

**RESOLUTION
R-19-111**

CITY HALL: March 28, 2019

**BY: COUNCILMEMBERS MORENO, WILLIAMS, GIARRUSSO, BANKS, AND
BROSSETT**

**RULEMAKING PROCEEDING TO ESTABLISH RULES
FOR COMMUNITY SOLAR PROJECTS**

**RESOLUTION AND ORDER ESTABLISHING RULES
FOR COMMUNITY SOLAR PROJECTS**

DOCKET NO. UD-18-03

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

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

WHEREAS, Entergy New Orleans, LLC (“ENO” or “Company”) is a public utility providing electric and natural gas service to all of New Orleans; and

WHEREAS, ENO is a wholly owned subsidiary of Entergy Utility Holding Company, LLC; and

WHEREAS, the Council has repeatedly expressed support for the efficient use of clean, sustainable technology to improve the quality of life for our citizens and businesses; and

WHEREAS, on March 15, 2007, the Council adopted Resolution No. R-07-132, adopting for the first time Net Energy Metering (“NEM”) Rules for the City of New Orleans; and

WHEREAS, the NEM program has proven to be popular in New Orleans and has resulted in over 37 MW of rooftop solar being installed in New Orleans;¹ and

WHEREAS, the Council believes there are many New Orleans residents who are interested in renewable resources but unable to participate in the NEM program for various reasons, including, but not limited to, because their roof is not a viable location for rooftop solar, they rent and do not own the building in which they live, they are unable to afford the cost of a rooftop solar system, or they are unable to make a long-term commitment to a solar unit; and

WHEREAS, the Council wishes to expand the renewable options available to New Orleans residents, particularly those who are unable to participate in the NEM program; and

WHEREAS, on June 21, 2018, in furtherance of this goal, the Council adopted Resolution No. R-18-223 establishing a docket and opening a rulemaking proceeding to establish rules for community solar projects, which included a White Paper with Proposed Rules regarding community solar programs provided to the Council by the Council’s Utility Advisors; and

WHEREAS, in Resolution No. R-18-223, the Council sought comments on the Advisors’ White Paper and stated that it believes that any rules established for community solar programs should adhere to the following principles:

- The rules should provide new renewable options to New Orleanians, with a particular focus on providing renewable options to those who are not eligible for rooftop solar on their own residences/businesses and to low-income customers. While the Council has no objection at this time to allowing those already participating in the NEM program to participate in community solar, the driving purpose of the rules should be to create options for those who are unable to participate in NEM.

¹ City of New Orleans, *Climate Action Plan for a Resilient New Orleans*, at 27 (July 7, 2017), <https://www.nola.gov/nola/media/Climate-Action/Climate-Action-for-a-Resilient-New-Orleans.pdf>

- The rules should be designed to allow customers to offset their own electric consumption, they should not be designed to allow customers to generate electricity for profit at the expense of their fellow ratepayers. The Council understands that most state rules regarding community solar contain this restriction, and that this restriction also assists in avoiding negative federal income tax and securities implications, as is discussed more fully in the Advisors' White Paper.
- The rules should leave as much flexibility as possible for developers to design community solar programs that they believe will be attractive to New Orleans citizens, consistent with the Council's responsibility to protect New Orleans citizens and to ensure the continued provision of safe, reliable, electric power to New Orleans at just and reasonable rates. To that end, the Council establishes the following parameters:
 - The rules should protect non-participating ratepayers from risks associated with the program. The risks borne by ratepayers participating in community solar projects should be limited to loss of the funds that they commit to invest in a community solar project. All other risks (such as liability for accidental damage, risk of undersubscription, etc.) should be borne by developers.
 - In order to ensure a level playing field, to the extent that ENO chooses to become a community solar developer, it must offer the same privileges it allows itself to all other developers. ENO may not give itself preferential treatment as a developer of a community solar project, and may not use ratepayer funding for its community solar projects in any manner not available to other developers.
 - Developers of community solar projects shall be required to meet all applicable safety and reliability protocols to ensure that the community solar projects do not pose a danger to human health and safety and the reliability of the electric grid in New Orleans.
 - Because of the expectation of the citizens of New Orleans that the Council oversees the provision of electric service to them, particularly anything that may appear on their ENO bill, consumer protection standards must be adopted to ensure that consumers are treated fairly by developers and that their dealings with developers are transparent; and

WHEREAS, pursuant to the procedural schedule adopted in Resolution No. R-18-223, Comments on the Advisors' White Paper and Proposed Rules were filed by 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, and the Advisors' submitted their Advisors Report;² and

WHEREAS, the Advisors reported 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;³ and

WHEREAS, the Advisors also report that there do remain areas of significant difference between the parties, 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;⁴ and

WHEREAS, the Advisors clarified 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 Advisors also clarified that Proposed Rules are not meant to be a determination of the one and only way that distributed generation ("DG") may enter New Orleans, and that there is nothing in the 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;⁵ and

² Advisors Report Regarding Proposed Community Solar Rules, Docket No. UD-18-03 (Nov. 30, 2018) ("Advisors Report").

³ Advisors Report at 1.

⁴ Advisors Report at 1.

⁵ Advisors Report at 1.

DISCUSSION

A. Opportunities for Low-Income Customers

WHEREAS, the Advisors state 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;⁶ and

1. *Definition of “Low-Income Customer”*

WHEREAS, 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;⁷ and

WHEREAS, 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.⁸ 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;⁹ and

⁶ Advisors Report at 3.

⁷ White Paper of the Council’s Utility Advisors Regarding Community Solar and Other Shared Distributed Energy Resources Appendix B, Proposed Rules, Definitions (June 2018) (“White Paper”).

⁸ 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”).

⁹ 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”).

WHEREAS, 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;¹⁰ and

WHEREAS, 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.¹¹ The Advisors believe 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.¹² 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.¹³ 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.¹⁴

¹⁰ 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”).

¹¹ Advisors Report at 4.

¹² Advisors Report at 4.

¹³ Advisors Report at 4.

¹⁴ Advisors Report at 4.

WHEREAS, the Council agrees that a widely accepted and understood definition of “Low-Income Customer” should be utilized, and finds that the use of the same standard applied by the Housing Authority of New Orleans, Louisiana Housing Corporation, and Louisiana Department of Health, and recommended by the AAE and the Advisors is a reasonable definition to use; and

2. *Capacity Reserved For Low-Income Customers*

WHEREAS, 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.¹⁵ The parties commenting on this issue felt that this is too little, and the set-aside for Low-Income Customers should be increased;¹⁶ and

WHEREAS, 350 New Orleans argues that the proposed set aside of 30% of the capacity limit for community solar projects is too small.¹⁷ 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;¹⁸ and

WHEREAS, 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.¹⁹ 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

¹⁵ White Paper at 10, Proposed rules at VI.B.

¹⁶ White Paper at 10, Proposed rules at VI.B.

¹⁷ 350 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”).

¹⁸ AAE Comments at 4.

¹⁹ ENO Comments at 15.

been placed on real estate developers to help ensure availability of low-income housing in the City;²⁰ and

WHEREAS, AAE states that there is consensus among all parties that every project should reserve a significant percentage of access for qualified Low-Income Customers.²¹ 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;²² and

WHEREAS, 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;²³ and

WHEREAS, the Advisors are amenable to generally increasing the amount of community solar reserved for Low-Income Customers above the initially proposed threshold.²⁴ 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;²⁵ and

WHEREAS, the Advisors report that 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;²⁶ and

²⁰ ENO Comments at 15.

²¹ Alliance for Affordable Energy's Reply Comments on Parties Preliminary Comments, Docket No. UD-18-03, at 5 (Oct. 31, 2018) ("AAE Reply Comments").

²² AAE Reply Comments at 5.

²³ ENO Reply Comments at 3.

²⁴ Advisors Report at 5.

²⁵ Advisors Report at 5.

²⁶ Advisors Report at 5-6, *quoting*, 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>.

WHEREAS, the Advisors also note that of the 17 state policies and regulations that the Advisors reviewed in the development of our White Paper and Proposed Rules,²⁷ 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 yet proven successful;²⁸ and

WHEREAS, the Advisors report that Colorado requires 5% of each investor owned utility's community solar program, but does not require each individual facility to have at least 5% reserved for Low-Income Customers.²⁹ Oregon's community solar program is still under development,³⁰ but its law requires 10% of the total generating capacity of its community solar projects be made available for use by low-income residential customers of electricity.³¹ To implement this provision, 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.³² 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.³³ Bids meeting this requirement were

²⁷ 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/>.

²⁸ Advisors Report at 6.

²⁹ Advisors Report at 6, citing Colo. Code Regs. § 3665(d)(IV).

³⁰ Oregon's competitive selection of the program administrator was still under way as of November 13, 2018. Oregon Public Utility Commission Staff Report, Docket No. UM 1930, at 3 (Nov. 13, 2018).

³¹ Advisors Report at 7, citing S.B. 1547, 78th Leg.(Or. 2016); Or. Rev. Stat., ch. 757 § 22(9)(a).

³² Advisors Report at 7, citing Oregon Public Utility Commission, Order No. 17-232, at 11, Docket No. AR 603 (June 29, 2017).

³³ Advisors Report at 7, citing Connecticut Department of Energy & Environmental Protection, Request for Proposals from Private Developers for Shared Clean Energy Facilities (Revised), Section 3.8 (Mar. 28, 2017).

received,³⁴ it is still too early to tell whether these projects will succeed in recruiting 20% low-to-moderate income customers; and

WHEREAS, Hawaii's program is being phased in, with the utilities only participating as Subscriber Organizations in Phase II, which has not yet begun.³⁵ Third-party developers have no low-income requirement, but the utilities, who will be allowed only 9 MW of the 72 MW capacity limit, will be required to provide 50% of their projects to low-to-moderate-income customers.³⁶ 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, meaning projects that serve more than 30% of their output to low or moderate income customers, of which Low-Income Customers receive a minimum of 10% of output.³⁷ 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; and

WHEREAS, the Advisors report that New York's initial efforts to encourage projects with at least 20% Low-Income Subscribers were not successful and New York continues to consider additional programs to encourage low-income participation.³⁸ The Advisors' research found that

³⁴ Advisors Report at 7, citing Connecticut Department of Energy & Environmental Protection, Notice of Final Determination, at 3 (June 28, 2017).

³⁵ Advisors Report at 7, citing Public Utilities Commission of Hawaii, Decision and Order No. 35137, at 87, Docket No. 2015-0389 (Dec. 22, 2017).

³⁶ Advisors Report at 7, citing Public Utilities Commission of Hawaii, Decision and Order No. 35137, at 88-90, Docket No. 2015-0389. 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).

³⁷ Advisors Report at 8, citing Maryland's Community Solar Program, <https://www.psc.state.md.us/electricity/community-solar-pilot-program/>.

³⁸ Advisors Report at 8, citing 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). 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). New York Public Service Commission Case Nos. 15-E-0751 and 15-E-0082, Order Adopting Low-Income Community Distributed Generation Incentives, at 3-8 (July 12, 2018).

Rhode Island allows Low-Income Customers to be eligible for community solar credits³⁹ and Washington, D.C. requires that developers promote participation among Low-Income Customers.⁴⁰ California requires utilities to actively market community solar to Low-Income Customers, and allows varying subscription levels.⁴¹ The Advisors also report that Delaware, Maine, Minnesota, New Hampshire and Vermont appear to have no measures to encourage low-income participation in their programs.⁴² Thus, the Advisors report, there are few, if any examples of other states that have successfully implemented a per-project minimum low-income participation threshold for the Council to evaluate,⁴³ and

WHEREAS, the Advisors report that there may be a downside to establishing a low-income requirement for each CSG Facility.⁴⁴ The Advisors agree that 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.⁴⁵ 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, and for industrial customers wishing to join together to create a CSG Facility in an industrial area.⁴⁶ The Advisors state that it was for this

³⁹ Advisors Report at 8, citing S.B. 2450 Substitute B, § 39-2.1.2 (R.I. 2013).

⁴⁰ Advisors Report at 8, citing Community Renewable Energy Amendment Act of 2013, (D.C. Law 20-47, Oct. 17, 2013).

⁴¹ Advisors Report at 8, citing S.B. 43, ch. 7.6 § 2833 (Cal. 2013).

⁴² Advisors Report at 8.

⁴³ Advisors Report at 8.

⁴⁴ Advisors Report at 9.

⁴⁵ Advisors Report at 9.

⁴⁶ Advisors Report at 9.

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;⁴⁷ and

WHEREAS, while the Advisors note that the parties appear to be willing to make this trade-off, 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.⁴⁸ Based on the input from the parties, however, the Advisors do recommend increasing the amount of the capacity set aside for Low-Income Subscribers under the rules and recommend 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.⁴⁹ 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;⁵⁰ and

WHEREAS, the Council finds that the compromise proposed by the Advisors of requiring 50% of the capacity allowed under the Community Solar Rules adopted herein to be reserved for CSG Facilities providing at least 30% of their output to Low-Income Subscribers is a reasonable balance between encouraging low-income participation and encouraging more rapid development of community solar projects at least for the first three years of the program until the Council, Advisors and the parties have more actual data regarding the extent to which a per-project requirement successfully encourages greater low-income participation in community solar, and the extent to which it acts as a deterrent to community solar projects being developed. If the results

⁴⁷ Advisors Report at 9.

⁴⁸ Advisors Report at 9.

⁴⁹ Advisors Report at 9.

⁵⁰ Advisors Report at 9.

of the first three years of the program so warrant, or at such time as the Council considers adjusting the total capacity limit of the community solar program, the Council may reconsider this limit; and

3. *Other Mechanisms to Facilitate Low-Income Customer Participation*

WHEREAS, 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,⁵¹ 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;⁵² and

WHEREAS, 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;⁵³ and

WHEREAS, 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;⁵⁴ and

WHEREAS, 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.⁵⁵ 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-

⁵¹ Proposed Rules, Section V.B.(4).

⁵² Proposed Rules, Section XIV.E.(1).

⁵³ AAE Comments at 4.

⁵⁴ 350 New Orleans' Comments at 2.

⁵⁵ ENO Comments at 5.

participating customers to subsidize third-party developers' community solar offerings that are poorly structured, designed, located, marketed, operated, or maintained.⁵⁶ ENO is concerned that many of the customers providing such subsidy would also be Low-Income Customers.⁵⁷ 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;⁵⁸ and

WHEREAS, 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.⁵⁹ 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;⁶⁰ and

WHEREAS, the Advisors clarify their position 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 manner.⁶¹ 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.⁶² The Advisors suggest that the most effective way for such organizations to assist Low-Income Customers may be in working with developers to subsidize

⁵⁶ ENO Comments at 14, 22.

⁵⁷ ENO Comments at 14-15.

⁵⁸ ENO Comments at 22.

⁵⁹ ENO Reply Comments at 4.

⁶⁰ ENO Reply Comments at 4.

⁶¹ Advisors Report at 10-11.

⁶² Advisors Report at 11.

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;⁶³ and

WHEREAS, the Council agrees that permitting Low-Income Subscribers to invest at lower levels than is permitted for other customers is reasonable as a means of facilitating Low-Income Customer participation in community solar and that it is also reasonable to apply a separate set of uniform income, credit, and security deposit standards to facilitate at Low-Income Customer participation. The Council agrees that Proposed Rules herein should not be interpreted to establish any subsidy to create financial incentives for Low-Income Customer participation in Community Solar; and

B. Need for Consumer Protections and the Enforcement Thereof

WHEREAS, 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;⁶⁴ and

WHEREAS, 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.⁶⁵ ENO argues that the Proposed Rules should set forth

⁶³ Advisors Report at 11.

⁶⁴ White Paper at 19, Proposed Rules, Section XIV.

⁶⁵ ENO Comments at 4.

penalties for violations of the consumer protection provisions and/or a process for assessing whether and how such penalties should be determined and enforced.⁶⁶ 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;⁶⁷ and

WHEREAS, 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.⁶⁸ 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 by ongoing, rigorous oversight and enforcement by the Council as the developers of such projects transact with New Orleans residents;⁶⁹ and

WHEREAS, 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.⁷⁰ ENO suggests adding a section

⁶⁶ ENO Comments at 4-5.

⁶⁷ ENO Comments at 10.

⁶⁸ 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 (Jan. 13, 2015), https://www.theadvocate.com/new_orleans/news/business/article_9724cf30-da9f-57f8-a70f-e7fb4a300606.html.

⁶⁹ ENO Comments at 12.

⁷⁰ ENO Comments at 12.

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;⁷¹ and

WHEREAS, 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;⁷² and

WHEREAS, 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;⁷³ and

WHEREAS, 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;⁷⁴ and

⁷¹ ENO Comments at 13, 16-17.

⁷² ENO Comments at 13, 27.

⁷³ ENO Comments at 13-14.

⁷⁴ ENO Comments at 17.

WHEREAS, 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.⁷⁵ ENO also agrees that the additional systems and resources required for enforcement of the Council’s rules need to be determined in this proceeding.⁷⁶ 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.⁷⁷ 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.⁷⁸ However, contrary to ENO, the AAE does not recommend the addition of a set of prescribed penalties.⁷⁹ 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;⁸⁰ and

WHEREAS, 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;⁸¹ and

WHEREAS, 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

⁷⁵ ENO Reply Comments at 2.

⁷⁶ ENO Reply Comments at 2-3.

⁷⁷ AAE Reply Comments at 6.

⁷⁸ AAE Reply Comments at 6.

⁷⁹ AAE Reply Comments at 6.

⁸⁰ AAE Reply Comments at 6.

⁸¹ 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”).

to ensure that due process is afforded to all parties.⁸² 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.⁸³ 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.⁸⁴ 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.⁸⁵ 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;⁸⁶ and

WHEREAS, 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.⁸⁷ 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.⁸⁸ 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.⁸⁹ 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

⁸² Advisors Report at 13.

⁸³ Advisors Report at 13.

⁸⁴ Advisors Report at 13.

⁸⁵ Advisors Report at 13.

⁸⁶ Advisors Report at 13.

⁸⁷ Advisors Report at 13.

⁸⁸ Advisors Report at 13.

⁸⁹ Advisors Report at 13.

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.⁹⁰ 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;⁹¹ and

C. Transparency and Reporting

1. *Utility and Subscriber Organization Registration*

WHEREAS, 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;⁹² and

WHEREAS, 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;⁹³ and

WHEREAS, 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

⁹⁰ Advisors Report at 13.

⁹¹ Advisors Report at 13.

⁹² Proposed Rules, Section VII.

⁹³ ENO Comments at 18.

equitable opportunity for non-utility developers.⁹⁴ 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;⁹⁵ and

WHEREAS, 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.⁹⁶ While it is the Advisors' hope that Subscriber Organizations will either have or open a business office in New Orleans, they 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.⁹⁷ 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.⁹⁸ 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.⁹⁹ The Advisors recommend that 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

⁹⁴ AAE Comments at 3.

⁹⁵ AAE Comments at 3.

⁹⁶ Advisors Report at 14.

⁹⁷ Advisors Report at 14.

⁹⁸ Advisors Report at 14.

⁹⁹ Advisors Report at 14.

Parish, and not to create additional hurdles not applicable to other businesses in Orleans Parish;¹⁰⁰
and

WHEREAS, the Council agrees that the purpose of this provision is not to create unusual requirements for doing business in New Orleans, but rather to ensure that Subscriber Organizations participating in the Community Solar program are legitimately doing business in the City and that the Council and Subscribers have resource against any Subscriber Organizations that harm consumers or damage the grid; and

WHEREAS, the Council finds that CURO is the appropriate entity to oversee the registry of Subscriber Organizations and acknowledges that CURO likely will need additional resources to take on this function; and

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

WHEREAS, the Proposed Rules also contained requirements of information the utility must maintain and publish on its website and an annual reporting requirement;¹⁰¹ and

WHEREAS, 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.¹⁰² ENO believes that the AAE's suggestion that CURO maintain this information is more appropriate than Air Products' suggestion that ENO maintain it;¹⁰³ and

WHEREAS, AAE supports ENO's recommendation for annual reporting by Subscriber Organizations to ensure that customers are not "gaming" a system;¹⁰⁴ and

¹⁰⁰ Advisors Report at 14.

¹⁰¹ Proposed Rules, Sections VIII.E. and F.

¹⁰² ENO Reply Comments at 11.

¹⁰³ ENO Reply Comments at 11.

¹⁰⁴ AAE Reply Comments at 2.

WHEREAS, 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.¹⁰⁵ 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;¹⁰⁶ and

WHEREAS, 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.¹⁰⁷ Air Products also argues that ideally draft tariffs and a plan would be developed in this rulemaking proceeding;¹⁰⁸ and

WHEREAS, 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.¹⁰⁹ Air Products would also like information regarding the level of subscription of each CSG Facility and such Facility’s performance in the prior calendar year should also be publicly available, including the extent to which ENO is the Subscriber Organization for a CSG Facility;¹¹⁰ and

¹⁰⁵ AAE Comments at 8; AAE Reply Comments at 6-7.

¹⁰⁶ AAE Comments at 8.

¹⁰⁷ 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”).

¹⁰⁸ Air Products Comments at 5.

¹⁰⁹ Air Products Comments at 5.

¹¹⁰ Air Products Comments at 5-6.

WHEREAS, 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.¹¹¹ The Advisors also recommend that the Council’s website include the name of any Subscriber Organization whose registrations have been revoked by the Council;¹¹² and

WHEREAS, 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.¹¹³ The Advisors also recommend that Subscriber Organizations should provide ENO with updated subscriber information on a monthly basis;¹¹⁴ and

WHEREAS, the Council agrees that it is in the public interest to require transparency as to the status of community solar facilities to enable customers to confirm the legitimacy and status of proposed CSG Facilities both prior and subsequent to entering into a contract with a Subscriber Organization; and

D. Safety and Reliability

WHEREAS, 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

¹¹¹ Advisors Report at 16.

¹¹² Advisors Report at 16.

¹¹³ Advisors Report at 16.

¹¹⁴ Advisors Report at 16.

regulations, including, but not limited to, zoning, permitting, occupational safety and health, and environmental laws, rules, and regulations¹¹⁵ and

WHEREAS, 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;¹¹⁶ and

WHEREAS, 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.¹¹⁷ 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.¹¹⁸ 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.¹¹⁹ 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;¹²⁰ and

WHEREAS, 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.¹²¹ 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 the interconnection and operation of the CSG Facility, and would expect that any upgrades required to ensure that the CSG Facility can be safely

¹¹⁵ Proposed Rules, Section VII.B(6). *See also* White Paper at 19.

¹¹⁶ AAE Comments at 8.

¹¹⁷ ENO Reply Comments at 5.

¹¹⁸ ENO Reply Comments at 5.

¹¹⁹ ENO Reply Comments at 5.

¹²⁰ ENO Reply Comments at 5.

¹²¹ Advisors Report at 16.

interconnected would be the responsibility of the Subscriber Organization/developer, and would not be a cost passed on to ratepayers.¹²² The Advisors believe that this clarification should resolve ENO's concern about overloading any particular feeder;¹²³ and

WHEREAS, the Council agrees that rules should require that Subscriber Organizations be responsible for meeting all safety and reliability standards in the construction and operation of their facilities; and

WHEREAS, the Council also agrees that ENO's interconnection process should identify any reliability issues associated with interconnecting a CSG Facility to a particular feeder. The Council also agrees that it is appropriate, where such a reliability issue is identified, to offer the CSG Facility Subscriber Organization/developer the option of reducing the capacity of the CSG Facility sufficiently to remedy the reliability issue or paying for the distribution system upgrade necessary to remedy the reliability issue; and

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

WHEREAS, in its September 21, 2018 Combined Rate Case,¹²⁴ 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;¹²⁵ and

WHEREAS, 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

¹²² Advisors Report at 16-17.

¹²³ Advisors Report at 17.

¹²⁴ 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").

¹²⁵ Combined Rate Case Application at 39.

will be treated as an additional option for customers, and not be precluded by the adoption of these rules.¹²⁶ 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;¹²⁷ and

WHEREAS, 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.¹²⁸ 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;¹²⁹ and

WHEREAS, 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.¹³⁰ 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;¹³¹ and

WHEREAS, 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.¹³² ENO believes that sufficient distinction exists between its “Utility-Scale

¹²⁶ ENO Comments at 2-3.

¹²⁷ ENO Comments at 4.

¹²⁸ ENO Comments at 6.

¹²⁹ AAE Reply Comments at 7.

¹³⁰ ENO Comments at 5, 17.

¹³¹ ENO Comments at 6.

¹³² ENO Comments at 6.

Community Solar” offering and the “Developer-Scale Community Solar” offering set forth in the Proposed Rules that the two kinds of offerings could complement each other rather than compete with each other;¹³³ and

WHEREAS, ENO notes, for example, 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.¹³⁴ 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.¹³⁵ ENO suggests that the Council consider pursuing parallel, non-mutually-exclusive, paths on community solar in this docket and in the Combined Rate Case and, in doing so, look to create multiple avenues through which New Orleans residents can support renewable resource development.¹³⁶ 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,¹³⁷ and

WHEREAS, 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.¹³⁸ ENO argues that the Proposed Rules provide a number of

¹³³ ENO Comments at 6.

¹³⁴ ENO Comments at 6.

¹³⁵ ENO Comments at 7.

¹³⁶ ENO Comments at 7, 17-18.

¹³⁷ ENO Comments at 17-18.

¹³⁸ ENO Comments at 7-8.

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.¹³⁹

WHEREAS, 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.¹⁴⁰ 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.¹⁴¹ 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;¹⁴² and

WHEREAS, 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;"

¹³⁹ ENO Comments at 7.

¹⁴⁰ AAE Reply Comments at 3.

¹⁴¹ AAE Reply Comments at 3.

¹⁴² AAE Reply Comments at 3.

with voluntary subscriptions that can be used to offset costs associated with ENO's 5 MW DG solar program approved in Docket No. UD-17-05,¹⁴³ and

WHEREAS, 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.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶ 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 is more beneficial for New Orleans ratepayers than a program under the rules would bring.¹⁴⁷ The Advisors would not look with favor upon proposals meant to circumvent the rules and gain an advantage over other developers.¹⁴⁸ 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,¹⁴⁹ and

WHEREAS, the Council agrees with the Advisors that the purpose of these Community Solar rules should be to create an expedited path for the development of community solar projects in New Orleans, without need for Council review and approval of each individual CSG Facility,

¹⁴³ Air Products Reply Comments at 3.

¹⁴⁴ Advisors Report at 19.

¹⁴⁵ Advisors Report at 19.

¹⁴⁶ Advisors Report at 19.

¹⁴⁷ Advisors Report at 19.

¹⁴⁸ Advisors Report at 19.

¹⁴⁹ Advisors Report at 19.

so long as the facility meets the requirements of the Community Solar Rules established herein. Like the Advisors, the Council believes that this does not preclude alternative proposals for distributed generation in New Orleans, rather proposals that do not conform to the Community Solar Rules, or proposals that seek a waiver of one or more of the Community Solar Rules would need to be submitted to the Council for review and approval; and

WHEREAS, however, the Council notes that it will view with disfavor proposals that are merely an attempt to evade the Council's Community Solar Rules. The Council would expect that proposals for renewable distributed generation projects with public participation would either conform to these rules, or demonstrate why the alternative proposal brings greater benefits than a proposal conforming to the Community Solar Rules would bring; and

F. Inclusion of Community Solar in ENO's IRP

WHEREAS, 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.¹⁵⁰ 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.¹⁵¹ 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.¹⁵² ENO argues that developers should be required

¹⁵⁰ ENO Comments at 5.

¹⁵¹ ENO Comments at 15.

¹⁵² ENO Comments at 15-16.

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;¹⁵³ and

WHEREAS, 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.¹⁵⁴ The AAE states that it is unclear from 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;¹⁵⁵ and

WHEREAS, 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; and

WHEREAS, 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

¹⁵³ ENO Comments at 16.

¹⁵⁴ AAE Reply Comments at 8.

¹⁵⁵ AAE Reply Comments at 8.

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; and

WHEREAS, the Council recognizes that there will always be some level of uncertainty around the level of community solar that is likely to be implemented in the City due to a large number of factors outside of the utility's or Council's control. However, the Council believes that the Advisors' proposal to require the Subscriber Organization to notify ENO of the planned project's location, capacity, and expected amounts of energy at the time that the Subscriber Organization is ready to begin soliciting subscriptions or at the time the Subscriber Organization or developer file an interconnection request with the utility, whichever is earlier, would be of assistance to the Utility in the planning process; and

G. Calculation of Subscriber Bill Credits

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

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.¹⁵⁶

WHEREAS, 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;¹⁵⁷ and

WHEREAS, 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.¹⁵⁸ 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.¹⁵⁹ 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.¹⁶⁰ The Advisors state that 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.¹⁶¹ 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;¹⁶² and

¹⁵⁶ White Paper at 15.

¹⁵⁷ ENO Comments at 4.

¹⁵⁸ Air Products Comments at 3.

¹⁵⁹ Air Products Comments at 4.

¹⁶⁰ Air Products Comments at 4-5.

¹⁶¹ Advisors Report at 21.

¹⁶² Advisors Report at 21.

WHEREAS, 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.¹⁶³ 350 New Orleans urges the Council to adopt some form of virtual net metering pricing;¹⁶⁴ and

WHEREAS, the 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.¹⁶⁵ The 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 energy at the end of the billing cycle be credited at a lower rate, to be “rolled over” to the following month;¹⁶⁶ and

WHEREAS, the AAE argues that Subscribers of community solar should not be penalized because they cannot participate in traditional NEM.¹⁶⁷ The AAE argues that the compensation policy for community solar should match that of existing solar NEM policy in New Orleans.¹⁶⁸ 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.¹⁶⁹ 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

¹⁶³ 350 New Orleans’ Comments at 2-3.

¹⁶⁴ 350 New Orleans’ Comments at 2-3.

¹⁶⁵ AAE Reply Comments at 2.

¹⁶⁶ AAE Reply Comments at 2.

¹⁶⁷ AAE Comments at 5.

¹⁶⁸ AAE Comments at 5.

¹⁶⁹ AAE Comments at 5.

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.¹⁷⁰ 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.¹⁷¹ 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;¹⁷² and

WHEREAS, the Advisors dispute the AAE's characterization of the Advisors' proposal as discriminatory against consumers who cannot afford to put rooftop solar on their roof and argue it fails to acknowledge that many states treat NEM differently than community solar for various reasons.¹⁷³ Indeed, the Advisors assert, both the Interstate Renewable Energy Council ("IREC") and the National Regulatory Research Institute ("NRRI") acknowledge that pricing for NEM and community solar typically differ.¹⁷⁴ Moreover, the Advisors state that 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.¹⁷⁵ The Advisors note that 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

¹⁷⁰ AAE Comments at 6.

¹⁷¹ AAE Comments at 6.

¹⁷² AAE Comments at 6.

¹⁷³ Advisors Report at 22.

¹⁷⁴ Advisors Report at 22, citing 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/>.

¹⁷⁵ Advisors Report at 22.

participants saving as electric rates are anticipated to rise over time to increasing utility fixed costs;¹⁷⁶ and

WHEREAS, Air Products strongly opposes the recommendation of the AAE for calculation of Subscriber bill credits based on the electric utility retail rate.¹⁷⁷ 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.¹⁷⁸ Air Products supports calculation of Subscriber bill credits based on the electric utility's avoided capacity and avoided 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.¹⁷⁹ Air Products recommends that current LMPs be used for calculation of avoided energy costs;¹⁸⁰ and

WHEREAS, 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.¹⁸¹ 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.¹⁸² 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

¹⁷⁶ Advisors Report at 22, citing IREC, Model Rules for Shared Renewable Energy Programs at 4, 6, and 9.

¹⁷⁷ Air Products Reply Comments at 1.

¹⁷⁸ Air Products Reply Comments at 1.

¹⁷⁹ Air Products Reply Comments at 2.

¹⁸⁰ Air Products Reply Comments at 2.

¹⁸¹ ENO Comments at 4; ENO Reply Comments at 6.

¹⁸² ENO Comments at 4.

appropriate amounts for bill credits to be paid to Subscribers.¹⁸³ ENO disagrees fundamentally with their proposal to extend the pricing for NEM to community solar.¹⁸⁴ ENO also argues that virtual NEM is not an appropriate or established method for calculating community solar bill credits.¹⁸⁵ 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,¹⁸⁶ and

WHEREAS, ENO states that AAE's argument that ENO has not requested that the Council change its existing NEM policy is not entirely accurate.¹⁸⁷ 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.¹⁸⁸ ENO explains that the AAE was an active participant in this proceeding.¹⁸⁹ ENO states its 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.¹⁹⁰ ENO argues that 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.¹⁹¹ ENO argues that it believes the NEM pricing

¹⁸³ ENO Reply Comments at 6.

¹⁸⁴ ENO Reply Comments at 6.

¹⁸⁵ ENO Reply Comments at 8.

¹⁸⁶ ENO Reply Comments at 8.

¹⁸⁷ ENO Reply Comments at 9.

¹⁸⁸ ENO Reply Comments at 9.

¹⁸⁹ ENO Reply Comments at 9.

¹⁹⁰ ENO Reply Comments at 9.

¹⁹¹ ENO Reply Comments at 9.

structure creates unfair cost-shifting between participants and non-participants that contravenes well-established and longstanding principles of cost causation and allocation.¹⁹² 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.¹⁹³ 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.¹⁹⁴ 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 live at or below the poverty line.¹⁹⁵ 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;¹⁹⁶ and

WHEREAS, the Advisors note that ENO is correct in its explanation of the current status of Council's Docket No. UD-13-02.¹⁹⁷ 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

¹⁹² ENO Reply Comments at 9.

¹⁹³ ENO Reply Comments at 10.

¹⁹⁴ ENO Reply Comments at 10.

¹⁹⁵ ENO Reply Comments at 10.

¹⁹⁶ ENO Reply Comments at 10.

¹⁹⁷ Advisors Report at 24.

the absence of a cost-of-service study that would demonstrate what is ENO's cost to serve them.¹⁹⁸ The Advisors state that 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.¹⁹⁹ 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,²⁰⁰ and

WHEREAS, the Advisors also state 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.²⁰¹ 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.²⁰² 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.²⁰³ 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.²⁰⁴ Community solar customers will impose greater costs on the system than NEM customers.²⁰⁵ The Advisors note, however, that they should benefit from economies of scale, in that it should be

¹⁹⁸ Advisors Report at 24.

¹⁹⁹ Advisors Report at 24.

²⁰⁰ Advisors Report at 24.

²⁰¹ Advisors Report at 24.

²⁰² Advisors Report at 24.

²⁰³ Advisors Report at 24.

²⁰⁴ Advisors Report at 24.

²⁰⁵ Advisors Report at 24.

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.²⁰⁶ 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 of money to invest in solar.²⁰⁷ 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,²⁰⁸ and

WHEREAS, 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.²⁰⁹ 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;²¹⁰ and

WHEREAS, 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.²¹¹ 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

²⁰⁶ Advisors Report at 24.

²⁰⁷ Advisors Report at 24-25.

²⁰⁸ Advisors Report at 25.

²⁰⁹ ENO Comments at 8.

²¹⁰ ENO Comments at 8.

²¹¹ ENO Comments at 10.

avoided capacity cost (generally expressed in \$/kW-month) into a volumetric credit rate (cents per kWh) based on anticipated solar energy output.²¹² 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.²¹³ 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.²¹⁴ 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,²¹⁵ and

WHEREAS, 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.²¹⁶ 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.²¹⁷ 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.²¹⁸ ENO provided a number of sample calculations and examples of three different scenarios that, it argues, could be used to clarify the

²¹² ENO Comments at 10.

²¹³ ENO Comments at 10.

²¹⁴ ENO Comments at 10.

²¹⁵ ENO Comments at 10.

²¹⁶ ENO Comments at 10.

²¹⁷ ENO Comments at 10-11.

²¹⁸ ENO Comments at 11.

Proposed Rules.²¹⁹ The Advisors reviewed ENO's avoided capacity and energy cost calculation methodology and found 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.²²⁰ ENO provides three sample calculations based on three different capacity values.²²¹ However, two of the calculations depart from the Proposed Rules and rely on the MISO PRA results, which the Advisors believe are not consistent with the value of new generation.²²² 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.²²³ 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.²²⁴ 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.²²⁵ The Advisors have provided detailed revisions to the Proposed Rules to clarify the calculation of Subscription Credits;²²⁶ and

WHEREAS, 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.²²⁷ ENO also proposes an additional requirement in the rules that all costs

²¹⁹ ENO Reply Comments at 7-8.

²²⁰ Advisors Report at 25-26.

²²¹ Advisors Report at 25.

²²² Advisors Report at 25-26.

²²³ Advisors Report at 26.

²²⁴ Advisors Report at 26.

²²⁵ Advisors Report at 26.

²²⁶ Advisors Report at 26.

²²⁷ ENO Comments at 26.

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;²²⁸ and

WHEREAS, AAE agrees that Subscriber Organizations (and thus their membership) should bear the administrative and interconnection costs caused by the Subscriber Organization.²²⁹ AAE also argues that costs to be borne by Subscriber Organizations should be fair, transparent, and reasonable.²³⁰ The AAE notes that ENO points out that there are myriad costs that should accrue to the participants in a CSG Facility rather than absorbed by non-participants, and AAE insists that these costs should reflect only the incremental costs associated with each CSG Facility, and should be transparent and confirmed with the Council, as are other revenues.²³¹ AAE argues that such costs should not be a barrier to entry, but should represent the actual "costs of doing business;"²³² and

WHEREAS, 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;²³³ and

WHEREAS, 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 community solar program provides a new option available to all ratepayers whether they

²²⁸ ENO Comments at 24.

²²⁹ AAE Reply Comments at 3.

²³⁰ AAE Reply Comments at 4.

²³¹ AAE Reply Comments at 4.

²³² AAE Reply Comments at 4.

²³³ ENO Reply Comments at 4.

choose avail themselves of it or not, and there is value in the creation of more choices for ratepayers.²³⁴ 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.²³⁵ 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;²³⁶ and

WHEREAS, the Council recognizes that while higher Subscriber Credits will lead to greater adoption of community solar, minimizing the rate impact on ENO's non-participating customers should be a goal of the Subscriber Credit pricing mechanism; and

WHEREAS, the Council recognizes that setting the price for Subscriber Credits as closely as is practically feasible to the energy and capacity costs that ENO would otherwise pay if it did not purchase power from a CSG Facility should protect ENO's non-participating customers from significant rate increases due to purchases from CSG Facilities; and

WHEREAS, nevertheless, the Council believes, as a policy matter, that participation of low-income customers in Community Solar should be encouraged and recognizes that it will be difficult for low-income customers to participate in the program without greater financial assistance. The Council believes that although increasing the credit for low-income customers will cause other customers to bear part of the cost of low-income customers' participation, the rate impact to those other customers would be minimal and the public policy goal of allowing low income customers greater access to renewable resources is sufficient to warrant such a minor rate impact on other customers; and

²³⁴ Advisors Report at 26-27.

²³⁵ Advisors Report at 27.

²³⁶ Advisors Report at 27.

WHEREAS, the Council believes that as the costs of installing solar come down over time relative to ENO's avoided costs, the Subscription Credit pricing will become more advantageous to Subscribers over time, while continuing to protect ENO's non-participating customers; and

WHEREAS, for these reasons, the Council approves the Advisors' proposed calculation of Subscription Credits, with the modification that low-income customers shall receive the full retail rate credit for power generated by their community solar Subscription; and

H. Treatment of Unsubscribed Energy

WHEREAS, 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,²³⁷ and

WHEREAS, 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.²³⁸ 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.²³⁹ ENO argues that the final rules must ensure that companies (including companies acting in bad faith) cannot use the Council's Community Solar

²³⁷ White Paper at 18.

²³⁸ ENO Comments at 9.

²³⁹ ENO Comments at 9.

Rules to subsidize generators that would otherwise be designated as QFs and would operate under those existing rules and constructs;²⁴⁰ and

WHEREAS, 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,²⁴¹ and

WHEREAS, 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.²⁴² 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.²⁴³ ENO proposes deleting the section requiring compensation for unsubscribed capacity from the rules completely.²⁴⁴ Alternatively, if the payment obligation for unsubscribed capacity is retained, ENO proposes that Subscriber Organizations with unsubscribed capacity should be required to provide the Council and ENO with an annual report detailing the steps being taken to fully subscribe the Subscriber Organization's community solar project;²⁴⁵ and

WHEREAS, 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

²⁴⁰ ENO Comments at 9.

²⁴¹ Air Products Reply Comments at 4.

²⁴² ENO Comments at 25.

²⁴³ ENO Comments at 25-26.

²⁴⁴ ENO Comments at 26; ENO Reply Comments at 11.

²⁴⁵ ENO Comments at 26.

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;²⁴⁶ and

WHEREAS, Air Products also expresses concern that there is no limit to the amount by which any individual CSG Facility 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;²⁴⁷ and

WHEREAS, 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.²⁴⁸ 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;²⁴⁹ and

WHEREAS, AAE argues that there is no difference between unsubscribed capacity at a community solar facility and a QF as described by PURPA,²⁵⁰ and therefore such excess energy should receive avoided cost payments, as is done in multiple states with successful community solar programs.²⁵¹ 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;²⁵² and

²⁴⁶ ENO Reply Comments at 11.

²⁴⁷ Air Products Comments at 4.

²⁴⁸ Air Products Reply Comments at 2.

²⁴⁹ Air Products Reply Comments at 2.

²⁵⁰ Public Utility Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat. 3117 ("PURPA").

²⁵¹ AAE Reply Comments at 4.

²⁵² AAE Reply Comments at 4.

WHEREAS, the Advisors state that it is not their 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.²⁵³ It is reasonable, however, to anticipate that any given project may have some level of unsubscribed energy 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 energy at ENO's avoided cost rate, which should prevent a rate impact on other customers.²⁵⁴ 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 energy that is consistent with the amount of occasional, incidental undersubscription of energy that a well-run project might be reasonably expected to encounter from time to time.²⁵⁵ 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;²⁵⁶ and

WHEREAS, the Council finds it reasonable to allow Subscriber Organizations to be compensated for up to 20% of a project's output at an avoided cost rate where that project has unsubscribed energy. The Council concurs that limiting compensation for unsubscribed energy to no more than 20% of the facility's output and pricing it at the utility's avoided cost provides reasonable protections against Subscriber Organizations using unsubscribed energy payments to sustain poorly run or badly designed projects; and

²⁵³ Advisors Report at 28.

²⁵⁴ Advisors Report at 28.

²⁵⁵ Advisors Report at 28-29.

²⁵⁶ Advisors Report at 29.

WHEREAS, the Council also finds it reasonable to require reporting of subscription levels of CSG Facilities; and

I. Capacity Limits

1. *Total Community Solar Capacity Limit*

WHEREAS, 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.

WHEREAS, 350 New Orleans encourages the Council to establish a capacity limit greater than 5% of peak capacity.²⁵⁷ 350 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.²⁵⁸ The Advisors state that 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.²⁵⁹ 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.²⁶⁰ 350 New Orleans appears to be arguing that there should be no limit on community solar.²⁶¹ The Advisors believe that this is a particularly reckless position, especially when coupled with 350 New Orleans' argument that the credit proposed by the

²⁵⁷ 350 New Orleans' Comments at 1.

²⁵⁸ 350 New Orleans' Comments at 1.

²⁵⁹ Advisors Report at 29.

²⁶⁰ Advisors Report at 29.

²⁶¹ 350 New Orleans' Comments at 1.

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.²⁶² 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;²⁶³ and

WHEREAS, the Advisors state that 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 2030.²⁶⁴ As was explained in the White Paper, to reach 255 MW of local solar capacity by 2030, New Orleans would need to add 18 MW per year between now and 2030.²⁶⁵ 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 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;²⁶⁶ and

WHEREAS, 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

²⁶² 350 New Orleans' Comments at 2.

²⁶³ Advisors Report at 29.

²⁶⁴ 350 New Orleans' Comments at 1.

²⁶⁵ Advisors Report at 29.

²⁶⁶ White Paper at 12.

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;²⁶⁷ and

WHEREAS, 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.²⁶⁸ The Advisors agree.²⁶⁹ 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.²⁷⁰ 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.²⁷¹ 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.²⁷² 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;²⁷³ and

WHEREAS, in light of the lack of available data regarding the rate of implementation of community solar projects in New Orleans and the lack of data regarding the likely impact of CSG Facilities on the utility system, the Council finds it reasonable to impose a cap on the total capacity

²⁶⁷ AAE Comments at 5.

²⁶⁸ ENO Reply Comments at 10.

²⁶⁹ Advisors Report at 30.

²⁷⁰ Advisors Report at 30.

²⁷¹ Advisors Report at 30.

²⁷² Advisors Report at 30.

²⁷³ Advisors Report at 30.

permitted to be installed over the first three years of the program. As the Advisors note, the Council will be able to re-examine the cap at any time and will affirmatively review it after the first three years of the program. Further, as the Advisors explain, the cap is consistent with the Mayor's goal of implementing 255 MW of local solar capacity by 2030; and

2. *Per-Project Capacity Limit*

WHEREAS, 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;²⁷⁴ and

WHEREAS, 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.²⁷⁵ 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.²⁷⁶ 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;²⁷⁷ and

WHEREAS, 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.²⁷⁸ The AAE also states that if smart inverters or storage are utilized, a 2 MW cap, to address

²⁷⁴ White Paper at 11.

²⁷⁵ ENO Comments at 24.

²⁷⁶ ENO Comments at 24.

²⁷⁷ AAE Reply Comments at 7.

²⁷⁸ AAE Comments at 4.

distribution system impact, may not be required.²⁷⁹ 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.²⁸⁰ The AAE states that more technical discussion is required before finalizing the size of a cap,²⁸¹ and

WHEREAS, 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.²⁸² 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.²⁸³ 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;²⁸⁴ and

WHEREAS, the Council finds that the 2 MW project cap is reasonable and protective of the reliability of the utility system. The Council expects that, even with this cap, ENO's interconnection process should identify and address any additional reliability concerns with any particular CSG Facility. The Council also notes that where a developer seeks to build a larger project, it may seek approval from the Council for a waiver of the 2MW limit; and

²⁷⁹ AAE Comments at 4.

²⁸⁰ AAE Comments at 4-5.

²⁸¹ AAE Comments at 5.

²⁸² IREC, Model Rules for Shared Renewable Energy Programs at 13.

²⁸³ Advisors Report at 31.

²⁸⁴ Advisors Report at 31.

J. Limits on Customer Participation

I. *Minimum and Maximum Per Project Customer Limit*

WHEREAS, in the White Paper and Proposed Rules, the Advisors proposed minimum and maximum limits on Subscriber participation in a CSG Facility. 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.²⁸⁵ The Advisors also recommended that no individual customer be able to subscribe to more than 40% of any individual CSG Facility'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.²⁸⁶ 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;²⁸⁷ and

WHEREAS, 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.²⁸⁸ ENO notes that minimum participation requirements help limit 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.²⁸⁹ While the Advisors support the general concept underlying the AAE's statement – that the bar to customer participation should be as low

²⁸⁵ White Paper at 8-9.

²⁸⁶ White Paper at 9.

²⁸⁷ Proposed Rules, Section V.B.(4).

²⁸⁸ AAE Comments at 4.

²⁸⁹ ENO Reply Comments at 11.

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;²⁹⁰ and

WHEREAS, the Council agrees that in the interest of minimizing administrative costs related to the community solar program, imposing a minimum subscription amount that applies to all except Low-Income Subscribers is appropriate; and

WHEREAS, 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.²⁹¹ 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.²⁹² 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.²⁹³ The Advisors do not believe that this reduction is necessary, even if the

²⁹⁰ Advisors Report at 32.

²⁹¹ AAE Comments at 3.

²⁹² AAE Comments at 3.

²⁹³ AAE Reply Comments at 5.

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,²⁹⁴ and

WHEREAS, 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.²⁹⁵ 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.²⁹⁶ 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.²⁹⁷ 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, 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.²⁹⁸ Community

²⁹⁴ Advisors Report at 32.

²⁹⁵ Air Products Reply Comments at 2.

²⁹⁶ Air Products Reply Comments at 2.

²⁹⁷ Air Products Reply Comments at 1.

²⁹⁸ Advisors Report at 32.

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.²⁹⁹ 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,³⁰⁰ and

WHEREAS, 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.³⁰¹ 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.³⁰² 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,³⁰³ and

WHEREAS, 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.³⁰⁴ 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 industrial and commercial customers;³⁰⁵ and

WHEREAS, the Council agrees that a 40% cap on investment in a CSG Facility is an appropriate limit to ensure that no single customer is able to consume the majority of any particular project. While the Council does wish to encourage residential participation in the community solar

²⁹⁹ Advisors Report at 33.

³⁰⁰ Advisors Report at 33.

³⁰¹ ENO Comments at 21.

³⁰² ENO Comments at 21.

³⁰³ ENO Comments at 21.

³⁰⁴ Advisors Report at 33.

³⁰⁵ Advisors Report at 33.

program, the Council also welcomes the participation of the large commercial and industrial customers and appreciates the resources they can bring to encourage the development of community solar facilities. A 40% cap on investment ensures that a project will have at least three participants and truly be a community solar project owned by multiple entities; and

WHEREAS, 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.³⁰⁶ 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.³⁰⁷ ENO also expresses concerns that administrative burdens will be shifted to ENO's other customers,³⁰⁸ and

WHEREAS, 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.³⁰⁹ The Advisors state 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,

³⁰⁶ ENO Comments at 19.

³⁰⁷ ENO Comments at 19.

³⁰⁸ ENO Comments at 19.

³⁰⁹ Advisors Report at 34.

but they 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 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.³¹⁰ 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,³¹¹ and

WHEREAS, the Council agrees that the significant administrative expense of an annual true-up of customer usage to community solar facility output compared to the relatively small risk that, where a customer's initial subscription is correctly sized, the Subscriber's energy use will subsequently be substantially less than the CSG Facility output weighs in favor of not requiring an annual true up. The Council clarifies that the limit on Subscription size to 100% of the annual baseline energy use is to be applied when the Subscription is entered into, and need not be trued up in subsequent years; and

2. *Participation by NEM Customers*

WHEREAS, 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.³¹² 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.³¹³ Air Products

³¹⁰ Advisors Report at 34.

³¹¹ Advisors Report at 34.

³¹² AAE Comments at 6.

³¹³ ENO Comments at 19.

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.³¹⁴ 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; and

WHEREAS, 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.³¹⁵ 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;³¹⁶ and

WHEREAS, the Council agrees that as long as the initial subscription amount is set properly relative to a 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 not likely to be significant enough to outweigh the significant administrative burden of tracking usage to ensure that the output of the

³¹⁴ Air Products Reply Comments at 4.

³¹⁵ Advisors Report at 34.

³¹⁶ Advisors Report at 34.

Subscriber's portion of the CSG Facility never exceeds 100% of the customer's usage in any given month. The Council also agrees, however, that where an existing CSG Facility Subscriber seeks to also become a NEM customer, either the NEM facility or the CSG subscription must be sized appropriately to ensure that the combined output does not exceed 100% of the annual baseline usage; and

WHEREAS, 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.³¹⁷ 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;³¹⁸ and

WHEREAS, 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 that any single customer would be able to own.³¹⁹ The Advisors explain that under the Proposed Rules' 40% limit, for example, the NEM customer would have to sell at least 60% of its capacity to other customers to qualify as a community solar facility.³²⁰ In addition, NEM facilities are typically connected behind the meter, while community solar facilities will be connected directly to the

³¹⁷ ENO Comments at 20.

³¹⁸ ENO Comments at 20-21.

³¹⁹ Advisors Report at 34.

³²⁰ Advisors Report at 34-35.

distribution system.³²¹ 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.³²² Any single project should be considered either entirely a NEM facility or entirely a CSG Facility and be governed by the appropriate set of rules,³²³ and

WHEREAS, the Council agrees that in order to qualify as a CSG Facility, a facility previously used for NEM purposes would cease to be a NEM facility. The facility would need to be interconnected directly to the distribution system, otherwise follow all Community Solar Rules, and be required to treat 100% of its output as community solar output. Should that facility’s owner subsequently wish to revert the facility to a NEM facility, it would have to cease all community solar operations in compliance with the terms of the contracts with its Subscribers, be interconnected to the grid behind the customer’s meter and become 100% a NEM facility in compliance with all NEM rules; and

K. Length of Customer Commitment, Portability, and Transferability

WHEREAS, 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

³²¹ Advisors Report at 35.

³²² Advisors Report at 34-35.

³²³ Advisors Report at 34-35.

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,³²⁴ and

WHEREAS, 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.³²⁵ 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,³²⁶ and

WHEREAS, 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.³²⁷ 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;³²⁸ and

WHEREAS, 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

³²⁴ ENO Comments at 25.

³²⁵ AAE Comments at 7.

³²⁶ AAE Comments at 7.

³²⁷ AAE Comments at 6-7.

³²⁸ ENO Comments at 25.

administrative burdens on the utility.³²⁹ 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), then the subscription should be downsized and the Subscriber Organization should assist the Subscriber in transferring the appropriate portion of their subscription.³³⁰ 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;³³¹ and

WHEREAS, the Council agrees that resale of a subscription should be handled by the Subscriber Organization rather than through a consumer-to-consumer transaction and that all costs associated with such transactions should be borne by Subscribers and Subscriber Organizations and not by ratepayers. The Council believes that Subscribers and Subscriber Organizations will have a natural incentive to minimize such transfers, therefore there is no need for the Council to set a requirement for the length of the subscription. The Council agrees, however, that when a subscription is transferred from one address to another, ENO should ascertain whether the subscription amount will exceed 100% of the prior year baseline annual usage, and if so, notify the Subscriber and Subscriber Organization that the subscription must be reduced to a level that does not exceed 100% of the prior year baseline annual usage; and

³²⁹ Advisors Report at 36.

³³⁰ Advisors Report at 36.

³³¹ Advisors Report at 36.

WHEREAS, 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;³³² and

WHEREAS, the Council finds it reasonable to use the value of such excess credits to offset the cost of unsubscribed energy purchases; and

II. Other Comments By the Parties

WHEREAS, 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.³³³ The Advisors have no objection to ENO's proposed changes to the timeline³³⁴ and the Council also finds the request to be reasonable; and

WHEREAS, 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.³³⁵ The Advisors clarify that these Community Solar Rules require interconnection at the distribution level.³³⁶ 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.³³⁷ The Advisors do not anticipate that this would create a bar

³³² Air Products Comments at 5.

³³³ ENO Comments at 24.

³³⁴ Advisors Report at 36.

³³⁵ Air Products Reply Comments at 3.

³³⁶ Advisors Report at 36.

³³⁷ Advisors Report at 36.

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.³³⁸ The Council finds this approach to be reasonable; and

WHEREAS, 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.³³⁹ ENO argues, however, that the Council may amend its rules at any time, and once the program has proven successful, it may consider expanding the scope as AAE suggests.³⁴⁰ ENO argues, however, that the initial scope of the program should not be too broad, particularly during the initial three-year period.³⁴¹ The Advisors agree that it is appropriate, at least for the first three years of the program, to limit to program to solar projects, particularly since there is little evidence that other forms of renewable DG are currently feasible within Orleans Parish.³⁴² 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.³⁴³ 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.³⁴⁴ The Advisors do not believe it is necessary to address this issue at this time, but believe

³³⁸ Advisors Report at 37.

³³⁹ AAE Comments at 4.

³⁴⁰ ENO Reply comments at 11.

³⁴¹ ENO Reply comments at 11.

³⁴² Advisors Report at 36.

³⁴³ Advisors Report at 36.

³⁴⁴ Advisors Report at 36.

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.³⁴⁵ The Council agrees with the approach proposed by the Advisors; and

WHEREAS, the AAE agrees with the Advisors' proposal that subscribers to community solar programs should retain ownership of any Renewable Energy Credits ("RECs") generated by the project.³⁴⁶ 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.³⁴⁷ The AAE recommends that the treatment of RECs and their potential value should be described in the consumer disclosures provided to potential subscribers.³⁴⁸ 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.³⁴⁹ The Council agrees with this approach; and

WHEREAS, ENO also recommends a number of minor edits to the Proposed Rules to clarify certain points.³⁵⁰ The Advisors addressed such comments and clarifications in their redline of the Proposed Rules;³⁵¹ and

WHEREAS, attached to this Resolution as Appendix A a redline demonstrating how the proposed rules have changed from the White Paper. Attached as Appendix B is a draft of the rules approved by this Resolution; and

³⁴⁵ Advisors Report at 36.

³⁴⁶ AAE Comments at 7.

³⁴⁷ AAE Comments at 7.

³⁴⁸ AAE Comments at 7.

³⁴⁹ Advisors Report at 36.

³⁵⁰ ENO Comments at 28.

³⁵¹ Advisors Report at 36.

WHEREAS, the Council has carefully considered the Advisors White Paper and Proposed Rules, the comments and reply comments of the parties and the Advisors Report and all of the arguments raised therein in reaching its decision to adopt Community Solar Rules. To the extent that any aspect of the Community Solar Rules adopted herein, or concern raised by a party is not discussed in this Resolution, it is because the Council, has found that the aforementioned documents provide sufficient grounds for adoption and explanation of the rule and no further guidance to the parties or public from the Council is needed as to that aspect of the Rule; and

WHEREAS, for the foregoing reasons and as explained herein; now therefore:

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

1. The Community Solar Rules, as appended to this Resolution as Attachment B are approved, except for Section XIV. Enforcement of These Rules, regarding which the Council seeks further comment from the parties.
2. The following procedural schedule is adopted for further comment on Section XIV. Enforcement of These Rules.
 - a. Within 60 days of the adoption of this Resolution, parties shall file comments regarding the proposed Section XIV. Enforcement of These Rules as set forth in Attachment B to this Resolution.
 - b. Within 30 days of the filing of comments, parties shall file any responsive comments.
 - c. By September 1, 2019, CURO and the Advisors shall file a joint report to the Council detailing (1) any recommended changes based upon the comments of the parties regarding the proposed Section XIV. Enforcement of These Rules; (2) an estimate of what personnel would be needed for CURO to successfully undertake the functions set forth for CURO in the Community Solar Rules; (3) an estimate of what additional budget or resources for CURO would be needed for CURO to successfully undertake the functions set forth for CURO in the Community Solar Rules; and (4) any further proposed forms or procedures CURO intends to employ in order to fulfill its responsibilities under the Community Solar Rules.
3. With respect to the implementation of these Community Solar rules, the following procedural schedule is adopted:
 - a. No later than May 1, 2019, ENO shall meet with the parties regarding its proposed implementation plan.

- b. The effective date of the Community Solar Rules shall be May 1, 2019.
- c. As is required in the Community Solar rules, ENO shall, within 90 days of May 1, 2019 submit to the Council for review and approval, a Community Solar Plan setting forth ENO's plan for implementing the rules, including its program administration plan and relevant tariffs. Within 90 days of February 1, 2019, ENO shall also submit to the Council for review and approval its proposed CSG Facility application procedure and its proposed Standard Interconnection Agreement for CSG Facilities.
 - i. Within 30 days of the filing of the proposed Community Solar Plan and CSG Facility Application Procedure, and Standard Interconnection Agreement for CSG Facilities parties shall file any comments on the proposals.
 - ii. Within 15 days of the comments being filed, ENO shall file any responsive comments.

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

YEAS: Banks, Brossett, Giarrusso, Gisleson Palmer, Moreno, Nguyen - 6

NAYS: 0

ABSENT: Williams - 1

AND THE RESOLUTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

Lera W. Johnson
CLERK OF COUNCIL