

RESOLUTION

NO. R-20-105

CITY HALL: April 16, 2020

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

**RESOLUTION AND ORDER ADOPTING RULES REGARDING HOW ANY
FUTURE REQUESTS FOR PROPOSALS FOR GENERATING RESOURCES OR
PURCHASE POWER AGREEMENTS ISSUED BY ENTERGY NEW ORLEANS, LLC
SHALL BE CONDUCTED**

DOCKET NO. UD-18-05

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 has an obligation to provide safe and reliable service to its customers at just and reasonable rates; and

WHEREAS, the Company, from time to time, seeks to acquire resources to meet its load requirements and reliability needs in order to fulfill its service obligations to its customers; and

WHEREAS, ENO has historically utilized an internal process whereby it issues requests for proposals ("RFP") to solicit bids from parties that are interested in potentially supplying ENO with a resource for its electric power supply mix; and

WHEREAS, in April 2018, the Council expressed deep concern about the lack of information it and its Advisors had received throughout ENO's 2016 Renewables RFP and the slow pace at which ENO had been pursuing potential renewable resources; and

WHEREAS, as a result of the serious concerns expressed by the Council regarding ENO's 2016 RFP process, on April 5, 2018, the Council adopted Resolution R-18-97 containing several ordering paragraphs, including a directive to its Advisors to propose a procedural schedule for a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or purchase power agreements ("PPAs") issued by ENO, regardless of the type of technology sought, shall be conducted; and

WHEREAS, consistent with Resolution R-18-97, the Advisors recommended an initial procedural schedule for a rulemaking proceeding that provided opportunities for ENO, Intervenors, and the Advisors to file comments addressing how ENO's RFP process for generating resources or PPAs may be improved; and

WHEREAS, on August 23, 2018, the Council adopted Resolution R-18-355 establishing a docket and opening a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or PPAs issued by ENO, shall be conducted; and

WHEREAS, Resolution R-18-355 also provided a procedural schedule for interested parties to intervene and provide comments on the specific topics outlined in the resolution; and

WHEREAS, specifically, the Council was particularly interested in receiving comments that address the following areas of concern:

1. Prior to developing the Draft RFP documents
 - a. How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP:
 - i. Achieves wide participation by respondents and is not overly constrained to solicit specific, or narrowly defined resources;
 - ii. Targets the specific power supply, reliability or other system needs that would be met by acquiring those resource(s);
 - iii. Includes a proposed schedule of milestone events and dates that minimizes the time required to conduct the RFP while still allowing time for ENO to conduct necessary due diligence and negotiations?
 - b. To further the objective of increasing the independence of the Independent Monitor ("IM") and increasing public confidence in the IM's selection and role in the RFP process, what changes to the selection process of the IM should the Council consider?
 - c. What modifications, if any, should be considered regarding the competitive procurement process included in Entergy's Procurement Policy?
2. Development of the final RFP documents
 - a. How should the draft RFP comment process be improved to increase transparency and facilitate opportunities for public input, access to draft RFP materials and technical discussions among the parties in the docket, and responses to questions or issues in the draft RFP raised by other parties?

- b. What role should the Council have in the comment process?
- c. Should the RFP process be changed to a two-step process¹ in an effort to more efficiently evaluate the competitive bid submissions and increase the likelihood of maintaining the RFP schedule?
- d. What requirements, if any, should the Council impose regarding the treatment, disclosure and use of "non-price" factors in weighing offers from third parties against self-build proposals or affiliate offers?
- e. What information should be provided contemporaneously with the issuance of the final RFP documents to ensure a more efficient and timely negotiation process with respondents to any RFP?

3. Issuance of the RFP

- a. How can the RFP process be improved to encourage more market participants and thereby reduce unnecessary administrative and transaction costs that may produce price premiums in supply offers?
- b. What safeguard provisions are necessary to assure a fair and competitive solicitation, increase the opportunity for the best resource to be selected, and provide confidence to the market that there will be no preferential treatment of utility or affiliate offers?
- c. What provisions are necessary to provide increased confidence in the market and provide a reasonable level of certainty that the RFP process and regulatory approval will be conducted in a timely and efficient manner and in accordance with the Council's RFP rules?

¹ Typically, in a two-step procurement process, step 1 would evaluate unpriced technical proposals, and step 2 would encompass the technically qualified proposals submitting sealed bids.

- d. What provisions should the Council consider regarding the issuance and distribution of the RFP such that it encompasses a sufficiently wide range of vendors who may be qualified to perform the work required by the RFP?
4. Post-issuance of RFP and Evaluation of bid proposals
- a. Can the RFP process be made more transparent by requiring ENO to provide periodic updates to the public without compromising the Company's negotiations with bidders and without releasing Highly Sensitive Protected Materials?
 - i. What specific reporting requirements should be imposed?
 - b. What provisions should the Council consider regarding evaluation methods and criteria for bid selection?

WHEREAS, on October 19, 2018, ENO and Intervenors, the Alliance for Affordable Energy (“Alliance”) and Air Products and Chemicals, Inc. (“Air Products”), filed comments in the docket, and on November 16, 2018, ENO, Air Products and the Alliance filed reply comments outlining their positions with respect to the Council’s consideration of establishing rules pertaining to ENO’s process for issuing requests for proposals for future generating resources or PPAs; and

WHEREAS, ENO indicated in its comments that the Company shares the Council’s interest in improving the manner in which ENO administers and conducts RFPs and commended the Council’s judicious use of its regulatory authority in allowing all stakeholders the opportunity to contribute practical and constructive ideas for accomplishing this shared goal; and

WHEREAS, ENO also urged that the Council focus its RFP rules, if adopted, on creating a collaborative framework that fosters communication and maintains flexibility so that future RFPs will yield solutions to the needs of ENO's customers in a timely manner; and

WHEREAS, the Alliance argued that the Council's RFP rules, if adopted, should apply to not only generating resources but also a broader range of capital expenditures; and

WHEREAS, with respect to resource acquisitions, the Alliance argues that all source solicitations would allow the market to fairly and transparently answer the call to resolve a utility's resource needs with solutions that are tailored to those needs and at the least cost; and

WHEREAS, the Alliance further supported the Council's goals of creating increased transparency and timeliness in ENO's RFP process for generating resources; and

WHEREAS, Air Products indicated in its comments that it supported the development of RFP rules that would provide increased availability to public RFP documents and facilitate greater public input; and

WHEREAS, Air Products also urged the Council to require RFPs for generating resources to have flexibility in the eligibility of resources to meet a capacity need in order to allow the market to put forth competitive options that allow the lowest reasonable cost resource(s) to be selected that meets the general capacity need identified in the RFP; and

WHEREAS, on February 15, 2019, the Advisors filed their report as required by Resolution R-18-355 which addressed comments made by the parties and recommended that the Council provide additional dates in the procedural schedule that would allow additional input and participation from the parties; and

WHEREAS, the Advisors fundamentally disagreed with the Alliance’s interpretation of the scope of this proceeding. Specifically, the Alliance asserted that any new rule directing an RFP or procurement policy should apply to a broader range of resources and expenditures. Such broad application of the RFP rules contemplated by this docket fall far outside of the scope of this proceeding; and

WHEREAS, the Advisors point out in their report that Council Resolution R-18-355 requires this rulemaking proceeding to consider “the process for how any future requests for proposals for generating resources or PPAs issued by ENO, regardless of the type of technology sought, shall be conducted.”² Any application of the rules that may be adopted resulting from this proceeding other than for the acquisition of generating resources or PPAs would violate the Council’s order; and

WHEREAS, ENO expressed concern that some suggestions from the Intervenors encourage rigid rules that would apply to all RFPs in the same manner, thus precluding flexibility and limiting ENO’s ability to design RFPs to yield optimal solutions to its specific needs; and

WHEREAS, all parties submitted comments expressing a desire to improve the way in which ENO conducts and makes selections from RFPs for generating resources and ENO acknowledged the Council’s frustration with the slow pace and lack of information provided throughout ENO’s 2016 Renewables RFP process; and

² Resolution R-18-355 at p. 6.

WHEREAS, all parties were also generally in support of the Council adopting rules in this proceeding but expressed different opinions in their comments regarding specific aspects of any proposed rules; and

WHEREAS, after having received initial comments from the parties, the Council adopted Resolution R-19-110 directing its Advisors to draft a set of prospective rules consistent with the Council's goals and objectives as described in Resolutions R-18-97 and R-18-355; and

WHEREAS, on May 10, 2019, the Advisors filed a set of draft rules applicable to future RFPs issued by ENO for generation resources or PPAs and circulated the draft rules to the Official Service List in this docket; and

WHEREAS, on or about June 7, 2019, ENO, Air Products and the Alliance all filed reply comments in response to the proposed rules addressing issues, including but not limited to, the scope and purpose of the rules, the RFP process, compliance with the New Orleans DBE Goals, the selection of the IM, and periodic reporting by ENO and the IM; and

WHEREAS, in some instances the parties provided specific recommended changes to the draft rules for the Council's consideration; and

WHEREAS, the Council has carefully considered the draft rules, the extensive written comments and other input provided by the parties, and based on all of the information contained in the record of this docket the Council has concluded that adopting rules that govern the process for how future RFPs issued by ENO for generating resources or PPAs shall be conducted is in the best interest of ENO's customers; and

WHEREAS, the Council agrees with the Advisors and ENO that some flexibility should be maintained and incorporated in the rules adopted in this docket that would allow the Company to solicit resources with characteristics necessary to maintain system reliability or to satisfy specific system needs; and

WHEREAS, the Council also finds that greater independence of the IM can be achieved by the adoption of rules governing the RFP process for future generating resources without causing undue delays in the RFP schedule; and

WHEREAS, the Council further finds that the proposed rules, attached to and made a part of this resolution, will increase transparency, efficiency and public confidence in the manner in which ENO conducts RFPs for generating resources and PPAs; **NOW THEREFORE**

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

The attached Rules Applicable to Future Requests for Proposals Issued by Entergy New Orleans, LLC for Generating Resources or Purchase Power Agreements are adopted without modification.

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

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.

**RULES APPLICABLE TO FUTURE REQUESTS FOR PROPOSALS ISSUED BY
ENTERGY NEW ORLEANS, LLC FOR GENERATION RESOURCES OR PURCHASE
POWER AGREEMENTS**

I. Scope of Rules

The rules provided herein shall govern the process for how any future Requests for Proposals (“RFP”) issued by Entergy New Orleans, LLC (“ENO” or “Company”) for electric generating resources or purchase power agreements (“PPA”), regardless of the technology sought, shall be conducted. In the absence of an express exemption from the Council, ENO shall be required to comply with these rules for RFPs seeking to acquire generating resources or PPAs with a capacity of twenty (20) megawatts (“MWs”) or greater.

II. Purpose of Rules

The purpose of these rules is to increase transparency, efficiency, and public confidence in the manner in which ENO conducts RFPs for generating resources and purchase power agreements. These rules also seek to ensure that RFPs are designed to continue to allow ENO to meet the needs of its customers for reliable electric service at the lowest reasonable cost.

III. Pre-Draft RFP Process and Documents

A. Notice of Intent to Issue RFP

Upon determining that the acquisition of an additional generating resource(s) or purchase power agreement(s) is necessary for the Company to fulfill its obligation to provide reliable, safe electric service to its customers at the lowest reasonable cost, ENO shall inform the New Orleans City Council (“Council”), its utility Advisors, and the Council’s Utilities Regulatory Office (“CURO”) in writing of its intent to develop and issue an RFP for a new resource(s) or PPA(s). A public version of ENO’s Notice of Intent to Issue an RFP (“NOI”) shall be posted on the Company’s website and CURO shall cause the NOI to be posted on the Council’s website. ENO shall also circulate the public version of the NOI to the Official Service List in Council Docket No. UD-18-05.

B. Content of NOI

ENO’s NOI shall include the following:

1. A clear and thorough explanation of the Company’s stated resource needs and specific goals to be outlined in the draft RFP. The proposed scope of the RFP shall be clearly described and an explanation supporting the RFP’s scope shall also be provided. This explanation shall include all

specifically defined generating characteristics required (i.e., peak, baseload, geographic location, etc.) for resource proposals and should also specifically identify the interconnection and/or delivery points, if applicable, and the geographic area that would most benefit the transmission system in terms of reliability. ENO shall also identify a reasonable range of capacity (in megawatts) that it intends to include as the range sought in the RFP.

The Company shall also explain whether the RFP will contain sufficient flexibility in the eligibility of resources to meet the capacity and energy need and whether the capacity and energy need could be met through one or more resources without pre-determined limitations on locations, fuel source, technologies, project structures or other constraints, in order to attract competitive options that allow the lowest reasonable cost resource(s) to be selected. If it is anticipated that the RFP will not contain sufficient flexibility to meet ENO's identified need, then the Company shall explain, in detail, why the RFP should be drafted more narrowly to attract resources that would meet ENO's need.

An all-source RFP should be utilized if there is a general need for additional capacity and there are no specific resource characteristics identified by ENO that would prohibit the use of an all-source solicitation. The Company shall state in the NOI whether an all-source solicitation may be made in the proposed RFP. If an all-source solicitation cannot or should not be made, then ENO shall provide a detailed explanation in the NOI as to why certain resources will not meet ENO's needs for new generating capacity.

2. A clear and thorough explanation as to how ENO intends to achieve wide participation by potential respondents, including a description of the specific methods to be used for publicizing and distributing the RFP notice and draft RFP documents.
3. A detailed proposed schedule of milestone events and dates including a reasonable time period for the Company to conduct the RFP process and for ENO to perform its due diligence and negotiations with the selected bidder(s). This proposed schedule, beginning upon ENO's receipt of any bids in response to the RFP and ending upon the filing of an application by ENO seeking Council approval of the selected resource(s), shall not exceed a period of twelve (12) months except for extraordinary or unforeseen circumstances. If the Company is unable to make a filing at the Council seeking approval of a selected resource(s) within this 12-

month period as a result of extraordinary or unforeseen circumstances, ENO shall notify the Council, in writing, immediately upon learning that a filing within the 12-month period cannot be made and provide a detailed explanation to the Council and its Advisors, subject to any material designated by the Company as Highly Sensitive Protected Material (“HSPM”). The public version of the written notice and explanation shall be posted on ENO’s RFP website and shall be circulated to the Official Service List in Council Docket No. UD-18-05. The confidential version of the notice and explanation shall be provided to the Council’s Advisors and to those individuals included on the Official Service List in Council Docket UD-18-05 that have executed the appropriate non-disclosure certificate.

C. Compliance with the New Orleans’ DBE Goals

Future RFPs for new resources shall contain a provision that requires a comprehensive narrative from all respondents detailing the respondent's plan to have the addressable spend associated with their proposals comply with of the goals articulated in Article IV of Chapter 70 of the Code of the City of New Orleans pertaining to local and disadvantaged business enterprises ("DBE") and the City of New Orleans. A copy of this Code provision shall be included in the RFP. ENO shall consider each bidder’s response as part of the overall evaluation criteria in its selection of the winning bid(s).

D. Independent Monitor

1. After the Council adopts these rules and prior to the issuance of ENO’s next RFP for either a generating resource or PPA, the Council shall issue a Request for Qualifications (“RFQ”) for the purpose of determining one or more qualified respondents who could perform the duties of an Independent Monitor (“IM”) consistent with the criteria outlined in the RFQ. Once the qualified respondent(s) have been identified by the Council, through its RFQ process, the Council, or its designee, shall create a list of qualified potential IMs from whom ENO shall request bids through its RFP process for the selection of an IM. The IM list shall be posted on the Council’s website. The Council retains the discretion to disqualify any person from inclusion on, or to remove any person from the IM list, upon determining that circumstances warrant the disqualification or removal.

The Council may, in its discretion, conduct subsequent RFQs every five (5) years to update the list of qualified respondents who could perform the

duties of the IM. Once bids are received by the Company, ENO shall select and engage the services the IM. ENO shall also inform the Council, in writing, within seven (7) days of its selection of the IM.

In a subsequent RFP conducted pursuant to these rules, ENO shall solicit bids from the list of qualified respondents (IMs) which will have already been determined by the Council through the above RFQ process and any updates thereto.

ENO shall be exempted from the requirement to use a Council-pre-qualified IM if the Council does not have a current list of pre-qualified IMs, or none of the IMs from the Council's pre-qualified list are available to work during the anticipated timeline of an RFP. If ENO anticipates that this exemption will apply to an RFP, ENO shall notify the Council of its intent to proceed under the exemption and include an explanation of why ENO believes operating under this exemption is necessary. This exemption shall not eliminate the requirement that ENO employ an IM to perform the duties outlined in these rules.

2. The IM shall be responsible for performing duties such as oversight, review, monitoring and reporting throughout several phases of the RFP (for future resources) process as specifically defined in the scope of work for IM services, including but not necessarily limited to the following phases and activities:
 - (a) RFP Development
 - (b) Proposal Solicitation (RFP Issuance, Bidder Registration and Proposal Submission)
 - (c) Receipt of Proposals
 - (d) Proposal Evaluation and Selection
 - (e) Due Diligence and Contract Negotiations
3. The IM and the Council's Advisors may communicate with each other on matters relating to the RFP process without restriction. Such communications may be confidential as needed and do not require the participation of Entergy Services, LLC ("ESL") or ENO. The IM shall make public, periodic written reports to ENO and the Council, subject to any confidentiality agreements between ESL or ENO and the IM, as part of and at the conclusion of each phase of the RFP process. The IM will

also provide a public final report to the Council subject to any confidentiality agreements between ESL or ENO and the IM, stating the IM's analysis of and conclusions regarding the RFP process, including any suggestions for improvement. The public versions of the periodic reports and the final report shall be posted on ENO's RFP website and served on the Official Service List in Council Docket UD-18-05. Contemporaneously, the confidential versions of the periodic reports and the final report shall be provided to the Councils' Advisors and individuals in Docket UD-18-05 that have executed the appropriate non-disclosure certificates.

E. Periodic Status Reporting by ENO

Subsequent to ENO's issuance of the NOI, the Company shall provide a written update to the Council's Advisors and all other parties to Docket No. UD-18-05 that have properly executed ENO's Non-Disclosure Certificate (pursuant to the Council's approved Protective Order) every sixty (60) days regarding the status of the RFP process. These periodic status reports shall be held confidential in accordance with the Council's approved Protective Order for utility regulatory proceedings and shall be subject to the conditions identified in section V(B), below. The status reports shall be submitted throughout the entire RFP process and shall provide the current status of the process, including a detailed explanation of any meaningful developments in the process within the prior 60-day period. The status reports shall also include an explanation of any delays or events that could cause a delay in the overall RFP process. The obligation to issue periodic reports shall terminate upon the filing of an application with the Council for approval of a selection from the RFP at issue.

IV. Development of Final RFP Documents

A. Draft RFP Comment Process

ENO shall post all draft RFP documents to a public website for the purpose of allowing the Council, the Council's Advisors, potential bidders, and other members of the public the opportunity to comment on the documents. Contemporaneously, ENO shall provide written notice of the availability of the RFP documents to the Council, its Advisors and the parties included on the Official Service List in Docket UD-18-05.

1. Draft RFP documents posted to the public website shall include:
 - (a) a description of the need to be met;

- (b) a general description of the criteria used to evaluate bids, including “non-price” factors;
- (c) a link to the most recent Integrated Resource Plan (“IRP”) documents;
- (d) a description of any requirements or preferences for transmission arrangements and deliverability, including a description of how transmission issues will be incorporated into bid evaluations;
- (e) information about the requirements of resources sought, including dispatchability requirements;
- (f) draft model contracts, term sheets, and scope books outlining the technical requirements resources must meet, to inform potential contract negotiations; and
- (g) a draft confidentiality agreement to be used for the process.

2. A period of thirty (30) days after the draft documents have been posted to the public website shall be established for the Council, the Council’s Advisors, potential bidders, and other members of the public to submit written questions to ENO regarding the draft documents. Answers shall be posted on a rolling basis but not later than 15 days after the conclusion of the 30-day period for submission of written questions. Questions may be submitted related to a variety of topics, including ENO’s proposed timeline, the RFP’s scope, technical aspects of the RFP, proposal requirements and evaluation criteria. Other inquiries regarding non-price factors such as locational value, reliability, transmission/distribution impacts, and resource diversity may also be submitted.

B. Public Meeting and Technical Conference

ENO shall host a minimum of one public meeting and may host one or more technical conferences for the purpose of allowing the Company to further explain the draft documents and receive additional questions, concerns and feedback from the Council, the Council’s Advisors, stakeholders and members of the public. ENO shall provide the Council with written notice of each public meeting and technical conference on its website at least thirty (30) days prior to the date of the public meeting and technical conference, respectively. Contemporaneously, ENO shall post the written notice on its website and provide a copy to the parties listed on the Official Service List in Docket UD-18-05.

V. Issuance and Post Issuance of the RFP

A. Safeguard Provisions

1. Safeguard provisions are necessary in the RFP process to assure a fair and competitive solicitation. ENO has participated as a self-bidder in prior RFP processes and may participate as a bidder in future RFPs. When ENO or an affiliated entity does participate in RFPs as a self-bidder, the following safeguards shall be implemented and maintained throughout the solicitation, selection and negotiation processes:

- (a) separation of the self-build team from the evaluation team;
- (b) application of a Code of Conduct and Affiliate Rules;
- (c) designation of an RFP Administrator as a single point of contact with bidders;
- (d) submission and lock-down of the self-build several days before other proposals are submitted;
- (e) requirement that all bidders, including the self-build, submit the same proposal information to ensure each proposal was consistently evaluated;
- (f) use of bidder, proposal, and project ID numbers to eliminate any potential bias in the evaluation;
- (g) blinding of bid information and redaction of bidder names, by the IM, of other non-pertinent information when distributing information to the bid evaluation teams;
- (h) protection of the confidentiality of non-public information received from bidders in connection with the RFP;
- (i) inclusion of an active role for the IM, as specified in section

III.D.2.

B. Periodic Reporting by the IM

At the conclusion of each phase in the RFP process, as listed in section III, D, 2 above, the IM will prepare one or more interim reports and a final report (including confidential and public versions) at the conclusion of the RFP process stating the IM's analysis of and conclusions regarding each phase of the RFP process, including any expected delays in the schedule, reasons for the delays and any suggestions for improvement. These reports shall be subject to the Council's approved protective order and any other confidentiality agreements that may be executed by the negotiating parties. The confidential versions of the reports shall be provided to ENO, the Council's Advisors and any stakeholder that has affirmatively demonstrated no affiliation with any (i) for-profit companies that either compete with bidders or are themselves bidders in RFPs for generating resources, (ii) trade organizations that are composed of and represent the interests of such for-profit entities, and/or (iii) non-profit organizations that accept direct financial contributions from and, at times, directly advocate for the interest of such entities. The public versions of these interim reports and the public final report shall be provided to the Council, the Council's Advisors and the Official Service List in Docket No. UD-18-05. The public reports shall also be posted on ENO's public RFP website and the Council's website upon release by the IM.

VI. Effectuation of Rules

ENO shall include any and all contractual provisions in its agreements or contracts with bidders, counterparties, or IMs to effectuate compliance with these rules.