community solar, which would further exacerbate the cross-subsidization that already occurs.¹⁵⁰

The Advisors note that ENO is correct in its explanation of the current status of Council's Docket No. UD-13-02. In that proceeding, ENO submitted evidence, demonstrating to the Advisors' satisfaction, that non-NEM customers were subsidizing NEM customers. However, the correct amount for NEM customers to pay was difficult to determine in the absence of a cost-of-service study that would demonstrate what is ENO's cost to serve them. ENO recognized, and other parties agreed, that there was not enough data to determine what the appropriate rate would be, and it appeared that the level of adoption of NEM throughout New Orleans is still low enough, that the subsidy would not have a significant impact on the bills of most ratepayers. Thus, the Advisors agreed with ENO's proposal to suspend that docket until such time as ENO had been able to collect sufficient data to calculate what it costs ENO to serve a NEM customer. Moreover, it is helpful to note that it is evident that community solar projects will most likely impose greater costs on the system than rooftop solar. Rooftop solar is connected directly to the customer's building behind the meter - meaning that it never utilizes the distribution or transmission system to provide energy to the customer's home or business, it only uses the distribution and transmission system for the excess power generated by the customer that is sold back to ENO. Community solar, however, uses the distribution and transmission system for 100% of the power the customer uses in their home or business in addition to the "excess" power sold back to ENO. To characterize the Advisors' proposal as "penalizing" customers who cannot locate solar panels on their roof in comparison to NEM customers is inaccurate and demonstrates a fundamental misunderstanding of how retail rates are structured. Community solar customers will impose greater costs on the system than NEM customers. The Advisors note, however, that they should benefit from economies of scale, in that it should be cheaper on a per-MW basis to build a single, larger facility composed of many solar panels than to put a very small installation on a customer's home or place of business. Community solar customers, therefore, should be able to buy into a community solar project more cheaply than NEM customers can put solar on their roofs and, depending on the offers made by developers, may very well be able to make shorter commitments of time and smaller commitments

¹⁴⁶ ENO Reply Comments at 9.

¹⁴⁷ ENO Reply Comments at 10.

¹⁴⁸ ENO Reply Comments at 10.

¹⁴⁹ ENO Reply Comments at 10.

¹⁵⁰ ENO Reply Comments at 10.

of money to invest in solar. Thus, there is no reason to believe they will be disadvantaged by a properly structured bill credit that does not create significant subsidies from other customers.

ENO argues that Section VII(G)(3) of the Proposed Rules seems to indicate that some costs associated with third-party-owned and operated community solar projects should be billed to the Subscriber Organization and, thus, not passed on to ENO's customers through retail rates, but that Section VIII(G)(1) could be read to imply that the costs to administer the Community Solar Program should be recovered through rates, from all customers and not exclusively from Subscriber Organizations.¹⁵¹ ENO states that more clarity is needed in this section regarding how cost recovery would occur in practice as well as what form the fee (or charge) assessed to the Subscriber Organization would take.¹⁵²

ENO argues that in Section IX of the Proposed Rules, the method of calculating avoided energy costs is clearly described, whereas the method of calculating avoided capacity costs is ambiguous.¹⁵³ ENO states that, regardless of whether the MISO Planning Resource Auction (“PRA”) value or a value tied to an avoided “peaking unit” is used (which ENO objects to), it is concerned with the ambiguity of how the Proposed Rules would translate an avoided capacity cost (generally expressed in \$/kW-month) into a volumetric credit rate (cents per kWh) based on anticipated solar energy output.¹⁵⁴ ENO also expresses concern that the Proposed Rules do not indicate how the capacity valuation would account for the intermittency of solar resource and an associated reduction in the capacity value, like the capacity value reductions applied to intermittent resources by MISO.¹⁵⁵ ENO states that without further clarification as to what calculation steps would be used, it is concerned that the proposed approach regarding avoided capacity costs as it relates to the bill credit may result in a cost shift from Subscribers and Subscriber Organizations to ENO's other customers.¹⁵⁶ ENO is also concerned that the language in the Proposed Rules referring to “other directly quantifiable costs” does not provide appropriate clarity as to what avoided costs exactly would fall into this category and how those costs should be calculated.¹⁵⁷

ENO states that, absent rules to the contrary, the bill credit rate may be well above the value of ENO's avoided capacity and energy costs.¹⁵⁸ ENO suggests that the Council should consider whether a more appropriate bill credit rate would be the treatment afforded to small qualifying facilities (“QF”) under current regulatory policies and Council rules.¹⁵⁹ ENO argues that using a bill credit rate consistent with ENO's short-run marginal cost of capacity in MISO would help ensure there is no cost shift between participants and non-participants and also help to apply a more appropriate value to resources.¹⁶⁰ ENO provided a number of sample calculations and examples of three different scenarios that, it argues, could be used to clarify the Proposed Rules.¹⁶¹ The Advisors have reviewed ENO's avoided capacity and energy cost calculation methodology

¹⁵¹ ENO Comments at 8.

¹⁵² ENO Comments at 8.

¹⁵³ ENO Comments at 10.

¹⁵⁴ ENO Comments at 10.

¹⁵⁵ ENO Comments at 10.

¹⁵⁶ ENO Comments at 10.

¹⁵⁷ ENO Comments at 10.

¹⁵⁸ ENO Comments at 10.

¹⁵⁹ ENO Comments at 10-11.

¹⁶⁰ ENO Comments at 11.

¹⁶¹ ENO Reply Comments at 7-8.

and find it consistent with the intent of the Proposed Rules with respect to calculating avoided energy and capacity costs on a per kWh basis for a solar generation facility. ENO provides three sample calculations based on three different capacity values. However, two of the calculations depart from the Proposed Rules and rely on the MISO Planning Resource Auction results, which the Advisors believe are not consistent with the value of new generation. ENO's calculation of a capacity value utilizing the estimated value of a new combustion turbine is more in line with the value that ENO's ratepayers may be able to avoid through the development and utilization of Community Solar projects. However, rather than rely on ENO to calculate the value of a new combustion turbine, the Advisors recommend that the calculation be based on MISO's annual calculation of the Cost of New Entry value ("CONE") for the specific Local Resource Zone ("LRZ") in which ENO participates in MISO. MISO's annual CONE calculation is based on the costs of an advanced combustion turbine and is stated in \$/MW-yr for each LRZ in MISO's footprint. The Advisors have provided detailed revisions to the Proposed Rules to clarify the calculation of Subscription Credits.

ENO proposes that to ensure alignment with existing interconnection processes, a requirement be added to Section VII.C that any and all costs associated with interconnecting a community solar project to ENO's system be the sole responsibility of the Subscriber Organization.¹⁶² ENO also proposes an additional requirement in the rules that all costs associated with the creation of a new subscription credit and its implementation in the utility's billing system will be recovered from a new fee (or charge) to be paid by the Subscriber Organizations.¹⁶³

AAE agrees that Subscriber Organizations (and thus their membership) should bear the administrative and interconnection costs caused by the Subscriber Organization.¹⁶⁴ AAE also argues that costs to be borne by Subscriber Organizations should be fair, transparent, and reasonable.¹⁶⁵ The AAE notes that ENO points out that there are myriad costs that should accrue to the participants in a Community Solar Facility rather than absorbed by non-participants, and AAE insists that these costs should reflect only the incremental costs associated with each Community Solar Facility, and should be transparent and confirmed with the Council, as are other revenues.¹⁶⁶ AAE argues that such costs should not be a barrier to entry, but should represent the actual "costs of doing business."¹⁶⁷

ENO clarifies that, unlike Air Products, its position is not that all costs caused by Subscriber Organizations should be passed on to all community solar subscribers, rather, ENO's position is that Subscriber Organizations should pay the costs and then make a business decision as to whether to pass those costs in full or in part on to their Subscribers.¹⁶⁸

The Advisors believe that it is appropriate for ratepayers to share the costs associated with administrative upgrades needed to enable ENO to administer a community solar program -- updating billing programs, handling interconnection requests, etc. because the creation of the

¹⁶² ENO Comments at 26.

¹⁶³ ENO Comments at 24.

¹⁶⁴ AAE Reply Comments at 3.

¹⁶⁵ AAE Reply Comments at 4.

¹⁶⁶ AAE Reply Comments at 4.

¹⁶⁷ AAE Reply Comments at 4.

¹⁶⁸ ENO Reply Comments at 4.

community solar program provides a new option available to all ratepayers whether they choose avail themselves of it or not, and there is value in the creation of more choices for ratepayers. The Advisors do agree, however, that the costs of any specific project should be borne by the Subscriber Organization and participating Subscribers, and should not be subsidized by ratepayers. The purpose of the projects should be to allow Subscribers to offset their own use, not to allow them to make a guaranteed profit at the expense of other ratepayers.

B. Treatment of Unsubscribed Energy

The White Paper and Proposed Rules provided that where a Subscriber Organization has energy in a CSG Facility which is unsubscribed, the Subscriber Organization should be compensated for that unsubscribed energy at the utility's estimated avoided energy costs for the appropriate time period from the utility's most recent biennial avoided cost filing with the Clerk of Council.¹⁶⁹

ENO argues that requiring ENO's customers to pay for any energy related to any unsubscribed portion of a third-party developer's CSG Facilities amounts to a guaranteed PPA for developers, which effectively eliminates the developers' risk in designing a community solar offering that successfully attracts any subscribers.¹⁷⁰ ENO states that it understands that this is an avoided energy cost-based payment, but expresses concern about its customers being required to pay for any energy stemming from community solar offerings that are poorly structured, designed, located, marketed, operated, or maintained.¹⁷¹ ENO argues that the final rules must ensure that companies (including companies acting in bad faith) cannot use the Council's Community Solar Rules to subsidize generators that would otherwise be designated as QFs and would operate under those existing rules and constructs.¹⁷²

Air Products supports ENO's recommendation that a Subscriber Organization that does not develop a CSG Facility after submitting a deposit with its application shall forfeit the deposit and that such funds shall flow back to all customers through the utility's Fuel Adjustment Clause.¹⁷³

ENO expresses concern regarding a requirement forcing its customers to pay for energy that Subscriber Organizations fail to subscribe or remain fully subscribed due to being poorly structured, designed, located, marketed, operated, or maintained.¹⁷⁴ Further, ENO argues, to the extent ENO's IRP does not demonstrate a need for such energy, ENO is concerned with forcing its customers to pay a premium for energy that is not needed and that would not truly avoid cost, thereby subsidizing an undersubscribed (or intentionally overbuilt) CSG facility.¹⁷⁵ ENO proposes deleting the section requiring compensation for unsubscribed capacity from the rules completely.¹⁷⁶ Alternatively, if the payment obligation for unsubscribed capacity is retained, ENO proposes that Subscriber Organizations with unsubscribed capacity should be required to provide

¹⁶⁹ White Paper at 18.

¹⁷⁰ ENO Comments at 9.

¹⁷¹ ENO Comments at 9.

¹⁷² ENO Comments at 9.

¹⁷³ Air Products Reply Comments at 4.

¹⁷⁴ ENO Comments at 25.

¹⁷⁵ ENO Comments at 25-26.

¹⁷⁶ ENO Comments at 26; ENO Reply Comments at 11.

the Council and ENO with an annual report detailing the steps being taken to fully subscribe the Subscriber Organization's community solar project.¹⁷⁷

ENO argues that if the Council does not accept ENO's proposal to eliminate payments for unsubscribed energy, then ENO recommends following Air Products' suggestion of limiting how much unsubscribed energy ENO is required to purchase (*i.e.*, up to 10% of the capacity from any one Subscriber Organization's CSG Facilities, up to 5% of the total capacity allowed for the Council's program), and that, to the extent possible, such costs would be recovered exclusively from customers that choose to participate in community solar, through the tariff ultimately adopted by the Council in this proceeding.¹⁷⁸

Air Products also expresses concern that there is no limit to the amount by which any individual CSG project or the Community Solar Program as a whole may be undersubscribed and that the Proposed Rules would require ENO to purchase such undersubscribed capacity at avoided energy costs.¹⁷⁹

Air Products agrees with ENO's proposal to (i) delete the requirement for unsubscribed energy to be purchased by the electric utility and (ii) require Subscriber Organizations to report to the Council on participation levels.¹⁸⁰ Air Products remains concerned with the costs of undersubscribed CSG Facilities and the potential for such costs to be shifted to ENO customers who have chosen not to participate in the Community Solar Program.¹⁸¹

AAE argues that there is no difference between unsubscribed capacity at a community solar facility and a QF as described by PURPA,¹⁸² and therefore such excess energy should receive avoided cost payments, as is done in multiple states with successful community solar programs.¹⁸³ AAE also argues that while ENO refers to a current Council rule that treats QFs differently than traditional avoided costs as defined by PURPA, ENO did not cite a specific rule and the AAE is unaware of one.¹⁸⁴

It is not the Advisors' intention to recommend a structure that makes it easy for poorly run or badly designed projects that cannot maintain a sufficient level of subscriptions to succeed. It is reasonable, however, to anticipate that any given project may have some level of unsubscribed capacity at any given time, as Subscribers come and go, and that it would be beneficial to the development of a robust industry to allow Subscriber Organizations to be paid for a reasonable amount of that capacity at ENO's avoided cost rate, which should prevent a rate impact on other customers. In order to address ENO's concerns that this could escalate to an unreasonable level, the Advisors are amenable to setting a limit on a Subscriber Organization's ability to be paid for unsubscribed capacity that is consistent with the amount of occasional, incidental undersubscription of capacity that a well-run project might be reasonably expected to encounter

¹⁷⁷ ENO Comments at 26.

¹⁷⁸ ENO Reply Comments at 11.

¹⁷⁹ Air Products Comments at 4.

¹⁸⁰ Air Products Reply Comments at 2.

¹⁸¹ Air Products Reply Comments at 2.

¹⁸² Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 ("PURPA").

¹⁸³ AAE Reply Comments at 4.

¹⁸⁴ AAE Reply Comments at 4.

from time to time. The Advisors continue to believe that it is appropriate for the Subscriber Organizations to be paid for unsubscribed energy at the utility's estimated avoided energy costs, but in response to the comments on this issue, recommend that only 20% of any CSG Facility's output be eligible for such payments.

C. Capacity Limits

1. *Total Community Solar Capacity Limit*

In the White Paper and Proposed Rules, the Advisors proposed a cap on the total amount of community solar to be implemented in Orleans Parish over the first three years of the program of 5% of ENO's annual peak MW. The Advisors also recommended that the Council review this limit at the end of the initial three years of the program to determine whether it should be lifted or adjusted, and that it leave open the opportunity for parties to petition the Council to lift the limit prior to the expiration of the three years if circumstances so warrant.

350 New Orleans encourages the Council to establish a capacity limit greater than 5% of peak capacity.¹⁸⁵ 350 New Orleans argues that that the peak occurs at the time of day when solar production is greatest and provides the most value to the grid.¹⁸⁶ The precise meaning of this sentence is unclear, but it appears that 350 New Orleans is objecting to the use of peak capacity as the measurement against which any capacity limit should be measured. However, there is no larger measure of ENO's load, therefore, 5% of any other capacity measure (such as off-peak capacity) would necessarily result in a smaller MW limit on the amount of community solar. 350 New Orleans appears to be arguing that there should be no limit on community solar.¹⁸⁷ The Advisors believe that this is a particularly reckless position, especially when coupled with 350 New Orleans' argument that the credit proposed by the Advisors, which would ensure that non-participating ratepayers do not suffer a rate increase as a result of the community solar program is too low.¹⁸⁸ A subscription credit under which all ratepayers subsidize the community solar program so that participating customers can make a profit on their solar panels, with no limit on the amount of community solar allowed to be developed in the city is an unsustainable model that would cause electricity rates to spiral out of control as more and more customers participate in community solar, leaving the increasingly small number of non-participating customers on the system to bear the increasing costs of subsidies to those community solar customers. 350 New Orleans also appears to misunderstand the Advisors' proposed 5% of peak capacity limit as being inconsistent with the Administration's goal of achieving 255 MW of local solar by 2030.¹⁸⁹ As was explained in the White Paper, o reach 255 MW of local solar capacity by 2030, New Orleans would need to add 18 MW per year between now and 2030. Therefore, even if the community solar program were the only source for local rooftop solar and the Net Metering and ENO's distributed rooftop solar programs were disregarded, the 5% limit, which would allow approximately 55 MW of community

¹⁸⁵ 350 New Orleans' Comments at 1.

¹⁸⁶ 350 New Orleans' Comments at 1.

¹⁸⁷ 350 New Orleans' Comments at 1.

¹⁸⁸ 350 New Orleans' Comments at 2.

¹⁸⁹ 350 New Orleans' Comments at 1.

solar to be developed over the first three years of the program, would still pose no threat to the City's ability to reach the 255 MW goal.¹⁹⁰

The AAE does not believe that an aggregate cap of 5% of annual peak demand is necessary, but if the Council feels a cap is required, the AAE supports the opportunity to review after three years, as proposed by the Advisors, and an opportunity to file a request to lift the cap if the program is successful enough to warrant it ahead of the three year mark.¹⁹¹

ENO states that it believes that the flexibility created in the Advisors proposed limit, which is not necessarily permanent and can be changed by the Council, should resolve the Intervenors' concerns.¹⁹² The Advisors agree. The purpose of the limit is to ensure that once investment in community solar hits a level that could have a more serious impact on ENO's distribution grid and a more significant impact, there is an opportunity for the Council to re-examine the situation and make sure that it is satisfied that continuing to add more community solar is still in the public interest before any further community solar is created. Stating such a limit clearly from the outset allows developers to structure their business plans accordingly, rather than allowing as much investment as possible to occur until an emergency arises and then having the plug suddenly pulled on the program altogether. With a transparent cap set out from the beginning, developers know how to plan over the next three years, and at what points their investments become particularly risky. As the proposed cap is structured, once it is clear that the capacity limit is being approached and will limit further investment, any party has the opportunity to petition the Council to lift the cap, the Council can investigate and if it determines that further investment is in the public interest, it can lift the cap.

2. *Per-Project Capacity Limit*

In the White Paper and Proposed Rules, the Advisors recommended that the Council apply a 2 MW cap on the size of an individual CSG Facility.¹⁹³

ENO expresses concern that its ability to forecast the impact and cost of increased penetration of distributed energy resources such as community solar on the distribution system will be made more difficult by an unknown number, size, and location of community solar projects.¹⁹⁴ ENO proposes that the rules should contain a limit on the total capacity of CSG Facilities that may be connected to the same distribution feeder.¹⁹⁵ The AAE supports ENO's argument that there may be more appropriate ways to limit the impact on the distribution system, such as setting the maximum number of installations (or MW) on a single feeder, and argues that more information about the limitations of ENO's distribution grid would be necessary to make a recommendation and suggests that if a cap is imposed for administrative simplicity, a Subscriber Organization may petition for a larger size.¹⁹⁶

¹⁹⁰ White Paper at 12.

¹⁹¹ AAE Comments at 5.

¹⁹² ENO Reply Comments at 10.

¹⁹³ White Paper at 11.

¹⁹⁴ ENO Comments at 24.

¹⁹⁵ ENO Comments at 24.

¹⁹⁶ AAE Reply Comments at 7.

The AAE agrees that a 2 MW project cap is likely an appropriate level, but is interested in comments from ENO on the impact on the distribution system at varying project sizes.¹⁹⁷ The AAE also states that if smart inverters or storage are utilized, a 2 MW cap, to address distribution system impact, may not be required.¹⁹⁸ AAE also notes that if a project were implemented by a customer connecting to the transmission system rather than the distribution system, a 2 MW cap may not be needed.¹⁹⁹ The AAE states that more technical discussion is required before finalizing the size of a cap.²⁰⁰

The Advisors continue to believe that a 2 MW project limit is appropriate. The Advisors note that IREC recommends a 2 MW cap as being large enough to allow economies of scale, while being small enough to allow for relatively low-cost interconnections.²⁰¹ Rather than applying a blunt rule that would prevent more than one project on any given feeder, the Advisors believe that ENO's interconnection process should identify any reliability impacts on a specific feeder related to the interconnection of a proposed project. ENO should address the impact on a particular feeder in the interconnection application process and where the interconnection process reveals that interconnecting a CSG Facility to a particular feeder would have a reliability impact, further size limits based on the feeder's capacity may be applied, or a Subscriber Organization may choose to pay for necessary upgrades to allow its proposed project to be interconnected to that feeder.

D. Limits on Customer Participation

1. *Minimum and Maximum Per Project Customer Limit*

In the White Paper and Proposed Rules, the Advisors proposed minimum and maximum limits on Subscriber participation in a CSG Project. The Advisors recommended that no customer should be allowed to subscribe for more than 100% of their baseline annual consumption of energy (measured at the customer's meter), and that in the case of a NEM customer, the NEM customer's excess generation should be netted out of their baseline annual consumption.²⁰² The Advisors also recommended that no individual customer be able to subscribe to more than 40% of any individual community solar project's capacity, and that each project be required to have a minimum of three unique Subscribers in order to ensure that a larger number of customers are able to participate in the program.²⁰³ Finally, the Advisors also recommended a minimum subscription size of at least one (1) kW of the CSG Facility's nameplate rating, with the exception of Low-Income Subscribers, who would have no minimum subscription requirement.²⁰⁴

The AAE does not support a lower minimum participation threshold for Low-Income Customers, because they believe all customers should be able to participate by purchasing as little as a single panel if they desire.²⁰⁵ ENO notes that minimum participation requirements help limit

¹⁹⁷ AAE Comments at 4.

¹⁹⁸ AAE Comments at 4.

¹⁹⁹ AAE Comments at 4-5.

²⁰⁰ AAE Comments at 5.

²⁰¹ IREC, Model Rules for Shared Renewable Energy Programs at 13.

²⁰² White Paper at 8-9.

²⁰³ White Paper at 9.

²⁰⁴ Proposed Rules, Section V.B.(4).

²⁰⁵ AAE Comments at 4.

administrative costs and cautions against waiving this requirement for any customers other than Low-Income Subscribers, otherwise the administrative costs of the program may eliminate the benefits potentially derived by customers.²⁰⁶ While the Advisors support the general concept underlying the AAE’s statement – that the bar to customer participation should be as low as possible, there are practical considerations that necessitate some sort of minimum threshold. The administrative burden on developers and ENO increases as each project is divided into smaller and smaller pieces, and so the Advisors believe it is prudent to have some sort of minimum threshold on non-low-income participants so that the costs to administer the program do not balloon out of control.

The AAE does support a maximum participation limit, because the AAE believes all customer classes should be allowed to participate in the program and agrees that there should be limitations on the amount of a project in which any single customer may subscribe in order to allow access to more customers. In particular, the AAE urges that large commercial or industrial customers should not be in a position to “soak up” the majority of benefits from community solar, leaving others out of the opportunities to stabilize their bills in the long term.²⁰⁷ The AAE agrees that capping participation at 40% of any single project is a fair maximum for any single large customer subscription, and that each community solar project should be required to have at least three Subscribers.²⁰⁸ The AAE notes in its Reply Comments that its suggestion of requiring that a specific amount of low income capacity be reserved for Low-Income Customers would mean that projects will not then be able to provide two 40% blocks of capacity to large commercial/municipal customers and also suggests reducing the limit to not more than 30% of any single project.²⁰⁹ The Advisors do not believe that this reduction is necessary, even if the requirement that every project reserve some capacity (20% or 30%) for Low-Income Subscribers is adopted, because any given project would still be able to allow a single customer to take up to 40% of the project.

Contrary to the other parties, Air Products questions the inclusion of a hard cap on individual participation in CSG Facilities, particularly if the CSG Facility is undersubscribed.²¹⁰ Air Products recommends that a Subscriber Organization be allowed to request to waive any cap in order to pursue additional subscriptions from interested Subscriber(s) even if the additional subscription would result in the Subscriber participating in the CSG Facility beyond the cap allowed in the Proposed Rules or if the additional subscription would result in the Subscriber participating in the CSG Facility beyond the cap allowed in the Proposed Rules or if the additional subscription would result in the CSG Facility not achieving a low-income participation requirement.²¹¹ Air Products argues that allowing the waiver of any caps would reduce risks associated with a CSG Facility having unsubscribed energy, and whether the waiver is appropriate and in the public interest, would be based on the facts and circumstances of each situation.²¹² The Advisors note that there is nothing in the rules that would prohibit any developer from seeking from the Council a waiver of any rule as it applies to a particular project. The Advisors, however, note that where there are not sufficient Subscribers for a community solar project to be built, there are other options available,

²⁰⁶ ENO Reply Comments at 11.

²⁰⁷ AAE Comments at 3.

²⁰⁸ AAE Comments at 3.

²⁰⁹ AAE Reply Comments at 5.

²¹⁰ Air Products Reply Comments at 2.

²¹¹ Air Products Reply Comments at 2.

²¹² Air Products Reply Comments at 1.

particularly to large industrial customers with the resources to invest in on-site generation, including qualifying as a QF, or proposing a different type of combined heat and power or microgrid project to the Council for approval. Community solar projects are meant to be a mechanism for several parties to pool resources to share in a form of renewable generation to offset their own energy usage. To the extent that a particular project does not attract enough interest from the community to qualify as a community solar project, it might be better structured as a different type of project.

ENO agrees with the principle of not allowing large customers to soak up the majority of benefits from community solar, but argues that the proposed 40% limit is too high.²¹³ ENO states that, for example in Xcel's Community Solar Garden Program, where the same 40% limit is applied, 86% of the projects thus far have solely benefitted commercial and/or large public entities.²¹⁴ ENO proposes instead that a 20% goal be applied and that each CSG Facility should be required to have at least some residential customers enrolled.²¹⁵

Despite the recommendations from ENO and AAE to lower the maximum investment cap of 40%, the Advisors continue to believe that the 40% cap is appropriate. While ENO and AAE are correct that this may result in large industrial and commercial customers consuming much of the available capacity, the Advisors have recommended increasing the capacity set-aside for Low-Income Customers to require that 50% of projects provide at least 30% of their output to Low-Income Subscribers, which means that in at least 50% of projects no more than 70% of the project could be consumed by large customers.

ENO also proposes that in order to ensure that no customer is allowed to subscribe to more than 100% of their baseline annual consumption of energy, an additional requirement be added that Subscriber Organizations must submit an annual report for each Subscriber to the Council and to ENO with the report demonstrating that none of a community solar project's Subscribers exceeds 100% of the value of the Subscriber's baseline annual usage.²¹⁶ ENO also proposes that since consumption will be measured at the meter, safeguards must be put into place to ensure that Subscribers in community solar projects authorize that customer usage and other billing data be made available by ENO to third-party Subscriber Organizations.²¹⁷ ENO also expresses concerns that administrative burdens will be shifted to ENO's other customers.²¹⁸ The Advisors believe that if the initial subscription amount is set properly relative to the Subscriber's prior year baseline annual usage, the risk that a Subscriber will produce far enough in excess of their ongoing annual usage to be problematic will be small relative to the significant administrative burden on ENO and Subscriber Organizations of performing an annual true-up as to each customer and then trying to re-allocate Subscriptions based on ongoing annual usage. It is true that there will be some risk that a customer may make energy efficiency investments or otherwise reduce their usage over time from their baseline annual usage, but the Advisors find no reason to believe at this time that this will be significant enough or widespread enough to warrant the significant administrative expense of requiring ENO to compare the credits to each Subscriber on their bill to the kWh consumed by

²¹³ ENO Comments at 21.

²¹⁴ ENO Comments at 21.

²¹⁵ ENO Comments at 21.

²¹⁶ ENO Comments at 19.

²¹⁷ ENO Comments at 19.

²¹⁸ ENO Comments at 19.

each Subscriber annually and then provide instruction back to Subscriber Organizations regarding any adjustments that need to be made to a particular Subscriber's subscription amount. Rather, the Advisors believe, if ENO does begin to see an ongoing problem of significant size with the credits it is providing community solar Subscribers exceeding the annual kWh usage of those Subscribers, ENO should so advise the Council and the Council could consider a remedy at that time.

2. *Participation by NEM Customers*

The AAE supports the Advisors' proposal that customers be allowed to pair their residential NEM use with community solar in order to offset 100% their electricity usage.²¹⁹ ENO expresses concerns about billing complexities related to allowing NEM customers, whose usage changes month to month, to offset 100% of their usage every month, and recommends that the rules not allow NEM customers to participate in community solar at this time.²²⁰ Air Products agrees with ENO's concern about the level of billing complexity for NEM customers to also participate in the community solar program, and agrees with ENO's recommendation that the Proposed Rules not permit NEM customers to also participate in community solar at this time.²²¹ Because the 100% limit is applied to the customer's Baseline Annual Usage, net of any DG, and is not meant to require that their monthly credit precisely match 100% of their monthly usage, the Advisors do not believe that monthly variations in usage should complicate the billing issues. Further, as is discussed above, the Advisors believe that so long as the initial Subscription amount is set properly relative to the NEM customer's prior year baseline annual usage any future production in excess of 100% of the customer's usage in any given year is likely to be insignificant. The Advisors do, however, believe that it would be appropriate to require an adjustment to a community solar Subscriber's subscription amount where an existing community solar customer adds rooftop solar to their home under the NEM program subsequent to obtaining their community solar subscription. The Advisors recommend that ENO be required to add a step to their NEM interconnection process to check whether a new NEM customer is also a community solar customer and to ensure that any new NEM installation, when coupled with a community solar subscription, does not exceed 100% of the annual baseline usage.

ENO also argues that existing solar PV systems in the City that are treated as NEM systems, should not be allowed to convert themselves to community solar systems. ENO argues that NEM systems are designed to only allow the building owner to produce enough energy to meet 100% of its needs, and so the NEM customer should not be allowed to sell its "excess" because that excess could disappear if their load increases.²²² ENO also argues that allowing existing NEM projects to convert to community solar projects defeats the goal of adding new solar resources to the City and allows NEM customers, many of whom received subsidies from the federal and state governments, an unfair advantage.²²³ Given that there are significant limits on the size of NEM installations under Louisiana law, and those limits are meant to prevent consumers from being able to install NEM facilities significantly larger than their own energy use, the Advisors do not believe this will be a substantial problem particularly if the Council imposes a limit on the percentage of capacity

²¹⁹ AAE Comments at 6.

²²⁰ ENO Comments at 19.

²²¹ Air Products Reply Comments at 4.

²²² ENO Comments at 20.

²²³ ENO Comments at 20-21.

that any single customer would be able to own. Under the Proposed Rules' 40% limit, for example, the NEM customer would have to sell 60% of its capacity to other customers to qualify as a community solar facility. In addition, NEM facilities are typically connected behind the meter, while community solar facilities will be connected directly to the distribution system. The Advisors clarify that to the extent a NEM customer converts its rooftop installation into a community solar installation, in order to sell its "excess" to other customers, the entire facility should be considered a community solar facility and should be interconnected on the utility side of the meter, and all participants should receive community solar credits for the output of the facility, so that the existing NEM customer ceases to receive NEM credits, and instead would receive community solar credits for no more than the capacity limit percentage of its project ultimately adopted under these rules. Any single project should be considered either entirely a NEM facility or entirely a Community Solar Facility and be governed by the appropriate set of rules.

E. Length of Customer Commitment, Portability, and Transferability

ENO argues that the mechanism for effecting the transfer or sale of subscriptions is not clear and proposes changes to require that all costs related to the transfer of subscriptions and/or subscription credits will be paid for by the Subscriber Organization or Subscriber, that Subscriber Organizations provide Subscribers with transparent information about current subscription costs, and that ENO work with the Advisors and Council to develop a mechanism to facilitate the transfer of subscriptions and/or subscription credits and that Subscriber Organizations be responsible for the costs incurred in developing this process.²²⁴

In its comments, the AAE agrees that a subscription should be portable from one address in Orleans Parish to another, and subscribers should be permitted to sell the subscription if they leave the service territory or merely return the subscription to the Subscriber Organization.²²⁵ However, the AAE argues, that transfers of subscriptions should be made through the Subscriber Organizations and limited to the current Subscriber Organization cost for a subscription so that sales of subscriptions are not permitted to drive up costs, and do not provide an opportunity for speculation.²²⁶

The AAE agrees with the Advisors that the Proposed Rules should not impose an artificial barrier or requirement for a length of commitment or a requirement to purchase panels outright, but that the market should be allowed to evolve to suit customer preferences.²²⁷ ENO believes that it would be more appropriate to have standard, Council-approved terms for each community solar project in order to manage administrative complexity and associated cost, as well as ensure consumers are protected.²²⁸

²²⁴ ENO Comments at 25.

²²⁵ AAE Comments at 7.

²²⁶ AAE Comments at 7.

²²⁷ AAE Comments at 6-7.

²²⁸ ENO Comments at 25.

Air Products argues that with respect to excess credits at termination of service, since ENO is not required to use the value of such excess credits to departing customers, ENO should be required to use the value of such excess credits to offset the cost of unsubscribed energy purchases.²²⁹

With respect to the frequency with which a Subscriber can take their subscription with them from one billing address to another within ENO's service territory, the Advisors believe that for most Subscribers this will occur only when they move their residence or business to a new location, which is likely to be infrequent enough that no rule is needed to reduce administrative burdens on the utility. The Advisors do recommend, however, a requirement to demonstrate that energy use at the new location will be sufficient to justify the subscription level, and if it is evident that a new location will have substantially lower energy use (as might be the case where a Subscriber moves from a single family home to a small apartment or condo), than the subscription should be downsized and the Subscriber Organization should assist the Subscriber in transferring the appropriate portion of their subscription. With respect to a minimum term for Subscriber contracts, the Advisors believe that the Subscriber Organizations will likely try to minimize their own administrative burdens and thus will have a natural incentive to strike a balance between the longer-term contracts that both ENO and the Subscriber Organizations are likely to prefer as less risky and expensive for them to manage against the desire of Subscribers for shorter-term subscriptions.

III. Other Comments By the Parties

ENO also proposes modifications to the timeline required for ENO's development of its ability to manage billing process changes and other aspects of the community solar program.²³⁰ The Advisors have no objection to ENO's proposed changes to the timeline.

Further, to the extent a CSG Facility connects at transmission voltage, Air Products questions the interplay between regulation of the Council and regulation of the Federal Energy Regulatory Commission ("FERC"), and the use of the MISO interconnection process.²³¹ The Advisors clarify that these Community Solar Rules require interconnection at the distribution level. Should any party desire to develop a community solar project that would interconnect at the transmission level rather than at the distribution level, the developer would need to file an application with the Council for whatever exceptions to the Community Solar Rules that would be necessary to account for MISO and FERC's rules regarding interconnecting as a generation resource at the transmission level. The Advisors do not anticipate that this would create a bar to such projects being developed, merely that there would be some complications related to the jurisdictional issues that would need to be worked through more carefully than can be accomplished in this rulemaking proceeding.

The AAE believes that a broad range of renewables and storage projects should be able to follow the same kinds of rules contemplated in this proceeding and that the benefits of pairing solar with storage, should not be foreclosed by rules that are too restrictive.²³² ENO argues, however, that the Council may amend its rules at any time, and once the program has proven successful, it may

²²⁹ Air Products Comments at 5.

²³⁰ ENO Comments at 24.

²³¹ Air Products Reply Comments at 3.

²³² AAE Comments at 4.

consider expanding the scope as AAE suggests.²³³ ENO argues, however, that the initial scope of the program should not be too broad, particularly during the initial three-year period.²³⁴ The Advisors agree that it is appropriate, at least for the first three years of the program, to limit the program to solar projects, particularly since there is little evidence that other forms of renewable DG are currently feasible within Orleans Parish. However, the Advisors also note that should a project be developed that otherwise complies with the Community Solar Rules but is not a solar facility, the developers may petition the Council for an exception of the requirement that a CSG Facility be a solar facility. Similarly, the Advisors note that there is nothing in the rules that would prohibit a solar facility that also has storage capability from qualifying as a CSG Facility, though the Advisors also note that at present, the storage aspect of the project may provide little additional value in the absence of time-of-use pricing in New Orleans. The Advisors do not believe it is necessary to address this issue at this time, but believe that it may be appropriate in the future, at such time as time-of-use pricing becomes available in New Orleans, for parties to suggest changes to the Subscriber credit formula to account for time-of-use pricing for the Council's consideration.

The AAE agrees with the Advisors' proposal that subscribers to community solar programs should retain ownership of any RECs generated by the project.²³⁵ The AAE also recognizes that there may be opportunities for Subscriber Organizations to aggregate and sell the RECs from their projects, and supports a policy of allowing Subscriber Organizations to propose such plans to the Council for consideration.²³⁶ The AAE recommends that the treatment of RECs and their potential value should be described in the consumer disclosures provided to potential subscribers.²³⁷ The Advisors agree that the treatment of RECs should be described in the consumer disclosures provided to potential subscribers, and their potential value explained, with the caveat that consumers should not be misled regarding the potential sale value of RECs.

ENO also recommends a number of minor edits to the Proposed Rules to clarify certain points.²³⁸ The Advisors have addressed any further comments or clarifications in their redline of the Proposed Rules.

CONCLUSION

For the reasons discussed herein, the Advisors recommend that the Council adopt the Community Solar Rules as attached in Appendix B. The Advisors believe that the proposed Community Solar Rules reflect a careful balance between the interests of potential Subscribers, non-participating ratepayers, the utility and Subscriber Organizations/developers, but also recommend that where a party believes that obtaining a waiver of a rule or proposing a differently structured project would bring greater benefits to ratepayers and New Orleans residents and businesses, such party may seek a waiver or propose a differently structured project to the Council for consideration.

²³³ ENO Reply comments at 11.

²³⁴ ENO Reply comments at 11.

²³⁵ AAE Comments at 7.

²³⁶ AAE Comments at 7.

²³⁷ AAE Comments at 7.

²³⁸ ENO Comments at 28.

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2018 a copy of the foregoing Advisors' Report Regarding Proposed Community Solar Rules has been sent to the official service list in Council Docket UD-18-03 by email and/or served by United States mail, postage prepaid.

s/ *J. A. "Jay" Beatmann, Jr.*

J. A. "Jay" Beatmann, Jr.

APPENDIX A

REDLINE OF PROPOSED COMMUNITY SOLAR RULES For the Council of the City of New Orleans

I. OVERVIEW

The purpose of the Community Solar Rules (“Rules”) is to establish the City Council of New Orleans’ rules, policies, and procedures for ~~eCommunity sSolar gGenerating~~ facilities and the associated electric utility customer subscriptions in Orleans Parish, including: eligibility for participating in ~~eCommunity sSolar gGenerating~~ facilities; developer, facility, and customer limits with respect to community solar; establishment of a bill crediting mechanism for participants; customer protection provisions; general interconnection requirements; safety and performance requirements; and contractual and reporting requirements. Further, these rules are intended to establish a clear and streamlined path to the development of Community Solar development in the City of New Orleans. The Council recognizes that these rules do not provide the only path to distributed generation development in the City of New Orleans. To the extent that the Utility or any other party has a proposed project or proposal that does not adhere to the requirements of these Rules, it may submit a proposal to the Council for review and approval. These Rules shall be cited as the “New Orleans Community Solar Rules.” The Council may waive a provision of these Rules upon a showing of good cause.

II. DEFINITIONS

As used in these rules; the following words and phrases shall have the following meaning, unless the context clearly indicates otherwise:

“Agent” means a person who conducts business, including marketing or sales activities, or both, on behalf of a CSG Facility Subscriber Organization and includes an employee, a representative, an independent contractor, and subcontractors, a vendors and a representatives not directly under contract with the Subscriber Organization that conducts business, including marketing or sales activities, on behalf of the Subscriber Organization.

“Baseline Annual Usage” refers to a Subscriber’s accumulated electricity use in kilowatt-hours (“kWh”) for the previous 12-month period at the time the subscription is entered into, as measured at the Utility’s meter, net of any distributed generation provided by the Subscriber to the utility system at that meter. For a Subscriber that does not have a record of 12 months of electricity use at the time of the Subscriber’s most recent Subscription, an estimate of the Subscriber’s accumulated 12 months of electricity use in kWh, determined in a manner the Council approves.

“Consent” means an agreement with an action communicated by the following: a written document with Customer signature; or an electronic document with electronic signature.

“Contract Summary” means a summary of the material terms and conditions of a Community Solar Generating Facility Subscriber contract on a form provided by the Council.

“Council” refers to the Council of the City of New Orleans.

“Community Solar Generating Facility” or **“CSG Facility”** means a solar energy facility that:

- (i) converts solar energy to electricity;
- (ii) is owned by the Utility or any other for-profit or nonprofit entity or organization;
- (iii) has a generating capacity/nameplate rating that does not exceed two megawatts (“MW”) as measured by the alternating current rating of the system’s inverter;
- (iv) can provide power to or is connected to the Utility’s distribution system;
- (v) is located in the Utility’s electric service territory;
- (vi) is individually metered;
- (vii) has at least three Subscribers;
- (viii) sells the Output from the facility to the Utility and which the purchase of the Output from the facility shall take the form of a credit against the Subscriber’s electric bill; and
- (ix) the beneficial use and renewable attributes of the Output of the facility belongs to the Subscribers.

“Community Solar Program” means a program that encompasses the facilities, entities, functions and requirements implemented by these Rules.

“Customer” means a retail electric customer account holder of the Utility.

“CURO” means Council Utilities Regulatory Office.

“Low-Income Customer” means a Customer whose gross annual household income is at or below 175-50 percent of the federal poverty levelArea Median Income for the year of subscription or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 175-50 percent of the federal poverty limitArea Median Income.

“Low-Income Subscriber” means a Subscriber who is a Low-Income Customer.

“NEM Rules” means the New Orleans Net Energy Metering Rules adopted by Council Resolution No. R-07-132.

“Output” means the energy and power produced by a CSG Facility.

“Person” refers to any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.

“Personally Identifiable Information” means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or capable of being linked to a specific individual.

“Renewable Energy Credit” or **“REC”** means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWh of electric energy generated from a renewable energy resource.

“Rules” means the Community Solar Rules established herein or as modified by subsequent action.

“Security Deposit” means any payment of money given to a Subscriber Organization by a Subscriber in order to protect the Subscriber Organization against nonpayment of future subscription fees, but does not include escrowed prepaid subscription fees.

“Service Connection” is the location on the CSG Facility’s premises/facilities at which a point of delivery of power between the Utility and the CSG Facility is established.

“Subscriber” means a Customer of the Utility that holds a Subscription to one or more CSG Facilities and has identified one or more individual meters or accounts related to electric service to which the Subscription(s) shall be attributed.

“Subscriber Organization” means a person or legal entity that owns and operates a CSG Facility, or operates a CSG Facility that is built and owned by a third party under contract with such Subscriber Organization. A Subscriber Organization may also be a Subscriber to the facility, subject to the Limitations on Subscriptions set forth herein.

“Subscription” refers to that portion or proportionate interest of Output of a CSG Facility that is allocated to a Subscriber, including the RECs associated with or attributable to the CSG Facility.

“Unsubscribed Energy” refers to any energy Output of a CSG Facility in kWh that is not allocated to a Subscriber.

“Utility” refers to the utility providing electric service to customers in the City of New Orleans and regulated by the Council.

III. CUSTOMER ELIGIBILITY

A. Customer Eligibility

- (1) All customer rate classes are eligible to subscribe to a CSG Facility.
- (2) A Customer may subscribe to a CSG Facility in the Utility's service territory, providing provided that the Customer has an account for electric service with the Utility.
- (3) A Customer may subscribe to CSG Facility regardless of the Customer's participation in other Utility-sponsored renewable programs, such as NEM, providing provided that the Customer's participation does not violate, individually or collectively, the eligibility limits of all applicable programs and these Rules.

B. Limitations on Subscriptions

- (1) A Customer may not hold Subscriptions representing a total amount of energy in the Community Solar Program that exceeds 100 percent of the value of the Subscriber's Baseline Annual Usage.
- (2) A Customer may purchase multiple Subscriptions from one or more CSG Facilities provided that the total of the Subscriptions does not exceed the requirements in III.B.(1) of the Rules.
- (3) No Customer may own more than a 40 percent interest in the beneficial use of the electricity generated by a CSG Facility, including without limitation, the renewable energy and RECs associated with or attributable to the CSG Facility.

IV. COMMUNITY SOLAR GENERATING FACILITY ELIGIBILITY

A. CSG Facility Eligibility

- (1) A CSG Facility can be owned by the Utility or any other for-profit or nonprofit entity or organization.
- (2) A Subscriber Organization that has registered with the Council, through CURO, that wishes to construct and operate a CSG Facility as part of the Community Solar Program shall submit an application to the Utility in accordance with the CSG Facility project application procedure established by the Utility as part of these Rules.
- (3) A Subscriber Organization shall be responsible for the operation and maintenance of the CSG Facility, the associated Subscription management, and any required reporting to the Utility.
- (4) A CSG Facility must be located in the Utility's service territory, must be individually metered, and must be connected to the Utility's distribution system.

- (5) A CSG Facility may be either new construction that commenced operation after the date of Council adoption of these Rules or a solar generating system that commenced operation prior to Council adoption of these Rules.
- (6) The Subscriber Organization for the CSG Facility must enter into a Contract with the Utility to sell the Output from the facility to the Utility. The purchase of the Output from the CSG Facility shall take the form of a credit against the Subscriber's electric bill.
- (7) The Council may establish additional conditions limiting the number of CSG Facilities for which any single Subscriber Organization or its affiliates may apply.

B. CSG Facility Limitations

- (1) The CSG Facility's generating capacity/nameplate rating must not exceed two MW as measured by the alternating current rating of the system's inverter.
- (2) The beneficial use and renewable attributes of the Output of the CSG Facility must remain with the Subscribers.
- (3) A CSG Facility must have at least three Subscribers.
- (4) The total number of accounts per CSG Facility may be determined by the Subscriber Organization; however, each Subscription shall be sized to represent at least one kW of the CSG Facility's nameplate rating. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible Low-Income Subscriber.
- (5) A CSG Facility with a nameplate rating of 1000 kW or greater may not be located on the same or adjacent property as an existing or proposed CSG Facility owned by the same Subscriber Organization or affiliate with a nameplate rating of 1000 kW or greater.
- (6) One or more Subscriber Organizations may construct multiple CSG Facilities on a single parcel of property, providing that the total MW of the multiple projects on the single parcel does not exceed 2 MW.
- (6)(7) To the extent that the analysis performed in the Utility's processing of the CSG Facility application as described in VII.D of these Rules reveals that a proposed CSG Facility would have a negative impact on the reliability of the Utility's system, either the CSG Facility must be reduced in size to mitigate such negative impact, or the CSG Facility developer may choose to incur the costs of necessary upgrades to the Utility's system to enable the CSG Facility to be interconnected without jeopardizing the reliability of the system.

V. CAPACITY LIMITS

A. Community Solar Program Capacity Limits

- (1) Subject to the CSG Facility category limits established in these Rules, the Utility shall accept CSG Facility applications as long as the total capacity

of all CSG Facilities, as measured by the sum of the nameplate capacity of each CSG Facility's inverter, is less than or equal to five percent of the Utility's annual peak in MW for the first three years of the Community Solar Program. Subsequent to the first three years the Council will reconsider the total capacity limit.

- (2) Prior to accepting CSG Facility applications beyond the Community Solar Program Capacity Limits or the CSG Facility Category Limits, the Utility shall seek and obtain Council approval.

B. CSG Facility Category Limits

- (1) CSG Facilities shall be classified into one of two categories:
 - (a) Open Category: CSG Facilities of any size up to two MW as measured by the alternating current rating of the system's inverter.
 - (b) Low-Income Category: CSG Facilities of any size up to two MW as measured by the alternating current rating of the system's inverter in which a minimum of ~~40-30~~ percent of the CSG Facility's Output is provided to Low-Income Subscribers.
- (2) The Utility shall accept CSG Facility applications in each of the following categories up to the Community Solar Program Capacity Limits and according to the following CSG Facility Category percentages:
 - (a) Open Category: up to ~~70-50~~ percent of the Community Solar Program Capacity Limits; and
 - (b) The remaining ~~30-50~~ percent of the Community Solar Program Capacity Limit shall be reserved for Low-Income Category CSG Facilities.

VI. SUBSCRIBER ORGANIZATION REGISTRATION AND RECORDS

A. Registration with the Council

- (1) A Subscriber Organization shall register with the Council, on forms authorized by the Council, prior to offering Subscriptions to a CSG Facility or operating a CSG Facility. CURO shall process the registrations and make a list of Subscriber Organizations with current, valid registrations available on the Council's website.
- (2) The Council shall assign each Subscriber Organization with an identification number.
- (3) A Subscriber Organization shall maintain the registration with the Council by notifying the Council whenever certain information supplied as part of the registration with the Council becomes inaccurate, and updating their registration with accurate information. Subscriber Organizations shall renew their registration with CURO annually. If any Subscriber Organization fails to renew their registration in a timely manner, or if CURO otherwise becomes aware that the information in a Subscriber Organization's registration is no longer accurate, CURO shall notify the

Subscriber Organization of the lapse in its registration and the Subscriber Organization shall have 30 days to renew or update its registration. If the Subscriber Organization fails to renew its or update its registration within the 30-day period, its registration shall be revoked by CURO. When a Subscriber organization's registration is revoked, CURO shall notify the Utility and the Utility shall no longer be required to purchase energy or capacity from the Subscriber Organization's CSG Facility or to provide credits to the Subscribers of that CSG Facility.

- (4) By registering with the Council, a Subscriber Organization acknowledges and agrees it is bound by the Council's regulatory authority and jurisdiction to enforce the requirements contained in these Rules, including, but not limited to, the Council's authority to impose penalties on the Subscriber Organization as provided for in these Rules, or otherwise allowed by law.
- ~~(3)~~(5) CURO may charge a reasonable fee to Subscriber Organizations for initial registration with the Council and for annual renewal, as authorized by the Council.

B. Subscriber Organization Obligations and Records

- (1) A Subscriber Organization shall maintain on file with CURO the following information for the duration of the operation of each CSG Facility:
- Owner name and address.
 - Business address.
 - Name of registered agent in Orleans Parish.
 - General information on the facility including: location, DC and AC nameplate capacity, major equipment list, interconnection requirements, and any other relevant design details.
 - Proof of liability insurance in an amount reasonably adequate to protect the public and the Utility against damages caused by the operation of each CSG Facility. The Council, through CURO or other designated agency, will establish minimum levels of liability insurance that shall be deemed reasonably adequate for CSG Facilities.
 - Proof of registration "In Good Standing" with the Louisiana Secretary of State.
 - Proof of professional licenses from all applicable regulatory agencies, such as the Louisiana State Licensing Board for Contractors.
 - A copy of the Subscriber Organization's Occupational or General Business License obtained from the City of New Orleans' Bureau of Revenue.
- (2) A Subscriber Organization shall maintain in its own files the following information for the duration of the operation of each CSG Facility:
- Subscriber information including: name, mailing address, address at which the Subscriber has an account for electric service with the

- Utility, and, where relevant, the data supporting a Subscriber's classification as a Low-Income Subscriber.
- (b) Subscription information for each Subscriber including a copy of the contract, rates, fees, and terms and conditions.
- (3) A Subscriber Organization shall provide the information in Section VI.B(2) to the Council upon request.
- (4) A Subscriber Organization shall provide to the Council, in a timely mannerwithin 10 business days, information requested by the Council concerning the operation of its CSG Facilities.
- (5) Contracts between the Subscriber Organization and the Utility shall be a matter of public record and shall be filed with the Clerk of Council by the Subscriber Organization.
- (6) A Subscriber Organization, and, where relevant, the third-party owner/developer, are responsible for ensuring that its CSG Facility is constructed, maintained, and operated in compliance with all relevant local, state, and federal laws, rules and regulations and standards, including, but not limited to, reliability, safety, zoning, permitting, occupational safety and health, and environmental laws, rules, and regulations and standards, as well as adherence to the Utility's interconnection policies and procedures and these Rules.
- (6)(7) CURO shall maintain on the Council's website a list of Subscriber Organizations registered with the Council, the names of any Subscriber Organizations whose registrations have lapsed or been revoked by the Council, a copy of these Rules, and an explanation of how consumers may submit a complaint related to these Rules to the Council.

VII. COMMUNITY SOLAR PROGRAM MANAGEMENT

A. Community Solar Program Plan

- (1) Within 60-90 days from the effective date of the Rules, the Utility shall develop a Community Solar Plan setting forth the Utility's plan for implementing these Rules including the Utility's program administration plan and relevant tariffs for compliance with these Rules.

B. CSG Facility Standard Interconnection Agreement

- (1) Within 60 days from the effective date of the Rules, the Utility shall develop a Standard Interconnection Agreement for CSG Facilities, which shall be subject to the review and approval of the Council.
- (2) The proposed Standard Interconnection Agreement for CSG Facilities shall be consistent with the provisions of Entergy's Distribution Design Basis/Standards DR7-01 and DR7-02.
- (3) The proposed Standard Interconnection Agreement for CSG Facilities shall be consistent with the provisions of these Rules and shall describe any and

all interconnection expenses, and other charges in conformity with the Rules.

C. CSG Facility Project Application Procedure

- (1) Within 90 days from the effective date of the Rules, the Utility shall establish a CSG Facility application procedure in compliance with these Rules and applicable Council orders, and consistent with the CSG Facility Standard Interconnection Agreement.
- (2) The Utility shall develop its CSG Facility application procedure in a manner designed to encourage achievement of the Council's community solar guiding principles, timely project development, and equitable allocation of the Community Solar Program Capacity Limits and the CSG Facility Category Limits. In addition CSG Facility details necessary for the application, the application procedure shall require:
 - (a) Proof of Subscriber Organization registration with the Council;
 - (b) Proof of application for all applicable permits to construct and Operate the CSG Facility; and
 - (c) Proof of site control. The ~~Utility~~ shall accept as proof of site control: evidence of property ownership; an executed lease agreement; or a signed option to purchase a lease.
- (3) A Subscriber Organization shall notify the Utility of the location, capacity and expected energy production of its proposed CSG Facility at the time it submits an interconnection request, or prior to soliciting subscriptions from potential Subscribers, whichever occurs first.

D. Processing of CSG Facility Applications

- (1) The Utility shall process applications from Subscriber Organizations filed in accordance with the CSG Facility application procedure in the order in which the utility receives the application.
- (2) Within ~~five-10~~ business days of receipt, the Utility shall notify the Subscriber Organization whether the application is rejected due to the capacity limits established by these Rules.
- (3) Within ~~five-10~~ business days of receipt, the Utility shall notify the Subscriber Organization whether the application is complete. If the application is incomplete, the Utility shall provide a written list detailing all information that must be provided to complete the application.
- (4) A Subscriber Organization receiving notice of an incomplete application shall revise and submit the required information within 10 business days after receipt of the list of incomplete information. Failure to submit the required information within 10 business days shall result in the Subscriber Organization losing their place in the queue, but shall not otherwise prejudice the Subscriber Organization's ability to file a new, complete application in the future.

- (5) The Utility shall notify a Subscriber Organization within five business days of receipt of a revised application whether the application is complete or incomplete.
- (6) The Utility shall grant an extension of time of an additional 10 days to provide such information upon request from the Subscriber Organization.
- (7) The Utility shall reject an application that is not submitted in accordance with CSG Facility application procedure.
- (8) The Utility shall assign each CSG Facility a unique identification number.
- (9) If the Utility participates as a Subscriber Organization, it shall apply to the Council for permission to enter each of its proposed CSG Facilities into the community solar program. it will have the same rules applied to it as any other Subscriber Organization.
- (10) If the Utility or any of its affiliates participate as a Subscriber Organization, the Utility may not recover any portion of its CSG Facility costs through its base rates. If a Utility or any of its affiliates participate as a Subscriber Organization, it must not offer its own CSG Facility, or that of its affiliate any preferential treatment or benefit not available to other Subscriber Organizations.
- (11) If a CSG Facility fails to begin operating within 12 months of an approved application by the Subscriber Organization, the Subscriber Organization should provide to the Utility an additional deposit of \$50 per kW to continue under the Community Solar Program.
- (12) The ~~Utility~~ shall return the CSG Facility deposit upon commencement of operation, unless the CSG Facility fails to begin operating with 18 months of an approved application.
- (13) Any forfeited deposits shall be forwarded to the Council credited back to Utility customers via the Fuel Adjustment Clause.
- (13)(14) The Utility's interconnection process shall include an analysis of any potential reliability impacts, positive or negative, of the interconnection of the CSG Facility at the requested location.

E. Utility Data and Project Information

- (1) The Utility shall designate a contact person, and provide contact information on its website for submission of all project application requests, and from whom information on the project application request process and the Utility's electric distribution system can be obtained.
- (2) The Utility shall provide updated information, updated at least quarterly, on its website about the current status of the Community Solar Program and CSG Facility applications, including: name; address; date of application; interconnection status; expected date of operation; percent of the project that is subscribed, and remaining available capacity by year in each program category. The Utility shall also include on its website a link to the Council's Community Solar web page.
- (3) The Utility shall make reasonable attempts to assist all applicants with identifying means to locate and operate CSG Facilities in a manner that

minimizes adverse effects or maximizes distribution system benefits at locations identified by applicants. If the Utility or any of its affiliates choose to participate as an owner/developer of a CSG Facility and/or a Subscriber Organization, the Utility must offer other owner/developer and Subscriber Organizations equal access to the information available to the Utility and its affiliates for locating and operating CSG Facilities in a manner that minimizes adverse effects or maximizes distribution system benefits so that neither the Utility's nor its affiliate's CSG Facility has preferential access to information inaccessible to other Subscriber Organizations.

- (4) The information provided by the Utility on its website shall include studies and other materials useful to understanding the feasibility of interconnecting a CSG Facility on the Utility's electric distribution system, except to the extent providing the materials would violate security requirements, confidentiality agreements, or be contrary to law.
- (5) The Utility may require an applicant to execute an appropriate confidentiality agreement prior to release or access to confidential or restricted information.
- (6) The Utility shall monitor and review its distribution system to determine any adverse or beneficial effects resulting from each installed CSG Facility.
- (7) The Utility shall maintain for the longer of ten years or the duration of the community solar program, the following customer-information for each CSG Facility-: recorded monthly peak output, monthly energy output, aggregate annual energy credited to Subscribers by rate class; aggregate annual amount of subscription credits provided to Subscribers by rate class; annual amount of unsubscribed energy output provided to the Utility; and annual amount paid by the Utility for unsubscribed energy. Subscriber monthly billing information should be maintained by the Utility consistent with the Utility's customer billing records retention policy, and Subscriber Organization: customer rate class; annual usage; average monthly bill; and peak demand.
- (8)(1) ~~The Council shall be provided with annual reports on CSG Facility billing accuracy, interconnection complaints, and consumer complaints related to the program.~~

F. Utility Reporting

- (1) The Utility shall provide the Council with complete date, information, and supporting documentation necessary to monitor the Community Solar Program status, impact on operations, Subscriber and ratepayer impact, and other information upon request.
- (2) By May 1 of each year, the Utility shall file an annual report with the Council on the Status of the Community Solar Program Including: (1) monthly energy (MWh) and capacity (MW) produced by the Community Solar Program, including each CSG Facility; (2) total cost of energy and capacity ENO purchases through the Community Solar

Program, identifying bill credits separate from unsubscribed energy; (2) \$/MW and \$/MWh of the capacity and energy purchased, (3) Utility costs associated with administering the Community Solar Program; (4) tons of emissions avoided through utilization of the energy and capacity produced by the Community Solar Program; (5) any positive and negative impacts on the operation of the Utility's distribution system; (6) any benefits provided to the Utility's system by the Community Solar Program related to mitigating or recovering from storm events or other outages.

- (3) The electric Utility shall maintain a list of projects and total program capacity, and shall provide the list to the Council by June 30 and December 31 of each year.
- (4) The Utility shall publish on its website a rolling 24-month report of what the per-kWh and per-kW credit for energy and capacity was in order to assist customers seeking to evaluate whether to enter into or renew a contract with a CSG Facility.

G. Utility Cost Recovery and Charges

- (1) Once the Utility's Community Solar Plan has been reviewed and approved by the Council, the Utility shall have a fair opportunity to receive full and timely cost recovery of costs incurred to administer the Community Solar Program, interconnection and metering costs for CSG Facilities, and any non-reimbursed portion of program bill credit costs and unsubscribed energy costs.
- (2) The Utility may not establish a separate surcharge fee or rate for recovery of any Community Solar programs costs identified in Section VII.G.1. The specific mechanisms for Community Solar program cost recovery will be approved by a Council resolution based on the Council's review of the community solar tariffs proposed in the Community Solar Plan required under Section VII.A.1.
- (3) The Utility may assess a Council-approved charge to the Subscriber Organization to cover the Utility's incremental costs of delivering the renewable energy generated by each CSG Facility to the CSG Subscriber's premises associated with, integrating the generation from the CSG Facility into the Utility's system, administering the contracts with Subscriber Organizations, and administering the CSG Facility's Subscriber billing credits. This charge shall not reflect costs that are already recovered by the Utility from Customers through other charges. The Utility may seek a revision of this charge no more frequently than once per year.
- (3)(4) The Utility's revenue and expenses associated with the Subscriber Organizations and the Community Solar Program Plan shall be identified separately in general ledger records and maintained in separate revenue and expense sub accounts.

VIII. SUBSCRIPTION CREDITS

- A. Subscriber Organizations are required to provide real time reporting of production as specified by the Utility. For CSG Facilities greater than 250 kW, the Subscriber Organization shall provide real time electronic access to production data. The Utility may require different real time reporting for CSG Facilities 250 kW and smaller.
- B. The Subscriber Organization for each CSG Facility will provide a monthly report to the Utility listing all Subscribers and the proportion of the CSG Facility Output that shall be applied to each Subscriber's monthly electric bill. The monthly report shall follow a standard format specified by the Utility in order to integrate data into the Utility's billing system. The monthly report shall also include the amount of the CSG Facility's capacity that remains unsubscribed.
- C. The Utility shall apply credits to each Subscriber's monthly bill using the most recently updated monthly Subscriber list and Output data on a two-month lag where actual operational results and the associated bill credit will show up two months following the Utility's receipt of Output data for the CSG Facility.
- D. The Utility shall determine the amount of CSG Facility monthly kWh Output to be credited to each Subscriber by multiplying the Subscriber's most recent generation proportion of the CSG Facility by the Utility metered Output of the CSG Facility.
- E. The CSG per kWh The value of each CSG Facility monthly kWh credit will be based on avoided capacity and energy costs. The value of the CSG per kWh credit will be determined by the following:
 - (1) The CSG per kWh credit shall be the sum of the avoided energy costs and corresponding avoided capacity, energy costs, and other directly quantifiable costs based on the Utility's incremental cost of providing service;
 - (2) The avoided energy costs, expressed in \$/kWh, will be the weighted average of the previous calendar year's average hourly locational marginal prices ("LMPs") applicable to the Utility. The hourly LMPs shall be weighted based on the estimated hourly output of a 1 kW_{DC} solar PV installation in New Orleans as calculated by the National Renewable Energy Laboratory's PVWatts Calculator for a standard fixed array system with a tilt and orientation typical for New Orleans;
 - (3) The corresponding avoided capacity cost, will be expressed in \$/kWh and based on the MISO Cost of New Entry ("CONE") value for the planning year that corresponds to the month in which the credit is provided and shall be calculated as follows:

$$\text{avoided capacity cost} = (\text{CV} * 0.5) / \text{AEE}$$

where:

- CV is equal to the CONE value in \$/MW-yr for MISO Local Resource Zone 9 for the planning year that corresponds with the month in which the credit is provided;

- 0.5 represents the adjustment used by MISO for solar resources in determining the initial Resource Adequacy value for the purposes of the Planning Resource Auction (“PRA”);
 - AEE is equal to the annual estimated energy in kWh from a 1 MW_{DC} solar PV installation in New Orleans as calculated by the National Renewable Energy Laboratory’s PVWatts Calculator for a standard fixed array system with an tilt and orientation typical for New Orleans based on short run marginal cost concepts, and will be the current annual fixed cost revenue requirement of a peaking unit expressed in \$/kWh based on the typical annual energy Output of a solar photovoltaic (“PV”) installed in Orleans Parish.
- F. The appropriate credit to be applied to each Subscriber’s bill will be a dollar amount credit determined by multiplying the Subscriber’s kWhs from Section VIII.D. by the value of each CSG kWh CSG per kWh credit from Section VIII.E.
- G. The Subscription monthly bill credit so determined will apply to each Subscriber irrespective of the customer class tariff under which the Subscriber receives service from the Utility, and will apply to all Subscribers in a CSG Facility.
- H. If, in a monthly billing period, the Subscriber’s billing credit associated with the Subscriber’s Subscriptions exceeds the Subscriber’s bill from the Utility, the excess billing credit will be rolled over as a dollar amount bill credit from month to month indefinitely until the Subscriber terminates service with the Utility at which time no payment shall be from the Utility for any remaining bill credits associated with the Subscriber’s Subscription.
- I. The Utility shall retain a record of CSG Facility kWh applied to each Subscriber’s account for a period of three years.

IX. UNSUBSCRIBED ENERGY

- A. The Utility will pay a Subscriber Organization for up to 20 percent of the monthly the energy produced by a CGS Facility and delivered to the Utility which if such energy is not allocated to a Subscriber of the CSG Facility.
- B. The rate per kWh to be paid for net deliveries to the Utility, pursuant to Section IX.A, shall be the Utility’s estimated avoided energy costs for the appropriate time period from the Utility’s most recent biennial filing with the Clerk of Council of the City of New Orleans pursuant to the Public Utilities Regulatory Policies Act of 1978, Section 210.

X. LOW-INCOME CUSTOMER VERIFICATION

- A. The operator of a low-income multi-family dwelling unit may apply to the Council to qualify as a Low-Income Subscriber for the purposes of the Community Solar Program. The operator should demonstrate to the Council that the Subscription Credits will be credited to the tenants of the low-income multi-family dwelling
- B. A Subscriber Organization shall certify to the Utility in writing that the Subscriber Organization has verified the eligibility of all Low-Income Subscribers needed to qualify for the program prior to receiving permission to operate from the Utility.

B.C. The Council will provide guidelines for acceptable methods for Subscriber Organizations to verify Low-Income Customer status of Subscribers within 90 days from the effective date of these Rules.

XI. SUBSCRIPTION TRANSFERS AND PORTABILITY

- A. A Subscriber may release all or part of their Subscription back to the Subscriber Organization for ~~may be transferred or assigned to the associated Subscriber Organization or transfer~~ to any person or entity who qualifies to be a Subscriber in the CSG Facility.
- B. A Subscriber who desires to transfer ~~or assign~~ all or part of his or her Subscription to another eligible Customer desiring to purchase a Subscription may do so only through the Subscription Organization and in compliance with the terms and conditions of the Subscription contract and the transfer ~~or assignment~~ will be effective in accordance therewith.
- C. ~~A Subscriber who desires to transfer or assign all or part of his Subscription to the Subscriber Organization or to become unsubscribed shall notify the Subscriber Organization.~~
- D.C. If the CSG Facility is fully subscribed, the Subscriber Organization shall maintain a waiting list of eligible Customers who desire to purchase Subscriptions. The Subscriber Organization shall offer the Subscription of the Subscriber desiring to transfer ~~or assign~~ their interest, or a portion thereof, on a first-come, first-serve basis to Customers on the waiting list.
- E.D. A Subscriber that moves to a different premise located within the Utility service territory may change the premises to which the Subscription is attributed, however, the Subscriber must adjust their Subscription so that it does not exceed 100 percent% the Baseline Annual Usage at the new location and release any portion of their Subscription beyond that level back to the Subscriber Organization. ~~and a~~ A Subscriber Organization may not charge an unreasonable transfer fee to such a Customer.
- F.E. The Subscriber Organization and the Utility shall jointly verify that each Subscriber is eligible to be a Subscriber in the CSG Facility. The CSG Facility Subscriber ~~roll enrollment records~~ shall include, at a minimum, the Subscriber's name and Utility Account number, the percentage share owned by the Subscriber, the effective date of the ownership of that Subscription, and the premises to which the Subscription is attributed for the purpose of applying billing credits. Changes in the Subscriber ~~roll-enrollment records~~ shall be communicated by the Subscriber Organization to the Utility, in written or electronic form, as soon as practicable, but on no less than a monthly basis.
- F. Prices paid for Subscriptions in a CSG Facility shall not be subject to regulation by the Council. However, to ensure that Subscriber Organizations are acting fairly and transparently, the Subscriber Organizations must provide materials to the potential Subscriber clearly showing the Subscription cost.
- G. To ensure fairness and transparency regarding the transfer of subscriptions and Subscription Credits, the Utility, in consultation with the Council and its Advisors will develop a process and requirements therefor. The Subscriber Organization will

be responsible for any costs associated with the transfer of subscriptions and/or Subscription Credits.

XII. RENEWABLE ENERGY CREDIT OWNERSHIP

- A. Subscribers are not customer generators.
- B. The ownership and title to all renewable energy attributes or Renewable Energy Credits associated with the CSG Facilities shall belong to the individual Subscribers.
- C. If the Subscriber Organization can demonstrate an increased value provided directly to Subscribers with ownership and title of the RECs by the Subscriber Organization (for example, if the Subscriber Organization believes it can provide greater benefit to its Subscribers by consolidating and selling RECs and crediting its Subscribers with the revenue), the Subscriber Organization is encouraged to provide the Council with support for such a proposal, and the Council may allow the Subscriber Organization to offer Subscribers the opportunity to redeem the value of such RECs on an individual or consolidated basis.

XIII. CONSUMER PROTECTION & DISCLOSURE

A. Unauthorized Subscriptions.

- (1) No person shall subscribe a Customer to a community solar energy generation system without the Customer's express written consent.
- (2) A Subscriber Organization may not add a new charge for a new service, existing service, or service option not described in the Subscriber's contract with the Subscriber Organization without first providing written notice to the Subscriber and providing them an opportunity to terminate their Subscription without penalty if the new charge is unacceptable to the Subscriber.

B. Discrimination Prohibited.

- (1) A Subscriber Organization may not discriminate against any Customer, based wholly or partly on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.
- (2) A Subscriber Organization may not refuse to provide service to a Customer except by the application of standards that are reasonably related to the Subscriber Organization's economic and business purpose.

C. Prohibition of Unfair, Deceptive, or Abusive Acts or Practices.

- (1) Each Subscriber Organization shall conduct all aspects of its business that touch on Consumers or their interests without any unfair, deceptive, or abusive acts or practices.
- (2) Each Subscriber Organization shall regularly examine and consider the possibility of unfair, deceptive, or abusive acts or practices violations in all aspects of its business that touch on consumers or their interests, including, but not limited to, marketing, sales, origination, contract terms, contract options, installation, servicing, and loss mitigation.
- (3) Subscriber Organizations shall not harass or threaten consumers and should avoid high-pressure sales techniques. Subscriber Organizations should not take advantage of a consumer's lack of knowledge, and if they become aware that a consumer clearly misunderstands a material issue in a community solar transaction, they should correct that misunderstanding. Consumer questions must be answered honestly, Subscriber Organizations may not make any statements to consumers that are false or without a reasonable basis in fact.

(3)

D. Limitation of Liability

- (1) In the event of the failure, termination, or disqualification of a CSG Facility or Subscriber Organization, Subscribers' liability will be limited only to loss of the funds that they commit to invest in a community solar project.

D.E. Advertising, Marketing, and Solicitations.

- (1) Advertising Permitted.
 - (a) A Subscriber Organization may advertise its services.
 - (b) A Subscriber Organization may not engage in an advertising, marketing or trade practice that is unfair, false, misleading, or deceptive.
 - (c) All advertising claims must be supported by factual, verifiable sources. Advertising claims should avoid underestimating costs, overestimating performance and overvaluing financial and incentive benefits.
 - (d) Subscriber Organizations should be familiar with all advertising laws, rules, regulations, and guidance, including federal, state, and local guidance on advertising and marketing.
 - (e) Prices quoted must be accurate and complete, including, but not limited to disclosure as to any initial pricing incentives, such as "teaser rates" that include future price increases, and whether the quoted price includes any price incentives, such as government tax

- incentives or utility program incentives, and the terms of eligibility for such incentives.
- (f) Any projections of future utility prices presented by a Subscriber Organization or its Agents to consumers must be based on accepted sources and methods. They must be clearly identified, verifiable, and be based on one or more of the following sources:
- (i) Energy Information Agency (“EIA”) data from the Annual Energy Review, Annual Energy Forecast, Monthly Energy Forecast, or similar EIA publications for the state in which the system is located;
- (ii) Council resolutions, orders, publications, or filings with the Council by the Utility;
- (iii) Industry experts or other qualified consultants; or
- (iv) Other similar reliable sources qualified by the Council or CURO office.
- (g) Accepted methods for Utility electricity price projections include:
- (i) If based on historical data for the utility servicing the installation site, combined average growth rate using no less than five years of data ending with the most recent year for which data is publicly available;
- (ii) If based on projections of third-party sources, then it must be an accurate representation of any data within the timeframe of the source of the data, and when projecting beyond the timeframe of the source data, a combined average growth rate projection using a time period that is the greater of source data timeframe or five years.
- (h) Any endorsements of the Subscriber Organization or its products or services by individuals used in any media format either owned by the Subscriber Organization or initiated or sponsored by the Subscriber Organization through media owned by a third party must be authorized by the endorser, accurate, genuine, in proper context, and without misrepresentation, whether the misrepresentation is affirmative or by omission. It must be clear as to whether the endorser is providing an opinion as a consumer with true firsthand experience, as an expert, or as a spokesperson, and transparent as to whether any connections exist between the endorser and the Subscriber Organization beyond that which a consumer would ordinarily expect.
- (2) Marketing.
- (a) A Subscriber Organization’s marketing or solicitation information shall include the name under which the Subscriber Organization is registered with CURO.
- (b) A Subscriber may use an Agent to conduct marketing or sales activities. A Subscriber Organization is responsible for any fraudulent, deceptive, or other unlawful marketing performed by its

- Agent while marketing or selling Subscriptions on behalf of the Subscriber Organization.
- (c) Subscriber Organizations and their Agents must follow all applicable marketing laws, such as the National Do Not Call Registry, the CAN-SPAM Act of 2003, etc.
- (d) Door-to-door marketing and sales: A Subscriber Organization may not permit a person to conduct door-to-door marketing on its behalf until it has obtained and reviewed a criminal history record. Subscriber Organizations shall be solely responsible for carefully screening individuals used for door-to-door marketing purposes to include only those individuals having no history of fraudulent conduct or violent behavior.
- (e) A Subscriber Organization must issue an identification badge to any persons conducting door-to-door sales on its behalf to be worn and prominently displayed when conducting door-to-door activities or appearing at public events on behalf of the Subscriber Organization. The badge must accurately identify the Subscriber Organization, and display the employee or Agent's full name and photograph. When conducting door-to-door activities or appearing at a public event, the Subscriber Organization's employees and Agents may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with a utility, government agency, or another Subscriber Organization.
- (f) A Subscriber Organization shall ensure the training of its employees and Agents on the following subjects:
- (i) Local, state and federal laws and regulations that govern marketing, telemarketing, consumer protection, and door-to-door sales as applicable to the relevant types of marketing and jurisdictions;
 - (ii) The consumer protections set forth in these Rules, including the prohibition on unfair, deceptive, or abusive acts or practices; and
 - (iii) The Subscriber Organization's products, services, and contracts.
- (g) Geographic marketing permitted.
- (i) A Subscriber Organization may market services on a geographic basis.
 - (ii) A Subscriber Organization is not required to offer services throughout an electric company's entire service territory.
 - (iii) A Subscriber Organization may not refuse to provide service to a Customer based on the economic character of a geographic area or the collective credit reputation of the area.

E.F. Creditworthiness.

- (1) A Subscriber Organization shall apply uniform income, security deposit, and credit standards for the purpose of making a decision as to whether to offer a Subscription to Customers within a given class, provided that the Subscriber Organization may apply separate sets of uniform standards for the purpose of promoting participation by low-income retail electric Customer.

F.G. Subscriber Funds

- (1) Subscriber funds, including deposits, collected by the Subscriber Organization in advance of commercial operation of a CSG Facility, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG Facility commences commercial operation as certified by Utility acceptance of energy from the CSG Facility.

G.H. CSG Facility Reporting

- (1) Production from the CSG Facility shall be reported by the Subscriber Organization to its Subscribers at least monthly. To facilitate the tracking of production data by Subscribers, Subscriber Organizations are encouraged to provide website access to Subscribers showing real time Output from the CSG Facility, if practicable, as well as historical production data.

H.I. Required Disclosures.

- (1) Contract Summary.
- (a) Prior to the time that a contract for a Subscription to a community solar project is executed, a Subscriber Organization shall present the Customer with a completed Contract Summary Disclosure using the form that is approved by the Council. A Customer shall be allowed no less than three days to review the Contract Summary Disclosure prior to execution of the contract and the terms of the contract offered to the Customer may not be changed during that three-day period. At a minimum, the Contract Summary must include:
- (i) Start and end date of the contract.
 - (ii) Renewal provisions, if any. If renewal provisions are automatic, explanation of when consumer may cancel renewal without penalty.
 - (iii) Ability of consumer to terminate early, early termination penalty, if any.
 - (iv) Ability of developer to terminate contract early, and any remedy provided to consumer.
 - (v) Ability of consumer to transfer Subscription to another consumer. Ability of consumer to transfer bill credit to new address in ENO service territory.

- (vi) All one-time payments or charges, including any deposit.
 - (vii) All recurring payments or charges.
 - (viii) All penalties or fees to which the consumer may be subject.
 - (ix) Total amount to be paid by consumer under contract.
 - (x) Billing and payment procedure.
 - (xi) Whether consumer owns or leases the solar panel or capacity and statement that consumer owns RECs.
 - (xii) Contact information of developer where consumer may call with questions. Must include physical address, telephone number and email address.
 - (xiii) Address, phone number and email contact information for the CURO, as well as the address of the Council's community solar webpage.
 - (xiv) Statement that any bill credits are dependent upon the performance of the solar panels and the prevailing electric rates, which may change over time.
 - (xv) Notice that contract does not include Utility charges.
 - (xvi) Notice that developer makes no representations or warranties concerning the tax implications of the contract and consumers should consult a tax professional for such information and advice.
- (b) The Customer shall initial a copy of the Contract Summary Disclosure to acknowledge receipt of the Contract Summary.
- (2) Notice of Subscription.
- (a) A Subscriber Organization shall provide notice of Subscription of a Customer to the utility in a format consistent with Council orders.
 - (b) A Customer entering into an agreement with a Subscriber shall receive written notice of enrollment from the Subscriber Organization and the Utility.
 - (c) Notice of enrollment shall include the following:
 - (i) Customer name;
 - (ii) Customer service address;
 - (iii) Billing name;
 - (iv) Billing service address;
 - (v) Utility name;
 - (vi) Utility account number;
 - (vii) Subscriber Organization name;
 - (viii) Subscriber Organization account number; and effective date of the enrollment.

I.J. Contracts for Customer Subscription in a Community Solar Project

- (1) Minimum Contract Requirements: A Subscriber Organization's Subscription contract shall contain all material terms and conditions, stated in plain language, including the following:

- (a) A description of the transaction, including:
 - (i) Whether the Subscriber will own or lease a portion of the community solar project;
 - (ii) A statement that all Renewable Energy Credits generated by the Subscriber's portion of the project are the property of the Subscriber;
 - (iii) A statement that any bill credits are dependent upon the performance of the solar panels and the prevailing electric rates, which may change over time; and
 - (iv) Notice that the contract does not include utility charges.
- (b) The Subscriber Organization's obligation to maintain its [registry registration](#) with the Council for the duration of the contract.
- (c) Term of the contract, including:
 - (i) Start and end date of the contract;
 - (ii) Renewal provisions, if any. If renewal provisions are automatic, explanation of procedure for consumer to cancel renewal without penalty;
 - (iii) Ability of consumer to terminate early and the corresponding early termination penalty, if any;
 - (iv) Ability of developer to terminate contract early, and any corresponding remedy to be provided to the consumer, if any.
- (d) Transferability and portability.
 - (i) The ability of the consumer to transfer Subscription to another consumer.
 - (ii) The ability of the consumer to transfer the bill credit to a new address within the same Utility service territory.
- (e) The ability of the consumer to reduce the size of their commitment and any fees or penalties related thereto.
- (f) The total amount to be paid by the consumer under the contract, including:
 - (i) A clear statement of the total amount;
 - (ii) A listing of all one-time payments or charges, including any deposit, and whether the deposit is refundable;
 - (iii) A listing of all recurring payments or charges (monthly, annually, etc.);
 - (iv) A listing of any penalties or fees to which the consumer may be subject and the conditions under which such penalties or fees would be applied.
- (g) Billing and payment procedure.
- (h) The data privacy policy of the Subscriber Organization, including what data will be collected, for what purpose and to whom the developer may disclose the data.
- (i) Evidence of insurance.
- (j) A long-term maintenance plan for the project.

- (k) The current production projections for the project and a description of the methodology used to develop production projections.
- (l) Contact info of Subscriber Organization where consumer may call with questions, including the physical address, telephone number and email address of the Subscriber Organization.
- (m) Notice that the Subscriber Organization makes no representations or warranties concerning the tax implications of the contract and consumers should consult their tax professional.
- (n) Any other terms and conditions of service.

J.K. Disclosure of Subscriber Information.

- (1) Except as provided under these Rules, or otherwise ordered by the Council, a Subscriber Organization may not disclose energy usage or personally identifiable information about a Subscriber, or a Subscriber's billing, payment, and credit information, without the Subscriber's written consent.
- (2) A Subscriber Organization may disclose a Subscriber's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.
- (3) A Subscriber Organization shall provide a Customer with a copy of the Subscriber Organization's Customer information privacy policy.
- (4) A Subscriber Organization shall treat information received from prospective Customers, including those who do not subscribe, in accordance with provisions (a) and (c) of this section.

XIV. Subscription Disputes:ENFORCEMENT OF THESE RULES

- (1) CURO, with the assistance of a Hearing Officer, as necessary, may impose a penalty on the Council's behalf for any violation of these rules of up to \$1000 per violation and may, if appropriate in light of the particular violation, void a Subscriber's contract with a Subscriber Organization and require the Subscriber Organization to refund any monies paid by the Subscriber as a remedy for a violation of these provisions.
- (1)(2) Any person who believes that a the Utility or a Subscriber Organization has violated the Consumer Protection Provisions contained herein in a manner that aggrieves that person may send a written description of the alleged violation to the Council, through its CURO. The written description shall include the name of the Utility or Subscriber Organization ("Respondent"), a concise description of the alleged violation, and the complaining person's ("Complainant") name and contact information.
- (2)(3) The CouncilCURO may, through CURO, request and obtain additional information regarding the alleged violation from the Complainant and the Respondent and the Subscriber Organization. CURO shall also notify the Respondent formally of the complaint, -assess whether the Complainant has informed the Subscriber Organization Respondent of his or her complaint and given whether the Subscriber Organization Respondent has had an

opportunity to resolve the issue to the Complainant's satisfaction without CURO or Council intervention.

- (4) If, based on the information obtained by CURO, the CouncilCURO finds there is cause to believe a violation of the Council's regulations may have occurred, and the Complainant and Subscriber OrganizationRespondent have not been able to resolve the issue without Council intervention and the Respondent wishes to challenge the complaint, the Council shall establish a procedure to allow both parties to present their arguments and evidence to the Council for reviewCURO shall refer the matter to a Hearing Officer who shall conduct a process to allow both parties a fair opportunity to present evidence and their arguments and the Hearing Officer will render a decision as to whether a violation occurred and what the penalty should be. If the Respondent admits to the complaint, CURO may impose the authorized penalty on the Council's behalf.
- (5) Either the Complainant or the Respondent may appeal the decision of CURO and/or the Hearing Officer to the Council.
- (6) Should CURO and/or the Hearing Officer determine that the behavior complained of cannot be adequately remedied by a penalty of up to \$1000 and/or voiding the contract between Subscriber and Subscription Organization and requiring refund of any monies paid by the Subscriber, either CURO or the Hearing Officer may refer the matter up to the Council for further proceedings. The Council will then set an appropriate procedural schedule, consider the matter and exercise its penalty authority as appropriate in light of the circumstances.
- (5)(7) Should CURO and/or the Hearing Officer observe a pattern of continued violations of these rules by the Utility or a Subscriber Organization that is undeterred by the application of the remedies the Council has authorized CURO and the Hearing Officer to impose, either CURO or the Hearing Officer may refer the matter up to the Council for further proceedings. The Council will then set an appropriate procedural schedule, consider the matter, and exercise its penalty authority as appropriate in light of the circumstances.
- (6)(8) If, after thorough review by the Council, the Complainant's allegations are substantiated and a violation of the Consumer Protection Provisions is determined, the Council may order the Subscriber Organization to refund any overcharge or fees paid by the consumer as a result of the violation, if applicable. The Council may also, in its discretion, revoke a Subscriber Organization's registration as a result of any violation of the Consumer Protection Provisions contained in this section.
- (3) All other contract or legal disputes that arise between a Subscriber and the Subscriber Organization not pertaining to a violation of these provisions shall be brought in the appropriate city or district court in the City of New Orleans.
- The CURO shall provide the Council shall be provided with annual reports on ESG Facility billing accuracy, interconnection complaints, and consumer complaints related to the program.

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APPENDIX B

COMMUNITY SOLAR RULES
For the
Council of the City of New Orleans

I. OVERVIEW

The purpose of the Community Solar Rules (“Rules”) is to establish the City Council of New Orleans’ rules, policies, and procedures for Community Solar Generating Facilities and the associated electric utility customer subscriptions in Orleans Parish, including: eligibility for participating in Community Solar Generating Facilities; developer, facility, and customer limits with respect to community solar; establishment of a bill crediting mechanism for participants; customer protection provisions; general interconnection requirements; safety and performance requirements; and contractual and reporting requirements. Further, these rules are intended to establish a clear and streamlined path to the development of Community Solar development in the City of New Orleans. The Council recognizes that these rules do not provide the only path to distributed generation development in the City of New Orleans. To the extent that the Utility or any other party has a proposed project or proposal that does not adhere to the requirements of these Rules, it may submit a proposal to the Council for review and approval. These Rules shall be cited as the “New Orleans Community Solar Rules.” The Council may waive a provision of these Rules upon a showing of good cause.

II. DEFINITIONS

As used in these rules; the following words and phrases shall have the following meaning, unless the context clearly indicates otherwise:

“Agent” means a person who conducts business, including marketing or sales activities, or both, on behalf of a CSG Facility Subscriber Organization and includes an employee, a representative, an independent contractor, a subcontractor, a vendor and a representative not directly under contract with the Subscriber Organization that conducts business, including marketing or sales activities, on behalf of the Subscriber Organization.

“Baseline Annual Usage” refers to a Subscriber’s accumulated electricity use in kilowatt-hours (“kWh”) for the previous 12-month period at the time the subscription is entered into, as measured at the Utility’s meter, net of any distributed generation provided by the Subscriber to the utility system at that meter. For a Subscriber that does not have a record of 12 months of electricity use at the time of the Subscriber’s most recent Subscription, an estimate of the Subscriber’s accumulated 12 months of electricity use in kWh, determined in a manner the Council approves.

“Consent” means an agreement with an action communicated by the following: a written document with Customer signature; or an electronic document with electronic signature.

“Contract Summary” means a summary of the material terms and conditions of a Community Solar Generating Facility Subscriber contract on a form provided by the Council.

“Council” refers to the Council of the City of New Orleans.

“Community Solar Generating Facility” or **“CSG Facility”** means a solar energy facility that:

- (x) converts solar energy to electricity;
- (xi) is owned by the Utility or any other for-profit or nonprofit entity or organization;
- (xii) has a generating capacity/nameplate rating that does not exceed two megawatts (“MW”) as measured by the alternating current rating of the system’s inverter;
- (xiii) can provide power to or is connected to the Utility’s distribution system;
- (xiv) is located in the Utility’s electric service territory;
- (xv) is individually metered;
- (xvi) has at least three Subscribers;
- (xvii) sells the Output from the facility to the Utility and which the purchase of the Output from the facility shall take the form of a credit against the Subscriber’s electric bill; and
- (xviii) the beneficial use and renewable attributes of the Output of the facility belongs to the Subscribers.

“Community Solar Program” means a program that encompasses the facilities, entities, functions and requirements implemented by these Rules.

“Customer” means a retail electric customer account holder of the Utility.

“CURO” means Council Utilities Regulatory Office.

“Low-Income Customer” means a Customer whose gross annual household income is at or below 50 percent of Area Median Income for the year of subscription or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 50 percent of Area Median Income.

“Low-Income Subscriber” means a Subscriber who is a Low-Income Customer.

“NEM Rules” means the New Orleans Net Energy Metering Rules adopted by Council Resolution No. R-07-132.

“Output” means the energy and power produced by a CSG Facility.

“Person” refers to any individual, firm, partnership, corporation, company, association, cooperative association, joint stock association, joint venture, governmental entity, or other legal entity.

“Personally Identifiable Information” means information that can be used to distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or capable of being linked to a specific individual.

“Renewable Energy Credit” or **“REC”** means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWh of electric energy generated from a renewable energy resource.

“Rules” means the Community Solar Rules established herein or as modified by subsequent action.

“Security Deposit” means any payment of money given to a Subscriber Organization by a Subscriber in order to protect the Subscriber Organization against nonpayment of future subscription fees, but does not include escrowed prepaid subscription fees.

“Service Connection” is the location on the CSG Facility’s premises/facilities at which a point of delivery of power between the Utility and the CSG Facility is established.

“Subscriber” means a Customer of the Utility that holds a Subscription to one or more CSG Facilities and has identified one or more individual meters or accounts related to electric service to which the Subscription(s) shall be attributed.

“Subscriber Organization” means a person or legal entity that owns and operates a CSG Facility, or operates a CSG Facility that is built and owned by a third party under contract with such Subscriber Organization. A Subscriber Organization may also be a Subscriber to the facility, subject to the Limitations on Subscriptions set forth herein.

“Subscription” refers to that portion or proportionate interest of Output of a CSG Facility that is allocated to a Subscriber, including the RECs associated with or attributable to the CSG Facility.

“Unsubscribed Energy” refers to any energy Output of a CSG Facility in kWh that is not allocated to a Subscriber.

“Utility” refers to the utility providing electric service to customers in the City of New Orleans and regulated by the Council.

III. CUSTOMER ELIGIBILITY

A. Customer Eligibility

- (1) All customer rate classes are eligible to subscribe to a CSG Facility.

- (2) A Customer may subscribe to a CSG Facility in the Utility's service territory, provided that the Customer has an account for electric service with the Utility.
- (3) A Customer may subscribe to CSG Facility regardless of the Customer's participation in other Utility-sponsored renewable programs, such as NEM, provided that the Customer's participation does not violate, individually or collectively, the eligibility limits of all applicable programs and these Rules.

B. Limitations on Subscriptions

- (1) A Customer may not hold Subscriptions representing a total amount of energy in the Community Solar Program that exceeds 100 percent of the value of the Subscriber's Baseline Annual Usage.
- (2) A Customer may purchase multiple Subscriptions from one or more CSG Facilities provided that the total of the Subscriptions does not exceed the requirements in III.B.(1) of the Rules.
- (3) No Customer may own more than a 40 percent interest in the beneficial use of the electricity generated by a CSG Facility, including without limitation, the renewable energy and RECs associated with or attributable to the CSG Facility.

IV. COMMUNITY SOLAR GENERATING FACILITY ELIGIBILITY

A. CSG Facility Eligibility

- (1) A CSG Facility can be owned by the Utility or any other for-profit or nonprofit entity or organization.
- (2) A Subscriber Organization that has registered with the Council, through CURO, that wishes to construct and operate a CSG Facility as part of the Community Solar Program shall submit an application to the Utility in accordance with the CSG Facility project application procedure established by the Utility as part of these Rules.
- (3) A Subscriber Organization shall be responsible for the operation and maintenance of the CSG Facility, the associated Subscription management, and any required reporting to the Utility.
- (4) A CSG Facility must be located in the Utility's service territory, must be individually metered, and must be connected to the Utility's distribution system.
- (5) A CSG Facility may be either new construction that commenced operation after the date of Council adoption of these Rules or a solar generating system that commenced operation prior to Council adoption of these Rules.
- (6) The Subscriber Organization for the CSG Facility must enter into a Contract with the Utility to sell the Output from the facility to the Utility. The purchase of the Output from the CSG Facility shall take the form of a credit against the Subscriber's electric bill.

- (7) The Council may establish additional conditions limiting the number of CSG Facilities for which any single Subscriber Organization or its affiliates may apply.

B. CSG Facility Limitations

- (1) The CSG Facility's generating capacity/nameplate rating must not exceed two MW as measured by the alternating current rating of the system's inverter.
- (2) The beneficial use and renewable attributes of the Output of the CSG Facility must remain with the Subscribers.
- (3) A CSG Facility must have at least three Subscribers.
- (4) The total number of accounts per CSG Facility may be determined by the Subscriber Organization; however, each Subscription shall be sized to represent at least one kW of the CSG Facility's nameplate rating. The minimum one kW sizing requirement herein shall not apply to Subscriptions owned by an eligible Low-Income Subscriber.
- (5) A CSG Facility with a nameplate rating of 1000 kW or greater may not be located on the same or adjacent property as an existing or proposed CSG Facility owned by the same Subscriber Organization or affiliate with a nameplate rating of 1000 kW or greater.
- (6) One or more Subscriber Organizations may construct multiple CSG Facilities on a single parcel of property, providing that the total MW of the multiple projects on the single parcel does not exceed 2 MW.
- (7) To the extent that the analysis performed in the Utility's processing of the CSG Facility application as described in VII.D of these Rules reveals that a proposed CSG Facility would have a negative impact on the reliability of the Utility's system, either the CSG Facility must be reduced in size to mitigate such negative impact, or the CSG Facility developer may choose to incur the costs of necessary upgrades to the Utility's system to enable the CSG Facility to be interconnected without jeopardizing the reliability of the system.

V. CAPACITY LIMITS

A. Community Solar Program Capacity Limits

- (1) Subject to the CSG Facility category limits established in these Rules, the Utility shall accept CSG Facility applications as long as the total capacity of all CSG Facilities, as measured by the sum of the nameplate capacity of each CSG Facility's inverter, is less than or equal to five percent of the Utility's annual peak in MW for the first three years of the Community Solar Program. Subsequent to the first three years the Council will reconsider the total capacity limit.

- (2) Prior to accepting CSG Facility applications beyond the Community Solar Program Capacity Limits or the CSG Facility Category Limits, the Utility shall seek and obtain Council approval.

B. CSG Facility Category Limits

- (1) CSG Facilities shall be classified into one of two categories:
 - (a) Open Category: CSG Facilities of any size up to two MW as measured by the alternating current rating of the system's inverter.
 - (b) Low-Income Category: CSG Facilities of any size up to two MW as measured by the alternating current rating of the system's inverter in which a minimum of 30 percent of the CSG Facility's Output is provided to Low-Income Subscribers.
- (2) The Utility shall accept CSG Facility applications in each of the following categories up to the Community Solar Program Capacity Limits and according to the following CSG Facility Category percentages:
 - (a) Open Category: up to 50 percent of the Community Solar Program Capacity Limits; and
 - (b) The remaining 50 percent of the Community Solar Program Capacity Limit shall be reserved for Low-Income Category CSG Facilities.

VI. SUBSCRIBER ORGANIZATION REGISTRATION AND RECORDS

A. Registration with the Council

- (1) A Subscriber Organization shall register with the Council, on forms authorized by the Council, prior to offering Subscriptions to a CSG Facility or operating a CSG Facility. CURO shall process the registrations and make a list of Subscriber Organizations with current, valid registrations available on the Council's website.
- (2) The Council shall assign each Subscriber Organization with an identification number.
- (3) A Subscriber Organization shall maintain the registration with the Council by notifying the Council whenever certain information supplied as part of the registration with the Council becomes inaccurate, and updating their registration with accurate information. Subscriber Organizations shall renew their registration with CURO annually. If any Subscriber Organization fails to renew their registration in a timely manner, or if CURO otherwise becomes aware that the information in a Subscriber Organization's registration is no longer accurate, CURO shall notify the Subscriber Organization of the lapse in its registration and the Subscriber Organization shall have 30 days to renew or update its registration. If the Subscriber Organization fails to renew its or update its registration within the 30-day period, its registration shall be revoked by CURO. When a Subscriber organization's registration is revoked, CURO shall notify the

- Utility and the Utility shall no longer be required to purchase energy or capacity from the Subscriber Organization's CSG Facility or to provide credits to the Subscribers of that CSG Facility.
- (4) By registering with the Council, a Subscriber Organization acknowledges and agrees it is bound by the Council's regulatory authority and jurisdiction to enforce the requirements contained in these Rules, including, but not limited to, the Council's authority to impose penalties on the Subscriber Organization as provided for in these Rules, or otherwise allowed by law.
- (5) CURO may charge a reasonable fee to Subscriber Organizations for initial registration with the Council and for annual renewal, as authorized by the Council.

B. Subscriber Organization Obligations and Records

- (1) A Subscriber Organization shall maintain on file with CURO the following information for the duration of the operation of each CSG Facility:
- (a) Owner name and address.
 - (b) Business address.
 - (c) Name of registered agent in Orleans Parish.
 - (d) General information on the facility including: location, DC and AC nameplate capacity, major equipment list, interconnection requirements, and any other relevant design details.
 - (e) Proof of liability insurance in an amount reasonably adequate to protect the public and the Utility against damages caused by the operation of each CSG Facility. The Council, through CURO or other designated agency, will establish minimum levels of liability insurance that shall be deemed reasonably adequate for CSG Facilities.
 - (f) Proof of registration "In Good Standing" with the Louisiana Secretary of State.
 - (g) Proof of professional licenses from all applicable regulatory agencies, such as the Louisiana State Licensing Board for Contractors.
 - (h) A copy of the Subscriber Organization's Occupational or General Business License obtained from the City of New Orleans' Bureau of Revenue.
- (2) A Subscriber Organization shall maintain in its own files the following information for the duration of the operation of each CSG Facility:
- (a) Subscriber information including: name, mailing address, address at which the Subscriber has an account for electric service with the Utility, and, where relevant, the data supporting a Subscriber's classification as a Low-Income Subscriber.
 - (b) Subscription information for each Subscriber including a copy of the contract, rates, fees, and terms and conditions.
- (3) A Subscriber Organization shall provide the information in Section VI.B(2) to the Council upon request.

- (4) A Subscriber Organization shall provide to the Council, within 10 business days, information requested by the Council concerning the operation of its CSG Facilities.
- (5) Contracts between the Subscriber Organization and the Utility shall be a matter of public record and shall be filed with the Clerk of Council by the Subscriber Organization.
- (6) A Subscriber Organization, and, where relevant, the third-party owner/developer, are responsible for ensuring that its CSG Facility is constructed, maintained, and operated in compliance with all relevant local, state, and federal laws, rules regulations and standards, including, but not limited to, reliability, safety, zoning, permitting, occupational safety and health, and environmental laws, rules, regulations and standards, as well as adherence to the Utility's interconnection policies and procedures and these Rules.
- (7) CURO shall maintain on the Council's website a list of Subscriber Organizations registered with the Council, the names of any Subscriber Organizations whose registrations have lapsed or been revoked by the Council, a copy of these Rules, and an explanation of how consumers may submit a complaint related to these Rules to the Council.

VII. COMMUNITY SOLAR PROGRAM MANAGEMENT

A. Community Solar Program Plan

- (1) Within 90 days from the effective date of the Rules, the Utility shall develop a Community Solar Plan setting forth the Utility's plan for implementing these Rules including the Utility's program administration plan and relevant tariffs for compliance with these Rules.

B. CSG Facility Standard Interconnection Agreement

- (1) Within 60 days from the effective date of the Rules, the Utility shall develop a Standard Interconnection Agreement for CSG Facilities, which shall be subject to the review and approval of the Council.
- (2) The proposed Standard Interconnection Agreement for CSG Facilities shall be consistent with the provisions of Entergy's Distribution Design Basis/Standards DR7-01 and DR7-02.
- (3) The proposed Standard Interconnection Agreement for CSG Facilities shall be consistent with the provisions of these Rules and shall describe any and all interconnection expenses, and other charges in conformity with the Rules.

C. CSG Facility Project Application Procedure

- (1) Within 90 days from the effective date of the Rules, the Utility shall establish a CSG Facility application procedure in compliance with these

- Rules and applicable Council orders, and consistent with the CSG Facility Standard Interconnection Agreement.
- (2) The Utility shall develop its CSG Facility application procedure in a manner designed to encourage achievement of the Council's community solar guiding principles, timely project development, and equitable allocation of the Community Solar Program Capacity Limits and the CSG Facility Category Limits. In addition CSG Facility details necessary for the application, the application procedure shall require:
- (a) Proof of Subscriber Organization registration with the Council;
 - (b) Proof of application for all applicable permits to construct and Operate the CSG Facility; and
 - (c) Proof of site control. The Utility shall accept as proof of site control: evidence of property ownership; an executed lease agreement; or a signed option to purchase a lease.
- (3) A Subscriber Organization shall notify the Utility of the location, capacity and expected energy production of its proposed CSG Facility at the time it submits an interconnection request, or prior to soliciting subscriptions from potential Subscribers, whichever occurs first.

D. Processing of CSG Facility Applications

- (1) The Utility shall process applications from Subscriber Organizations filed in accordance with the CSG Facility application procedure in the order in which the utility receives the application.
- (2) Within 10 business days of receipt, the Utility shall notify the Subscriber Organization whether the application is rejected due to the capacity limits established by these Rules.
- (3) Within 10 business days of receipt, the Utility shall notify the Subscriber Organization whether the application is complete. If the application is incomplete, the Utility shall provide a written list detailing all information that must be provided to complete the application.
- (4) A Subscriber Organization receiving notice of an incomplete application shall revise and submit the required information within 10 business days after receipt of the list of incomplete information. Failure to submit the required information within 10 business days shall result in the Subscriber Organization losing their place in the queue, but shall not otherwise prejudice the Subscriber Organization's ability to file a new, complete application in the future.
- (5) The Utility shall notify a Subscriber Organization within five business days of receipt of a revised application whether the application is complete or incomplete.
- (6) The Utility shall grant an extension of time of an additional 10 days to provide such information upon request from the Subscriber Organization.
- (7) The Utility shall reject an application that is not submitted in accordance with CSG Facility application procedure.
- (8) The Utility shall assign each CSG Facility a unique identification number.

- (9) If the Utility participates as a Subscriber Organization, it will have the same rules applied to it as any other Subscriber Organization.
- (10) If the Utility or any of its affiliates participate as a Subscriber Organization, the Utility may not recover any portion of its CSG Facility costs through its base rates. If a Utility or any of its affiliates participate as a Subscriber Organization, it must not offer its own CSG Facility, or that of its affiliate any preferential treatment or benefit not available to other Subscriber Organizations.
- (11) If a CSG Facility fails to begin operating within 12 months of an approved application by the Subscriber Organization, the Subscriber Organization should provide to the Utility an additional deposit of \$50 per kW to continue under the Community Solar Program.
- (12) The Utility shall return the CSG Facility deposit upon commencement of operation, unless the CSG Facility fails to begin operating with 18 months of an approved application.
- (13) Any forfeited deposits shall be credited back to Utility customers via the Fuel Adjustment Clause.
- (14) The Utility's interconnection process shall include an analysis of any potential reliability impacts, positive or negative, of the interconnection of the CSG Facility at the requested location.

E. Utility Data and Project Information

- (1) The Utility shall designate a contact person, and provide contact information on its website for submission of all project application requests, and from whom information on the project application request process and the Utility's electric distribution system can be obtained.
- (2) The Utility shall provide information, updated at least quarterly, on its website about the current status of the Community Solar Program and CSG Facility applications, including: name; address; date of application; interconnection status; expected date of operation; percent of the project that is subscribed, and remaining available capacity by year in each program category. The Utility shall also include on its website a link to the Council's Community Solar web page.
- (3) The Utility shall make reasonable attempts to assist all applicants with identifying means to locate and operate CSG Facilities in a manner that minimizes adverse effects or maximizes distribution system benefits at locations identified by applicants. If the Utility or any of its affiliates choose to participate as an owner/developer of a CSG Facility and/or a Subscriber Organization, the Utility must offer other owner/developer and Subscriber Organizations equal access to the information available to the Utility and its affiliates for locating and operating CSG Facilities in a manner that minimizes adverse effects or maximizes distribution system benefits so that neither the Utility's nor its affiliate's CSG Facility has preferential access to information inaccessible to other Subscriber Organizations.

- (4) The information provided by the Utility on its website shall include studies and other materials useful to understanding the feasibility of interconnecting a CSG Facility on the Utility's electric distribution system, except to the extent providing the materials would violate security requirements, confidentiality agreements, or be contrary to law.
- (5) The Utility may require an applicant to execute an appropriate confidentiality agreement prior to release or access to confidential or restricted information.
- (6) The Utility shall monitor and review its distribution system to determine any adverse or beneficial effects resulting from each installed CSG Facility.
- (7) The Utility shall maintain for the longer of ten years or the duration of the community solar program, the following information for each CSG Facility: recorded monthly peak output, monthly energy output, aggregate annual energy credited to Subscribers by rate class; aggregate annual amount of subscription credits provided to Subscribers by rate class; annual amount of unsubscribed energy output provided to the Utility; and annual amount paid by the Utility for unsubscribed energy. Subscriber monthly billing information should be maintained by the Utility consistent with the Utility's customer billing records retention policy.

F. Utility Reporting

- (1) The Utility shall provide the Council with complete date, information, and supporting documentation necessary to monitor the Community Solar Program status, impact on operations, Subscriber and ratepayer impact, and other information upon request.
- (2) By May 1 of each year, the Utility shall file an annual report with the Council on the Status of the Community Solar Program Including: (1) monthly energy (MWh) and capacity (MW) produced by the Community Solar Program, including each CSG Facility; (2) total cost of energy and capacity ENO purchases through the Community Solar Program, identifying bill credits separate from unsubscribed energy; (2) \$/MW and \$/MWh of the capacity and energy purchased, (3) Utility costs associated with administering the Community Solar Program; (4) tons of emissions avoided through utilization of the energy and capacity produced by the Community Solar Program; (5) any positive and negative impacts on the operation of the Utility's distribution system; (6) any benefits provided to the Utility's system by the Community Solar Program related to mitigating or recovering from storm events or other outages.
- (3) The electric Utility shall maintain a list of projects and total program capacity, and shall provide the list to the Council by June 30 and December 31 of each year.
- (4) The Utility shall publish on its website a rolling 24-month report of what the per-kWh and per-kW credit for energy and capacity was in order to assist customers seeking to evaluate whether to enter into or renew a contract with a CSG Facility.

G. Utility Cost Recovery and Charges

- (1) Once the Utility's Community Solar Plan has been reviewed and approved by the Council, the Utility shall have a fair opportunity to receive full and timely cost recovery of costs incurred to administer the Community Solar Program, and any non-reimbursed portion of program bill credit costs and unsubscribed energy costs.
- (2) The Utility may not establish a separate surcharge fee or rate for recovery of any Community Solar programs costs identified in Section VII.G.1. The specific mechanisms for Community Solar program cost recovery will be approved by a Council resolution based on the Council's review of the community solar tariffs proposed in the Community Solar Plan required under Section VII.A.1.
- (3) The Utility may assess a Council-approved charge to the Subscriber Organization to cover the Utility's incremental costs associated with integrating the generation from the CSG Facility into the Utility's system, administering the contracts with Subscriber Organizations, and administering the CSG Facility's Subscriber billing credits. This charge shall not reflect costs that are already recovered by the Utility from Customers through other charges. The Utility may seek a revision of this charge no more frequently than once per year.
- (4) The Utility's revenue and expenses associated with the Subscriber Organizations and the Community Solar Program Plan shall be identified separately in general ledger records and maintained in separate revenue and expense sub accounts.

VIII. SUBSCRIPTION CREDITS

- A. Subscriber Organizations are required to provide real time reporting of production as specified by the Utility. For CSG Facilities greater than 250 kW, the Subscriber Organization shall provide real time electronic access to production data. The Utility may require different real time reporting for CSG Facilities 250 kW and smaller.
- B. The Subscriber Organization for each CSG Facility will provide a monthly report to the Utility listing all Subscribers and the proportion of the CSG Facility Output that shall be applied to each Subscriber's monthly electric bill. The monthly report shall follow a standard format specified by the Utility in order to integrate data into the Utility's billing system. The monthly report shall also include the amount of the CSG Facility's capacity that remains unsubscribed.
- C. The Utility shall apply credits to each Subscriber's monthly bill using the most recently updated monthly Subscriber list and Output data on a two-month lag where actual operational results and the associated bill credit will show up two months following the Utility's receipt of Output data for the CSG Facility.
- D. The Utility shall determine the amount of CSG Facility monthly kWh Output to be credited to each Subscriber by multiplying the Subscriber's most recent generation proportion of the CSG Facility by the Utility metered Output of the CSG Facility.

- E. The CSG per kWh credit will be based on avoided capacity and energy costs. The value of the CSG per kWh credit will be determined by the following:
- (1) The CSG per kWh credit shall be the sum of the avoided energy costs and corresponding avoided capacity costs;
 - (2) The avoided energy cost, expressed in \$/kWh, will be the weighted average of the previous calendar year's hourly locational marginal prices ("LMPs") applicable to the Utility. The hourly LMPs shall be weighted based on the estimated hourly output of a 1 kW_{DC} solar PV installation in New Orleans as calculated by the National Renewable Energy Laboratory's PVWatts Calculator for a standard fixed array system with a tilt and orientation typical for New Orleans;
 - (3) The corresponding avoided capacity cost, will be expressed in \$/kWh and based on the MISO Cost of New Entry ("CONE") value for the planning year that corresponds to the month in which the credit is provided and shall be calculated as follows:

$$\text{avoided capacity cost} = (\text{CV}*0.5)/\text{AEE}$$

where:

- CV is equal to the CONE value in \$/MW-yr for MISO Local Resource Zone 9 for the planning year that corresponds with the month in which the credit is provided;
 - 0.5 represents the adjustment used by MISO for solar resources in determining the initial Resource Adequacy value for the purposes of the Planning Resource Auction ("PRA");
 - AEE is equal to the annual estimated energy in kWh from a 1 MW_{DC} solar PV installation in New Orleans as calculated by the National Renewable Energy Laboratory's PVWatts Calculator for a standard fixed array system with a tilt and orientation typical for New Orleans.
- F. The appropriate credit to be applied to each Subscriber's bill will be a dollar amount credit determined by multiplying the Subscriber's kWhs from Section VIII.D. by the value of each CSG per kWh credit from Section VIII.E.
- G. The Subscription monthly bill credit so determined will apply to each Subscriber irrespective of the customer class tariff under which the Subscriber receives service from the Utility, and will apply to all Subscribers in a CSG Facility.
- H. If, in a monthly billing period, the Subscriber's billing credit associated with the Subscriber's Subscriptions exceeds the Subscriber's bill from the Utility, the excess billing credit will be rolled over as a dollar amount bill credit from month to month indefinitely until the Subscriber terminates service with the Utility at which time no payment shall be from the Utility for any remaining bill credits associated with the Subscriber's Subscription.
- I. The Utility shall retain a record of CSG Facility kWh applied to each Subscriber's account for a period of three years.

IX. UNSUBSCRIBED ENERGY

- A. The Utility will pay a Subscriber Organization for up to 20 percent of the monthly energy produced by a CGS Facility and delivered to the Utility if such energy is not allocated to a Subscriber of the CSG Facility.
- B. The rate per kWh to be paid for net deliveries to the Utility, pursuant to Section IX.A, shall be the Utility's estimated avoided energy costs for the appropriate time period from the Utility's most recent biennial filing with the Clerk of Council of the City of New Orleans pursuant to the Public Utilities Regulatory Policies Act of 1978, Section 210.

X. LOW-INCOME CUSTOMER VERIFICATION

- A. The operator of a low-income multi-family dwelling unit may apply to the Council to qualify as a Low-Income Subscriber for the purposes of the Community Solar Program. The operator should demonstrate to the Council that the Subscription Credits will be credited to the tenants of the low-income multi-family dwelling.
- B. A Subscriber Organization shall certify to the Utility in writing that the Subscriber Organization has verified the eligibility of all Low-Income Subscribers needed to qualify for the program prior to receiving permission to operate from the Utility.
- C. The Council will provide guidelines for acceptable methods for Subscriber Organizations to verify Low-Income Customer status of Subscribers within 90 days from the effective date of these Rules.

XI. SUBSCRIPTION TRANSFERS AND PORTABILITY

- A. A Subscriber may release all or part of their Subscription back to the Subscriber Organization for transfer to any person or entity who qualifies to be a Subscriber in the CSG Facility.
- B. A Subscriber who desires to transfer all or part of his or her Subscription to another eligible Customer desiring to purchase a Subscription may do so only through the Subscription Organization and in compliance with the terms and conditions of the Subscription contract and the transfer will be effective in accordance therewith.
- C. If the CSG Facility is fully subscribed, the Subscriber Organization shall maintain a waiting list of eligible Customers who desire to purchase Subscriptions. The Subscriber Organization shall offer the Subscription of the Subscriber desiring to transfer their interest, or a portion thereof, on a first-come, first-serve basis to Customers on the waiting list.
- D. A Subscriber that moves to a different premise located within the Utility service territory may change the premises to which the Subscription is attributed, however, the Subscriber must adjust their Subscription so that it does not exceed 100 percent the Baseline Annual Usage at the new location and release any portion of their Subscription beyond that level back to the Subscriber Organization. A Subscriber Organization may not charge an unreasonable transfer fee to such a Customer.
- E. The Subscriber Organization and the Utility shall jointly verify that each Subscriber is eligible to be a Subscriber in the CSG Facility. The CSG Facility Subscriber

- enrollment records shall include, at a minimum, the Subscriber's name and Utility Account number, the percentage share owned by the Subscriber, the effective date of the ownership of that Subscription, and the premises to which the Subscription is attributed for the purpose of applying billing credits. Changes in the Subscriber enrollment records shall be communicated by the Subscriber Organization to the Utility, in written or electronic form, as soon as practicable, but on no less than a monthly basis.
- F. Prices paid for Subscriptions in a CSG Facility shall not be subject to regulation by the Council. However, to ensure that Subscriber Organizations are acting fairly and transparently, the Subscriber Organizations must provide materials to the potential Subscriber clearly showing the Subscription cost.
 - G. To ensure fairness and transparency regarding the transfer of subscriptions and Subscription Credits, the Utility, in consultation with the Council and its Advisors will develop a process and requirements therefor. The Subscriber Organization will be responsible for any costs associated with the transfer of subscriptions and/or Subscription Credits.

XII. RENEWABLE ENERGY CREDIT OWNERSHIP

- A. Subscribers are not customer generators.
- B. The ownership and title to all renewable energy attributes or Renewable Energy Credits associated with the CSG Facilities shall belong to the individual Subscribers.
- C. If the Subscriber Organization can demonstrate an increased value provided directly to Subscribers with ownership and title of the RECs by the Subscriber Organization (for example, if the Subscriber Organization believes it can provide greater benefit to its Subscribers by consolidating and selling RECs and crediting its Subscribers with the revenue), the Subscriber Organization is encouraged to provide the Council with support for such a proposal, and the Council may allow the Subscriber Organization to offer Subscribers the opportunity to redeem the value of such RECs on an individual or consolidated basis.

XIII. CONSUMER PROTECTION & DISCLOSURE

A. Unauthorized Subscriptions.

- (1) No person shall subscribe a Customer to a community solar energy generation system without the Customer's express written consent.
- (2) A Subscriber Organization may not add a new charge for a new service, existing service, or service option not described in the Subscriber's contract with the Subscriber Organization without first providing written notice to the Subscriber and providing them an opportunity to terminate their Subscription without penalty if the new charge is unacceptable to the Subscriber.

B. Discrimination Prohibited.

- (1) A Subscriber Organization may not discriminate against any Customer, based wholly or partly on race, color, creed, national origin, or gender of an applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.
- (2) A Subscriber Organization may not refuse to provide service to a Customer except by the application of standards that are reasonably related to the Subscriber Organization's economic and business purpose.

C. Prohibition of Unfair, Deceptive, or Abusive Acts or Practices.

- (1) Each Subscriber Organization shall conduct all aspects of its business that touch on Consumers or their interests without any unfair, deceptive, or abusive acts or practices.
- (2) Each Subscriber Organization shall regularly examine and consider the possibility of unfair, deceptive, or abusive acts or practices violations in all aspects of its business that touch on consumers or their interests, including, but not limited to, marketing, sales, origination, contract terms, contract options, installation, servicing, and loss mitigation.
- (3) Subscriber Organizations shall not harass or threaten consumers and should avoid high-pressure sales techniques. Subscriber Organizations should not take advantage of a consumer's lack of knowledge, and if they become aware that a consumer clearly misunderstands a material issue in a community solar transaction, they should correct that misunderstanding. Consumer questions must be answered honestly, Subscriber Organizations may not make any statements to consumers that are false or without a reasonable basis in fact.

D. Limitation of Liability

- (1) In the event of the failure, termination, or disqualification of a CSG Facility or Subscriber Organization, Subscribers' liability will be limited only to loss of the funds that they commit to invest in a community solar project.

E. Advertising, Marketing, and Solicitations.

- (1) Advertising Permitted.
 - (a) A Subscriber Organization may advertise its services.
 - (b) A Subscriber Organization may not engage in an advertising, marketing or trade practice that is unfair, false, misleading, or deceptive.

- (c) All advertising claims must be supported by factual, verifiable sources. Advertising claims should avoid underestimating costs, overestimating performance and overvaluing financial and incentive benefits.
- (d) Subscriber Organizations should be familiar with all advertising laws, rules, regulations, and guidance, including federal, state, and local guidance on advertising and marketing.
- (e) Prices quoted must be accurate and complete, including, but not limited to disclosure as to any initial pricing incentives, such as “teaser rates” that include future price increases, and whether the quoted price includes any price incentives, such as government tax incentives or utility program incentives, and the terms of eligibility for such incentives.
- (f) Any projections of future utility prices presented by a Subscriber Organization or its Agents to consumers must be based on accepted sources and methods. They must be clearly identified, verifiable, and be based on one or more of the following sources:
 - (i) Energy Information Agency (“EIA”) data from the Annual Energy Review, Annual Energy Forecast, Monthly Energy Forecast, or similar EIA publications for the state in which the system is located;
 - (ii) Council resolutions, orders, publications, or filings with the Council by the Utility;
 - (iii) Industry experts or other qualified consultants; or
 - (iv) Other similar reliable sources qualified by the Council or CURO office.
- (g) Accepted methods for Utility electricity price projections include:
 - (i) If based on historical data for the utility servicing the installation site, combined average growth rate using no less than five years of data ending with the most recent year for which data is publicly available;
 - (ii) If based on projections of third-party sources, then it must be an accurate representation of any data within the timeframe of the source of the data, and when projecting beyond the timeframe of the source data, a combined average growth rate projection using a time period that is the greater of source data timeframe or five years.
- (h) Any endorsements of the Subscriber Organization or its products or services by individuals used in any media format either owned by the Subscriber Organization or initiated or sponsored by the Subscriber Organization through media owned by a third party must be authorized by the endorser, accurate, genuine, in proper context, and without misrepresentation, whether the misrepresentation is affirmative or by omission. It must be clear as to whether the endorser is providing an opinion as a consumer with true firsthand experience, as an expert, or as a spokesperson, and transparent as to

whether any connections exist between the endorser and the Subscriber Organization beyond that which a consumer would ordinarily expect.

(2) Marketing.

- (a) A Subscriber Organization's marketing or solicitation information shall include the name under which the Subscriber Organization is registered with CURO.
- (b) A Subscriber may use an Agent to conduct marketing or sales activities. A Subscriber Organization is responsible for any fraudulent, deceptive, or other unlawful marketing performed by its Agent while marketing or selling Subscriptions on behalf of the Subscriber Organization.
- (c) Subscriber Organizations and their Agents must follow all applicable marketing laws, such as the National Do Not Call Registry, the CAN-SPAM Act of 2003, etc.
- (d) Door-to-door marketing and sales: A Subscriber Organization may not permit a person to conduct door-to-door marketing on its behalf until it has obtained and reviewed a criminal history record. Subscriber Organizations shall be solely responsible for carefully screening individuals used for door-to-door marketing purposes to include only those individuals having no history of fraudulent conduct or violent behavior.
- (e) A Subscriber Organization must issue an identification badge to any persons conducting door-to-door sales on its behalf to be worn and prominently displayed when conducting door-to-door activities or appearing at public events on behalf of the Subscriber Organization. The badge must accurately identify the Subscriber Organization, and display the employee or Agent's full name and photograph. When conducting door-to-door activities or appearing at a public event, the Subscriber Organization's employees and Agents may not wear apparel or accessories or carry equipment that contains branding elements, including a logo, that suggests a relationship that does not exist with a utility, government agency, or another Subscriber Organization.
- (f) A Subscriber Organization shall ensure the training of its employees and Agents on the following subjects:
 - (i) Local, state and federal laws and regulations that govern marketing, telemarketing, consumer protection, and door-to-door sales as applicable to the relevant types of marketing and jurisdictions;
 - (ii) The consumer protections set forth in these Rules, including the prohibition on unfair, deceptive, or abusive acts or practices; and
 - (iii) The Subscriber Organization's products, services, and contracts.
- (g) Geographic marketing permitted.

- (i) A Subscriber Organization may market services on a geographic basis.
- (ii) A Subscriber Organization is not required to offer services throughout an electric company's entire service territory.
- (iii) A Subscriber Organization may not refuse to provide service to a Customer based on the economic character of a geographic area or the collective credit reputation of the area.

F. Creditworthiness.

- (1) A Subscriber Organization shall apply uniform income, security deposit, and credit standards for the purpose of making a decision as to whether to offer a Subscription to Customers within a given class, provided that the Subscriber Organization may apply separate sets of uniform standards for the purpose of promoting participation by low-income retail electric Customer.

G. Subscriber Funds

- (1) Subscriber funds, including deposits, collected by the Subscriber Organization in advance of commercial operation of a CSG Facility, shall be held in escrow. The escrow shall be maintained by its terms until such time as the CSG Facility commences commercial operation as certified by Utility acceptance of energy from the CSG Facility.

H. CSG Facility Reporting

- (1) Production from the CSG Facility shall be reported by the Subscriber Organization to its Subscribers at least monthly. To facilitate the tracking of production data by Subscribers, Subscriber Organizations are encouraged to provide website access to Subscribers showing real time Output from the CSG Facility, if practicable, as well as historical production data.

I. Required Disclosures

- (1) Contract Summary.
 - (a) Prior to the time that a contract for a Subscription to a community solar project is executed, a Subscriber Organization shall present the Customer with a completed Contract Summary Disclosure using the form that is approved by the Council. A Customer shall be allowed no less than three days to review the Contract Summary Disclosure prior to execution of the contract and the terms of the contract offered to the Customer may not be changed during that three-day period. At a minimum, the Contract Summary must include:
 - (i) Start and end date of the contract.

- (ii) Renewal provisions, if any. If renewal provisions are automatic, explanation of when consumer may cancel renewal without penalty.
 - (iii) Ability of consumer to terminate early, early termination penalty, if any.
 - (iv) Ability of developer to terminate contract early, and any remedy provided to consumer.
 - (v) Ability of consumer to transfer Subscription to another consumer. Ability of consumer to transfer bill credit to new address in ENO service territory.
 - (vi) All one-time payments or charges, including any deposit.
 - (vii) All recurring payments or charges.
 - (viii) All penalties or fees to which the consumer may be subject.
 - (ix) Total amount to be paid by consumer under contract.
 - (x) Billing and payment procedure.
 - (xi) Whether consumer owns or leases the solar panel or capacity and statement that consumer owns RECs.
 - (xii) Contact information of developer where consumer may call with questions. Must include physical address, telephone number and email address.
 - (xiii) Address, phone number and email contact information for the CURO, as well as the address of the Council's community solar webpage.
 - (xiv) Statement that any bill credits are dependent upon the performance of the solar panels and the prevailing electric rates, which may change over time.
 - (xv) Notice that contract does not include Utility charges.
 - (xvi) Notice that developer makes no representations or warranties concerning the tax implications of the contract and consumers should consult a tax professional for such information and advice.
- (b) The Customer shall initial a copy of the Contract Summary Disclosure to acknowledge receipt of the Contract Summary.

- (2) Notice of Subscription.
- (a) A Subscriber Organization shall provide notice of Subscription of a Customer to the utility in a format consistent with Council orders.
 - (b) A Customer entering into an agreement with a Subscriber shall receive written notice of enrollment from the Subscriber Organization and the Utility.
 - (c) Notice of enrollment shall include the following:
 - (i) Customer name;
 - (ii) Customer service address;
 - (iii) Billing name;
 - (iv) Billing service address;
 - (v) Utility name;

- (vi) Utility account number;
- (vii) Subscriber Organization name;
- (viii) Subscriber Organization account number; and effective date of the enrollment.

J. Contracts for Customer Subscription in a Community Solar Project

- (1) Minimum Contract Requirements: A Subscriber Organization's Subscription contract shall contain all material terms and conditions, stated in plain language, including the following:
 - (a) A description of the transaction, including:
 - (i) Whether the Subscriber will own or lease a portion of the community solar project;
 - (ii) A statement that all Renewable Energy Credits generated by the Subscriber's portion of the project are the property of the Subscriber;
 - (iii) A statement that any bill credits are dependent upon the performance of the solar panels and the prevailing electric rates, which may change over time; and
 - (iv) Notice that the contract does not include utility charges.
 - (b) The Subscriber Organization's obligation to maintain its registration with the Council for the duration of the contract.
 - (c) Term of the contract, including:
 - (i) Start and end date of the contract;
 - (ii) Renewal provisions, if any. If renewal provisions are automatic, explanation of procedure for consumer to cancel renewal without penalty;
 - (iii) Ability of consumer to terminate early and the corresponding early termination penalty, if any;
 - (iv) Ability of developer to terminate contract early, and any corresponding remedy to be provided to the consumer, if any.
 - (d) Transferability and portability.
 - (i) The ability of the consumer to transfer Subscription to another consumer.
 - (ii) The ability of the consumer to transfer the bill credit to a new address within the same Utility service territory.
 - (e) The ability of the consumer to reduce the size of their commitment and any fees or penalties related thereto.
 - (f) The total amount to be paid by the consumer under the contract, including:
 - (i) A clear statement of the total amount;
 - (ii) A listing of all one-time payments or charges, including any deposit, and whether the deposit is refundable;
 - (iii) A listing of all recurring payments or charges (monthly, annually, etc.);

- (iv) A listing of any penalties or fees to which the consumer may be subject and the conditions under which such penalties or fees would be applied.
- (g) Billing and payment procedure.
- (h) The data privacy policy of the Subscriber Organization, including what data will be collected, for what purpose and to whom the developer may disclose the data.
- (i) Evidence of insurance.
- (j) A long-term maintenance plan for the project.
- (k) The current production projections for the project and a description of the methodology used to develop production projections.
- (l) Contact info of Subscriber Organization where consumer may call with questions, including the physical address, telephone number and email address of the Subscriber Organization.
- (m) Notice that the Subscriber Organization makes no representations or warranties concerning the tax implications of the contract and consumers should consult their tax professional.
- (n) Any other terms and conditions of service.

K. Disclosure of Subscriber Information.

- (1) Except as provided under these Rules, or otherwise ordered by the Council, a Subscriber Organization may not disclose energy usage or personally identifiable information about a Subscriber, or a Subscriber's billing, payment, and credit information, without the Subscriber's written consent.
- (2) A Subscriber Organization may disclose a Subscriber's billing, payment, and credit information for the sole purpose of facilitating billing, bill collection, and credit reporting.
- (3) A Subscriber Organization shall provide a Customer with a copy of the Subscriber Organization's Customer information privacy policy.
- (4) A Subscriber Organization shall treat information received from prospective Customers, including those who do not subscribe, in accordance with provisions (a) and (c) of this section.

XIV. ENFORCEMENT OF THESE RULES

- (1) CURO, with the assistance of a Hearing Officer, as necessary, may impose a penalty on the Council's behalf for any violation of these rules of up to \$1000 per violation and may, if appropriate in light of the particular violation, void a Subscriber's contract with a Subscriber Organization and require the Subscriber Organization to refund any monies paid by the Subscriber as a remedy for a violation of these provisions.
- (2) Any person who believes that the Utility or a Subscriber Organization has violated the provisions contained herein in a manner that aggrieves that person may send a written description of the alleged violation to the Council, through its CURO. The written description shall include the name

- of the Utility or Subscriber Organization (“Respondent”), a concise description of the alleged violation, and the complaining person’s (“Complainant”) name and contact information.
- (3) CURO may, request and obtain additional information regarding the alleged violation from the Complainant and the Respondent. CURO shall also notify the Respondent formally of the complaint, assess whether the Complainant has informed the Respondent of his or her complaint and whether the Respondent has had an opportunity to resolve the issue to the Complainant’s satisfaction without CURO or Council intervention.
- (4) If, based on the information obtained by CURO, the CURO finds there is cause to believe a violation of the Council’s regulations may have occurred, the Complainant and Respondent have not been able to resolve the issue without Council intervention and the Respondent wishes to challenge the complaint, CURO shall refer the matter to a Hearing Officer who shall conduct a process to allow both parties a fair opportunity to present their evidence and arguments and the Hearing Officer will render a decision as to whether a violation occurred and what the penalty should be. If the Respondent admits to the complaint, CURO may impose the authorized penalty on the Council’s behalf.
- (5) Either the Complainant or the Respondent may appeal the decision of CURO and/or the Hearing Officer to the Council.
- (6) Should CURO and/or the Hearing Officer determine that the behavior complained of cannot be adequately remedied by a penalty of up to \$1000 and/or voiding the contract between Subscriber and Subscription Organization and requiring refund of any monies paid by the Subscriber, either CURO or the Hearing Officer may refer the matter up to the Council for further proceedings. The Council will then set an appropriate procedural schedule, consider the matter and exercise its penalty authority as appropriate in light of the circumstances.
- (7) Should CURO and/or the Hearing Officer observe a pattern of continued violations of these rules by the Utility or a Subscriber Organization that is undeterred by the application of the remedies the Council has authorized CURO and the Hearing Officer to impose, either CURO or the Hearing Officer may refer the matter up to the Council for further proceedings. The Council will then set an appropriate procedural schedule, consider the matter, and exercise its penalty authority as appropriate in light of the circumstances.
- (8) All other contract or legal disputes that arise between a Subscriber and the Subscriber Organization not pertaining to a violation of these provisions shall be brought in the appropriate city or district court in the City of New Orleans. CURO shall provide the Council with annual reports on consumer complaints related to the program.