

August 28, 2020

BY ELECTRONIC DELIVERY

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

In Re: *Establishing a Docket and Opening a Rulemaking Proceeding to Establish a Renewable Portfolio Standard*, CNO Docket UD-19-01

Dear Ms. Johnson:

Enclosed please find the *Advisors' Proposed RCPS Regulations* in the above referenced docket, which is being submitted for filing into the record along with this letter. As a result of the remote operations of the Council's office related to COVID-19, the Advisors submit this filing electronically and will submit the requisite original and number of hard copies once the Council resumes normal operations, or as you direct. Please file this submission in accordance with Council regulations as modified for the present circumstances.

Sincerely,



Jay Beatmann
Counsel

JAB/dpm
Attachment

cc: Official Service List for UD-19-01

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

Establishing a Docket and Opening a)	
Rulemaking Proceeding to Establish a)	Docket No. UD-19-01
Renewable Portfolio Standard)	

ADVISORS' PROPOSED RCPS REGULATIONS

Pursuant to Resolution No. R-20-104 (“Resolution”), the Utility Advisors to the Council of the City of New Orleans (“Advisors”) submit to the Council of the City of New Orleans (“Council”) for its review and consideration proposed regulations implementing a Renewable and Clean Portfolio Standard (“RCPS”). The Advisors have considered the guidance provided by the Council as well as the input provided by the parties through two technical conferences and the thirty-seven sets of comments filed by the parties thus far in this proceeding. The Advisors’ proposed RCPS is attached in Appendix A with a redline in Appendix B that demonstrates the changes made from the original Alternative 2 RCPS in response to the Council’s guidance and the parties’ comments. Appendix C provides hypothetical illustrations of how the RCPS would function with respect to various types of resources and Appendix D is a summary of the parties’ filed comments to date and the Advisors’ responses thereto.

Background

The Council has long expressed support for the efficient use of clean sustainable technology to improve the quality of life of the citizens and businesses of New Orleans. After having established Net Energy Metering (“NEM”) Rules, the Energy Smart energy efficiency program and Community Solar Rules, on March 28, 2019, the Council adopted Resolution No. R-19-109 establishing a docket and opening this rulemaking proceeding to establish renewable portfolio standards for the City of New Orleans in order to further encourage the development of a clean, sustainable resource portfolio for the City.

In Resolution No. R-19-109 (“R-19-109”), the Council set forth a procedural schedule that provided for the intervention of interested parties, comments and reply comments on the particular questions set forth by the Council, an Advisors’ Report responding to those comments and setting forth a recommendation with a draft renewable portfolio standard (“RPS”) requirement, and comments and reply comments on the Advisors’ Report. In particular, the Council sought input from all interested parties as to what an appropriate RPS target for New Orleans would be, whether it should be a requirement or a goal, how it should be satisfied, how it should be enforced, and what protections should be put in place to protect ratepayers from unreasonable increases in rates due to an RPS.¹

The following parties intervened in this proceeding: the Alliance for Affordable Energy (“AAE”),² Air Products and Chemicals, Inc. (“Air Products”),³ Center for Climate and Energy Solutions (“C2ES”),⁴ Gulf States Renewable Energy Industries Association (“GSREIA”),⁵ National Audubon Society (“Audubon”),⁶ Southern Renewable Energy Association (“SREA”),⁷ 350 New Orleans (“350 NO”),⁸ New Orleans Chamber,⁹ PosiGen Solar (“PosiGen”),¹⁰ Vote Solar,¹¹ Deep South Center for Environmental Justice (“DSCEJ”),¹² and the Sierra Club.¹³ Many

¹ R-19-109.

² The Alliance for Affordable Energy Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 2, 2019.

³ Air Products and Chemicals, Inc. Motion for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 30, 2019.

⁴ Center for Climate and Energy Solutions’ Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 24, 2019.

⁵ Gulf States Renewable Energy Industries Association, Motion of Intervention, Docket No. UD-19-01, Apr. 25, 2019.

⁶ The National Audubon Society (dba Audubon Louisiana) Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, May 1, 2019.

⁷ Southern Renewable Energy Association Petition for Intervention and inclusion on Service List, Docket NO. UD-19-01, May 1, 2019.

⁸ 350 New Orleans Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 10, 2019.

⁹ New Orleans Chamber Petition for Intervention and Inclusion on Service List, Docket UD-19-01, April 30, 2019.

¹⁰ PosiGen Solar Motion to Intervene, Docket UD-19-01, April 29, 2019.

¹¹ Vote Solar Motion to Intervene, Docket UD-19-01, April 26, 2019.

¹² Deep South Petition for Intervention and Inclusion on Service List, Docket UD-19-01, May 1, 2019.

¹³ Sierra Club Late-Filed Petition to Intervene and for Inclusion on Service List, Docket NO. UD-19-01, June 3, 2019. Petition was granted by the Hearing Officer by Order issued June 11, 2019.

of the parties to the case filed multiple rounds of comments and reply comments regarding an RPS for New Orleans, which the Advisors have summarized and provided a response to in Appendix D hereto. The comments and reply comments of the parties were wide-ranging and set forth additional models beyond the traditional RPS structure the Council had contemplated in Resolution No. R-19-109, including a proposal for a voluntary Clean Energy Standard (“CES”) by Entergy New Orleans (“ENO”)¹⁴ and a proposal for a Resilient and Renewable Portfolio Standard (“R-RPS”) by a coalition of the parties calling themselves Energy Future New Orleans (“EFNO”).¹⁵

In response to the alternative models submitted by the parties, the Advisors’ Report provided the Council with an example of a traditional RPS standard to consider as well as examples of a more aggressive CES and a R-RPS that would be more consistent with both the goal of rapid reductions in emissions with a lower impact on customer bills and more consistent with utility regulatory principles.¹⁶ The Advisors included an Appendix to their Advisors’ Report with three examples of different potential RPS standards designed to elicit comment on the proposed standards and to stimulate dialogue in hopes that parties might be able to develop a consensus model by combining features of the different models and/or introducing potential additional methods of accomplishing a particular goal.¹⁷

The Advisors, in their Advisors’ Report, provided three examples of potentially workable standards for discussion by the parties: (i) Alternative 1: a traditional RPS with a long-term clean energy goal; (ii) Alternative 2: RCPS which was a more aggressive alternative to ENO’s proposed

¹⁴ Advisors’ Report on Renewable Portfolio Standards dated September 9, 2019 (“Advisors’ Report”) at 32.

¹⁵ Joint Reply of EFNO Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans dated July 15, 2019 (“EFNO Reply Comments”) Appendix A, Section 1. Purpose at 16.

¹⁶ Advisors’ Report at 32.

¹⁷ Advisors’ Reply Comments to Renewable Portfolio Standards dated November 19, 2019 (“Advisors’ Reply Comments”) at 3-4.

CES; and (iii) Alternative 3: a Renewable and Resilient Portfolio Standard designed around the same general principles set forth in the EFNO Coalition’s R-RPS.¹⁸

A further round of comments and reply comments on the Advisors’ Report was received by the Council. After reviewing the comments submitted by the parties and the Advisors on the whole, and the comments and reply comments of the parties regarding the Advisors’ Report, the Council concluded that parties appeared to be moving farther apart from each other on the design of an appropriate RPS for New Orleans and would benefit from the Council providing guidance to the parties on the Council’s preferred design for an RPS for New Orleans.¹⁹

Council Guidance

After carefully considering the comments of the parties, on April 16, 2020, the Council issued Resolution No. R-20-104 providing its guidance as to the further development of an RPS for New Orleans. In R-20-104, the Council indicated that it is most interested in further exploring the RCPS concept modeled in the Advisors’ Alternative 2.

The Council further instructed the parties that it is most interested in gaining more information on an RCPS based on Alternative 2 in Appendix A of the Advisors’ Report with (1) a mandatory requirement that ENO achieve 100% net zero emissions by 2040; (2) reliance on Renewable Energy Credits (“RECs”) purchased without the associated energy for compliance with the standard being phased out over the ten-year period from 2040 to 2050; (3) ENO has no carbon-emitting resources in the portfolio of resources it uses to serve New Orleans by 2050; and (4) a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues. The Council set forth further a procedural schedule for interested parties to work with the Advisors in developing detailed regulations that, if approved, would

¹⁸ Advisors’ Report at 35-40.

¹⁹ City Council of New Orleans Resolution No. R-20-104 (“R-20-104”) at 6.

implement an RCPS consistent with the Council's guidance.²⁰ Pursuant to that procedural schedule, the Advisors conducted a 4-hour technical conference with the parties via WebEx on June 5, 2020, circulated a revised version of the Alternative 2 RCPS standard to the parties by email on July 6, 2020, and held a 5-hour technical conference with the parties to discuss the revised draft via Zoom on July 29, 2020.

Changes to the Alternative 2 Model:

After discussion with the parties in the Technical Conferences and review of the various additional comments submitted by the parties (summarized in Appendix D hereto), the Advisors are now recommending revised RCPS regulations to the Council. The primary changes the Advisors have made to the Alternative 2 Model are as follows:

1. Expanded the Overview section to make the intent of the RCPS clearer and to add a provision for periodic review of the RCPS by the Council;
2. Added definitions to better explain how the compliance mechanisms work and to clarify how different types of resources are treated under the RCPS;
3. Adjusted the phase-out of the reliance upon RECs purchased without the associated energy in order to alleviate concerns of the parties regarding "cliffs";
4. Clarified several aspects of how the Tier multipliers function in calculating compliance credits;
5. Clarified that Energy Storage Resources may be used for RCPS compliance, but must be considered on a case-by-case basis;
6. Added a new section detailing the process for calculating and demonstrating compliance with the RCPS;
7. Added a process for the Utility to file a compliance plan with the Council for approval every three years, similar to the process currently utilized for Energy Smart;
8. Added a provision requiring ENO to keep its relevant reports and filings on a web page easily accessible by the public;

²⁰ Resolution No. R-20-104 at 12-14.

9. Added a Banking and Compliance Reserve provision specifying how ENO may use RECs for up to three years after the REC was created in order to hedge against unexpected issues;
10. Clarified the determination of the alternative compliance payment (“ACP”); and
11. Clarified cost recovery and the Customer Protection Cost Cap.

Discussion of Changes

1. Expanded the Overview section to make the intent of the RCPS clearer and to add a provision for periodic review of the RCPS by the Council.

The Advisors have expanded the language in the Overview, Section 1(a) to clarify that the RCPS is intended to be a starting point for the Council’s pursuit of carbon emissions reductions in New Orleans, not an end point, and that nothing in the RCPS is intended to limit the Council’s ability to pursue its clean energy goals outside of the RCPS through additional measures.

The Overview has also been expanded in Section 1(a) to clarify that the Council may choose to waive any particular aspect of the regulations for a particular project if the party seeking the waiver can demonstrate to the Council that the project does serve the purposes of the RCPS, would benefit the utility’s customers and would otherwise meet any applicable Council standards or requirements. The purpose of this provision is to allow flexibility for projects that do not conform precisely to the standard, where the project would still facilitate aggressive carbon emissions reductions and safe, reliable, affordable power. An example of a project like this might be a large solar photovoltaic (“PV”) plant that has high costs and revenue requirements in the first year or two that exceed the cost cap, but has much lower ongoing operational costs in subsequent years that fall far below the cost cap such that over a particular period of time the project would on average be within the cost cap. This flexibility allows the Council to consider, evaluate, and approve in advance beneficial projects that might otherwise be rejected.

Air Products requested the explicit ability of the utility to average its renewable achievements and emissions reductions over multiple years for compliance upon a showing of economic efficiency.²¹ The Advisors believe that there may be specific projects for which this might be appropriate, but believe that only requiring a showing of economic efficiency is too low of a standard to apply. Thus, the Advisors have included language in the Overview that would allow averaging over a block of years, but only where the Council grants a waiver of its RCPS in advance based on the demonstration that the proposed project is consistent with the intent of the RCPS and benefits the utility's customers (and also meets any other Council standards or requirements relevant to the proposed project).

The Advisors have also added a provision to the Overview, Section 1(b) stating the Council's intention to conduct a periodic review of the RCPS approximately every five years. The Advisors initially suggested a ten-year review in order to provide greater stability to the RCPS that parties could rely upon in making long-term investments. Upon feedback from the parties in the technical meetings, however, the Advisors have made the periodic review more frequent, to occur every five years, and added a provision to grandfather in projects undertaken prior to any change to the RCPS so that the project developers can be assured that the economics of their project will not change unexpectedly. The periodic review set forth under the proposed RCPS would be a comprehensive review that takes into consideration a wide array of relevant factors, including, but not limited to: progress toward ultimate and interim goals, developments in climate science, impacts on customers, technological and market developments, and progress toward actual emissions reductions. This review will enable the Council to ensure that the RCPS stays on track and does not become outdated or stale as technology, markets, and climate science change over

²¹ August 20, 2020 Air Products Email to the Advisors.

time. It will allow the Council to review how the RCPS is functioning - whether it has resulted in the desired behavior, whether the various resources that are given priority should continue to be prioritized, whether the compliance, enforcement, and reporting provisions are functioning as desired, etc., and to make any changes needed. Of note, the Advisors observe that most of the states that have established an RPS have made changes to it over time -- frequently to increase the goals as utilities have often over-achieved on meeting the targets.

2. Added definitions to better explain how the compliance mechanisms work and to clarify how different types of resources are treated under the RCPS.

In the proposed RCPS, the Advisors have updated the Alternative 2 model to add definitions for Alternative Compliance Payment, Clean Energy Credit, Energy Storage Resource, Incremental Demand-Side Management (“DSM”), Net Zero Emissions, Qualified Measure, and RCPS Compliance Credit in order to implement the compliance tracking and crediting system. The proposed RCPS also has clarified the definitions of Beneficial Electrification, Conservation Program, Cost of Compliance, Demand Side Management/DSM, Distributed Energy Resource/DER, Tier 1 Resource, Tier 2 Resource, Tier 3 Resource and Zero-Carbon Emissions Resource for the same purpose, as well as other various minor edits.

In the May 11, 2020 EFNO Letter, the EFNO Coalition stated that “[t]here are many existing rules and regulations in New Orleans that also include lists of definitions, including the rules associated with Integrated Resource Planning (“IRP”), Community Solar, etc. The Council’s rules associated with a new energy standard should include standardized definitions that agree with those existing regulations.”²² In response to this comment, the Advisors created a table comparing definitions in the draft RCPS Alternative 2 to definitions in the IRP Rules, Community Solar Rules and NEM Rules so that parties could see the definitions side-by-side and address any

²² May 11, 2020 EFNO Letter at 3.

inconsistencies. In some cases, one of the existing sets of rules incorporated a definition not in the RCPS Alternative 2 draft that the Advisors considered adding to the draft proposed RCPS regulations. However, after the parties reviewed the chart of definitions in the first technical conference, the EFNO parties reversed their position that the “new energy standard should include standardized definitions that agree with those existing regulations” and instead claimed that “Advisors took the position that pre-existing definitions could not be reconsidered, expanded, or adjusted to account for RPS goals achievement and structure,”²³ arguing that “[t]his ‘least common denominator’ approach to certain key definitions will unreasonably constrain the RPS process and frustrate Council goals from the very start.”²⁴ This makes it clear that the EFNO Coalition’s intent was not actually to ensure consistency across different sets of rules, but rather to use this RCPS proceeding to “backdoor” changes to several other sets of Council regulations without notice and opportunity to comment to other parties with an interest in those sets of regulations. It is also a gross mischaracterization of the Advisors’ position.

The Advisors were responding to the EFNO Coalition’s May 11, 2020 comment that definitions in RCPS should be standardized with those definitions in existing regulations. The position the Advisors took was actually that it is inappropriate, at a late stage of an RCPS rulemaking position, to change definitions contained in the IRP Rules, the NEM Rules, and the Community Solar Rules, when there had been no notice to the public and interested parties that those sets of rules might be amended through this RCPS proceeding and no opportunity for parties impacted by changes to those rules to intervene in this proceeding and make their opinions known. To go so far beyond the issues set forth in the Resolution establishing this rulemaking docket with no public notice and opportunity to comment would be a violation of due process and of the

²³ June 22, 2020 EFNO Comments at 4.

²⁴ June 22, 2020 EFNO Comments at 4.

principle of transparency of government. Based on the EFNO parties' opposition to using existing Council definitions for the RCPS, in these proposed regulations, the Advisors have made edits to ensure that the definitions in the RCPS are updated and appropriate for the RCPS purposes and have ensured that, where they do not precisely match other sets of Council definitions, they are sufficiently consistent not to create confusion or difficulty in enforcing the Council's rules and regulations.

3. Adjusted the phase-out of the reliance upon RECs purchased without the associated energy in order to alleviate concerns of the parties regarding “cliffs”.

While the Council's directive in Resolution No. R-20-104 was to phase out reliance upon RECs purchased without the associated kWhs of electricity from 2040 to 2050, parties expressed concern that phasing out reliance on RECs beginning in 2040 created too much of a compliance “cliff” where ENO would suddenly in 2040 need to acquire a significant amount of new resources, particularly when combined with the loss of multipliers for compliance purposes in 2040.

Both in the technical conferences and in the June 22, 2020 EFNO Coalition Comments, the EFNO Coalition argued that the use of multipliers sets up “cliffs” along the way when extra credit goes away, particularly in 2040 when the use of RECs without the associated kWhs also begins phasing out in the original Alternative 2 draft.²⁵ Several other parties voiced similar concerns in the technical conferences, and in order to smooth out the “cliff,” the draft RCPS being submitted to the Council now shows that the phase out of reliance upon RECs without the associated kWhs begins earlier and is accomplished through smaller increments. The Advisors continue to believe that it is appropriate to allow the use of Tier multipliers in order to reach “net zero” by 2040; but once net zero emissions has been reached in 2040 and the RCPS progresses toward the goal of

²⁵ June 22, 2020 EFNO Comments at 7.

achieving true zero emissions in 2050, the focus of the RCPS should turn more heavily to eliminating carbon-emitting resources from ENO's resource portfolio rather than merely offsetting them, and thus, reliance upon Tier multipliers becomes counter-productive once net zero emissions has been achieved and should be eliminated.

In response, the Advisors have adjusted the phase-out of RECs to begin in 2026 and to reduce the amount of compliance that can be achieved through the purchase of RECs without the associated energy more gradually, by 1% per year rather than by 2%. In this manner, the RECs are phased out more gradually, smoothing the "cliff" to some extent, but still reach 0% by 2050 in accordance with the Council's directives.

While some parties continue to maintain that the elimination of multipliers in 2040 is a problem that should prevent the use of multipliers,²⁶ it is appropriate to eliminate them in 2040 given the Council's goal of getting to a truly carbon free emissions portfolio. While it may create a compliance cliff, the utility will have nearly 20 years of notice of the treatment of Tier multipliers and the potential cliff, and over that period of time not only will multiple IRP cycles be completed, but also the Council will undertake several reviews of the RCPS. The Advisors expect that over the course of the multiple IRP planning analyses and RCPS reviews, the cliff can be appropriately planned for in the utility's RCPS Compliance Plans, and, because the impact of the cliff on ratepayers should be reasonably ascertainable several years ahead of time, there should be ample time for the Council to amend the RCPS in one of its reviews if necessary to prevent harm to ratepayers.

Further, on July 29, 2020, the Sierra Club communicated by way of email to the Service List in UD-19-01 that it will oppose any use of RECs or similar instruments for RCPS

²⁶ August 27, 2020 EFNO Comments at 3.

compliance.²⁷ The Advisors agree with the underlying premise that a truly carbon emissions-free portfolio is more beneficial to the environment and public health than a portfolio where emissions are offset by RECs purchased without the associated kWhs. However, the Advisors are also conscious of the high energy burden experienced by many citizens in New Orleans and of the need to control energy costs and keep them as low as reasonably possible. The Advisors believe that permitting the use of RECs for compliance, particularly in the early years of the RCPS where ENO does not anticipate the need to add any new capacity to meet its load requirements, strikes an appropriate balance between controlling costs and making progress toward the Council's clean energy goals. The Advisors note that rather than allowing the unlimited use of RECs without the associated kWhs of electricity for compliance purposes, the proposed RCPS does limit the use of RECs for the entire term of the RCPS -- starting with a limit of not more than 25% compliance in the first compliance year and phasing out such use by 1% per year between 2026 and 2050 to reach the target of 0% carbon emissions by 2050 (Section 3(a)).

4. Clarified several aspects of how the Tier multipliers function.

In the revised RCPS, the Advisors have clarified several aspects of how the Tier multipliers function. First, the RCPS now states explicitly that after 2040 all Tier multipliers reduce to 1.0 (Section 3(b)). This change was made to be consistent with the Council's goal of not having any carbon-emitting resources in the utility's portfolio by 2050 by encouraging the utility to begin working carbon emitting resources out of its portfolio once it achieves net zero rather than continuing to rely on Tier multipliers to be able to offset emissions. In addition, the proposed RCPS specifies that if the utility can provide workpapers to the Council to support a different Tier

²⁷ July 29, 2020 Sierra Club Email re: RCPS 2nd Technical Conference.

multiplier, then a proposal for a different Tier multiplier than those set forth could be evaluated and considered by the Council (Section 3(b)).

With respect to Beneficial Electrification, 350 NO suggested in the second technical conference that a minimum threshold of carbon emissions reductions be established for a measure to qualify as a Beneficial Electrification measure eligible for the Tier 1 multiplier. In an email to the Advisors on August 17, 2020, 350 NO specifically proposed that a minimum per year of 5,000 tons of CO₂ reduction be required and that such measures should meet the standard of reducing 0.56 tons of CO₂/MWh based on information in the Power Master Plan for Sewerage and Water Board. ENO and Air Products opposed this proposal in a filing submitted to the Council on August 21, 2020, arguing that the criteria proposed have no basis in fact or sound carbon emissions reduction policy, and would all but eliminate the ability to use Beneficial Electrification to reduce carbon emissions.²⁸

As ENO and Air Products note, setting the minimum at 5,000 tons of CO₂ emissions would eliminate many smaller beneficial electrification projects that would be expected to bring benefits to New Orleans.²⁹ Although the minimum proposed by 350 NO is too high and would be too much of a deterrent to Beneficial Electrification projects, the Advisors do support including a minimum threshold for Beneficial Electrification in order to avoid a situation where the utility receives a very large compliance credit for only a minimal or nominal reduction in net carbon emissions from a Beneficial Electrification project.

²⁸ Entergy New Orleans Letter, submitted in Docket UD-19-01 on August 21, 2020 (August 21, 2020 ENO Letter) at 1.

²⁹ *Id.* at 2-3.

The average MISO marginal emissions rate is approximately 1,200 pounds of CO₂ per MWh.³⁰ Beneficial Electrification projects replace the existing CO₂ emissions from the project with the utility's MWh at the average MISO marginal emissions rate, and the **net** reduction in CO₂ emissions per MWh results in the clean energy credits earned with the project. To establish a minimum threshold for Beneficial Electrification, the existing project emissions per MWh less the emissions at the average MISO marginal emissions rate per MWh must result in a **net** emissions rate per MWh that would ensure that the project results in a sufficient net decrease in carbon emissions to be worthy of a Tier 1 multiplier. Since each MWh consumed or produced by a Beneficial Electrification measure results in a Clean Energy Credit ("CEC") earned, a **net** reduction minimum threshold of 1,500 pounds of CO₂ per CEC is required by the proposed RCPS Rules in order for a Beneficial Electrification project to receive the Tier 1 multiplier of 1.5. This is based upon applying a 1.25 multiplier to the average MISO emissions rate of 1,200 pounds of CO₂ per MWh to produce a minimum threshold of 1,500 pounds of CO₂ per MWh, which the Advisors find to be appropriate given the significant Tier 1 multiplier applied to Beneficial Electrification projects. Using a minimum **net** reduction of emissions threshold rather than an absolute (fixed value) threshold should serve as less of a disincentive for smaller projects with lower MWhs to be undertaken, and allows the magnitude of the threshold to move with the magnitude of the RCPS Compliance Credits to be earned.

As a notable exception, the proposed RCPS Rules provide that electric vehicle charging equipment is exempt from compliance with the minimum net reduction of emissions threshold.

³⁰ *Marginal Emission Factors Considering Renewables: A Case Study of the U.S. Midcontinent Independent System Operator (MISO) System*, Mo Li, Timothy M. Smith, Yi Yang, and Elizabeth J. Wilson, Environmental Science & Technology 2017. (Expanded Marginal Emissions Factors (the change in emissions (CO₂, SO₂, and NO_x) as a function of change in system generation from emitting and non-emitting sources) For MISO and its subregions (North, Central and South MISO) were presented).

This exemption reflects the difficulty in producing an accurate estimate of pounds of CO₂ per MWh saved from sources of emissions in New Orleans for EV charging stations while acknowledging the probability that the majority of kWhs of electricity used to charge EVs in Orleans Parish will be used to offset vehicle emissions in Orleans Parish, which is a substantial benefit to the Parish.

Finally, the EFNO Coalition argued that the Alternative 2 model should be clarified so that there is no opportunity to “double count” multipliers for a single measure.³¹ In response to this concern, the proposed RCPS also clarifies that a resource is eligible for only one Tier -- if it could be eligible for two Tiers, it should receive the highest Tier multiplier for which it is eligible (Section 3(b)).

5. Clarified that Energy Storage Resources may be used for RCPS compliance, but must be considered on a case-by-case basis.

There was extensive discussion among the parties in the technical conferences regarding the appropriate manner in which to credit Energy Storage Resources, such as batteries. In its June 22, 2020 Comments, the EFNO Coalition heavily criticized the Advisors for not including energy storage in the definition of Demand-Side Resources and Distributed Energy Resources in the Alternative 2 model and argued that energy storage resources are “absolutely critical to enabling cost-effective deployment of distributed generation, electric vehicles (which are themselves a kind of energy storage), demand response, load management, and other DERs” and that “[e]nergy storage is a fundamental tool for improving reliability, especially on the outage-prone ENO system, and is an essential resource for improving system resilience.”³²

³¹ June 22, 2020 EFNO Comments at 8.

³² June 22, 2020 EFNO Coalition Comments at 4.

While energy storage is a highly valuable system resource that can indeed improve reliability and support distributed generation deployment, there is nothing inherent about energy storage resources that reduce carbon emissions. Energy storage resources do not generate clean energy. Rather, they can be charged with electric energy from any resource - clean or not - and be discharged when needed. There are methods and strategies of using energy storage resources that have the potential to reduce carbon emissions -- for example, using them to store excess energy generated by a renewable resource in order to deploy it at a later time to avoid using a carbon-emitting resource. However, there are also uses of energy storage resources that do not reduce carbon emissions, such as when homeowners put a home battery on their house that is charged with electricity from the utility and use it to power their home during blackouts.

During the second technical conference, the Advisors shared with the parties several hypotheticals as to how energy storage resources might earn compliance credits depending on their application with DERs. The parties expressed concern that including energy storage resources in the manner depicted in the hypotheticals would result in a potential double-counting of resources and compliance credits being applied for uses of energy storage resources that do not necessarily advance the Council's RCPS goals. At the end of the discussion, it was the impression of the Advisors that there was at least some level of consensus among the parties that energy storage resources should be included as a potential resource for RCPS compliance, but the proposed application of the energy storage resource would need to be considered on a case-by-case basis rather than being assigned to any particular Tier. Therefore, the Advisors have added language in Section 3(c) of the RCPS to state that energy storage resources may be used for RCPS compliance, but would need to be approved and assigned an appropriate multiplier by the Council on a case-by-case basis.

6. Added a new section detailing the process for calculating and demonstrating compliance with the RCPS.

One of the key pieces of feedback from the parties with respect to the Alternative 2 model was that it was unclear from the original language of Alternative 2 exactly how compliance would be calculated. The revised proposed regulations add a Compliance and Reporting Section (Section 4) that sets forth how compliance is to be calculated and reported to the Council. First, the calculation of the Retail Compliance Load is defined, which is the annual megawatt-hour (“MWh”) basis upon which the Utility’s MWh obligations (as Compliance Credits) under the RCPS must be determined (Section 4(a)). Second, the RCPS Compliance Credits are determined by adding the RECs and CECs that the Utility has acquired in the compliance year, and applying the appropriate Tier multipliers and any RECs from the Banking and Compliance Reserve to be used for compliance purposes (Section 4(b)). Third, the percentage of the Retail Compliance Load that is met by the RCPS Compliance Credit MWhs is calculated to determine whether the Utility met the target for the year (Section 4(c)). Fourth, the RCPS Compliance Costs are calculated to determine whether the incremental revenue requirements related to RCPS stayed within the Customer Protection Cost Cap (Section 4(d)).

7. Added a process for the Utility to file a compliance plan with the Council for approval every three years, similar to the process currently utilized for Energy Smart.

Several parties also sought clarification of the interaction between the RCPS and the IRP and suggested that the IRP planning process should inform RCPS compliance planning as well.³³ While the parties were not in complete agreement about the extent to which the IRP and RCPS should inform one another, the Advisors agreed that clarification was warranted. The IRP and

³³ ENO Comments on Advisors’ Report at 8; PosiGen Comments at 10; EFNO Reply Comments, Appendix A at Sec. 3 at 8; SREA Comments at 14-15.

RCPS do not fit perfectly together, in no small part because the IRP is a long range planning tool which identifies generic supply and demand resources over a twenty-year planning period. Therefore, while the IRP planning tool can include additional regulatory policy strategies and should produce resource portfolios that reduce the Utility's carbon emitting capacity to zero by 2050, the IRP modeling does not have the full range of specific annual cost information needed for RCPS compliance. Similar to the IRP process informing the more detailed three-year Energy Smart Implementation Plan, the IRP process informs more detailed planning for RCPS compliance.

While the IRP planning process provides generic and helpful information regarding cost-effective RCPS compliance planning, a well-developed RCPS compliance plan should consider a broader range of resources that includes all available options, not just options that add capacity to the Utility's system. The Advisors have modified the proposed regulations from the Alternative 2 model, to add Section 4(e) which requires that at the end of each triennial IRP cycle, the Utility shall develop a three-year prospective RCPS Compliance Plan, including a three-year Banking and Compliance Reserve plan for RECs. The Utility will then submit the plan to the Council for review and approval. The plan would also include a calculation of a proposed ACP to be set for the three-year period. This should allow the utility to develop a RCPS compliance plan that is informed by the most recently completed IRP planning process.

8. Added a provision requiring ENO to keep its relevant reports and filings on a web page easily accessible by the public.

Several parties have requested a "dashboard" regarding RCPS compliance. The May 11, 2020 EFNO Coalition Letter also requests a transparent process for measuring and reporting benchmarks and progress. Specifically, the EFNO Coalition requests the creation of a Data

Platform, such as that operated by Austin Energy, to allow the public to view the utility's progress.³⁴ The EFNO Coalition reiterated this request in its June 22, 2020 EFNO Comments, arguing that without such a transparent Data Dashboard, the Council and the public are forced to wait until an end of the year report, and potentially until after Entergy complies with data requests in order to unravel details,³⁵ and further reiterated the request in the August 27, 2020 EFNO Letter.³⁶ The Advisors have reviewed Austin Energy's Data Dashboard.³⁷ That dashboard was created pursuant to a city resolution requiring Austin Energy, the municipally-owned utility of Austin, Texas, to publish an annual summary on the performance and costs of its generation portfolio and planning targets for renewables and energy efficiency.³⁸ The dashboard provides data reporting in a more consumer-friendly and readily accessible format and is updated as data becomes publicly available.³⁹ The Advisors believe that it is reasonable to require that the utility maintain an easy to find webpage with a user-friendly interface where it makes available the public versions of all reports and documents related to RCPS and the utility's carbon emissions that it submits to the Council or any other relevant government agency or public body, and have included such a recommendation in the proposed RCPS.

9. Added a Banking and Compliance provision specifying how ENO may use RECs for up to three years after the REC was created in order to hedge against unexpected issues.

ENO has requested a banking and reserve provision permitting it to save RECs and use them over a three-year period in order to hedge against costs and unanticipated challenges to meeting the Council's requirements.⁴⁰ The Advisors' research indicates that of the states with an

³⁴ May 11, 2020 EFNO Letter at 3, *See also* Audubon Comments at 10.

³⁵ June 22, 2020 EFNO Comments at 5-6.

³⁶ August 27, 2020 EFNO Letter at 3.

³⁷ <https://data.austintexas.gov/stories/s/Austin-Energy-Open-Data-Dashboard/82cz-8hvk>

³⁸ <https://data.austintexas.gov/stories/s/Austin-Energy-Open-Data-Dashboard/82cz-8hvk>

³⁹ <https://data.austintexas.gov/stories/s/Austin-Energy-Open-Data-Dashboard/82cz-8hvk>

⁴⁰ ENO Comments at 15.

RPS of approximately 90% permit the use of RECs to satisfy the compliance requirements. Of those states, approximately 70% allow RECs to be utilized for multiple years after they are generated as long as they are retired once used, with the most common term being for three years.

In the June 22, 2020 EFNO Coalition Comments, the EFNO Coalition opposes both banking of RECs and averaging of renewable energy achievements and emissions reductions as being antithetical to long term climate action goals and discouraging over-achieving on the goals.⁴¹ The EFNO Coalition argues that “[b]anking epitomizes the Advisors’ structural approach to incentivizing the minimal level of performance.”⁴² The EFNO Coalition, however, prefers to ignore that the Council has set forth a goal that is among the most ambitious in the nation for clean energy achievement, and that the monetary impact of the regulations on customers must be taken into account.

While the Advisors would be pleased if the utility is able to “over comply” with the Council’s RCPS without exceeding the Customer Protection Cost Cap, regulations should be drafted (i) to indicate to the utility the Council’s desired level of performance in the first instance and (ii) designed in a manner such that the utility can comply with the Council’s regulations through reasonable means. Rather than designing regulations to require minimal compliance but then encourage “over-compliance” as suggested by the EFNO Coalition’s comments, it is more effective to design the regulations to require the level of compliance that is desired, as the Advisors have done in the proposed RCPS.

The EFNO Coalition further attacks the addition of a REC banking provision as not considering the impacts on market development and stability and arguing that it will not lead to

⁴¹ June 22, 2020 EFNO Coalition Comments at 6.

⁴² June 22, 2020 EFNO Coalition Comments at 6.

the market transformation necessary to transition our energy system.⁴³ The Advisors also note, however, that “market development and stability” was not one of the four primary mandates set forth by the Council in Resolution No. R-20-104, whereas limiting the cost impact of the RCPS is one of the primary mandates set forth by the Council.

The Advisors are cognizant of these concerns of the parties and believe this is an area where a balance needs to be struck between the speed of change and the cost impact to customers. The Advisors believe that it would be helpful in controlling costs to customers to allow the utility some ability to hedge against unpredictable compliance costs by purchasing RECs at a known price that can be used in limited future years. However, in order to ensure that it is merely a hedging mechanism and the utility is not able to completely avoid acquiring new RECs in any given year, the Advisors have proposed certain limits on the use of the RECs: the banked RECs (1) were in excess of the compliance credits needed for compliance in the compliance year; (2) do not exceed the REC limitation specified in Section 3 for compliance with the RCPS in the year they were generated or produced; and (3) have not otherwise been, nor will be, sold, retired, claimed or represented as part of clean energy output or sales, or used to satisfy obligations in other jurisdictions. It is also important to note that banked RECs would be considered RECs without the associated MWhs of electricity, and thus their use for compliance purposes would be governed by the cap on the use of RECs without the associated MWhs of electricity as well. The Advisors believe that the banking provision included in the proposed RCPS would not allow the utility to evade compliance with the RCPS, but rather would be a reasonable hedge against unforeseeable changes in the price or availability of RECs.

⁴³ August 27, 2020 EFNO Letter at 3.

In the technical conferences, the parties raised an issue related to Green-e certification of banked RECs, namely that Green-e certification expires after one year. Therefore, a REC that is more than one year old would not be “Green-e certified.” The Advisors note, however, that with the requirement for the Midwest Renewable Energy Tracking System (“M-RETS”) (or similar) tracking of RECs, each REC would be assigned a unique tracking number that would permit the Council to verify that a banked REC is a REC that was Green-e certified when it was created and that it was never used for any other purpose. The Advisors believe that this should provide sufficient assurance to the Council that banked RECs are indeed from renewable energy resources and have not been “double counted” or otherwise used for any compliance purposes.

The Banking and Compliance Reserve Provision is also only available for RECs and not for CECs⁴⁴ produced from non-renewable resources. The Advisors have found no available third-party certification and tracking programs such as M-RETS or Green-e for CECs, which reduces the level of confidence that a banked CEC has never been used for any other compliance purpose. In addition, the use of CECs without the associated MWhs of energy is not recognized under the RCPS, so banked CECs would not be eligible for compliance purposes.

10. Clarified the determination of the ACP.

The parties’ feedback to the Advisors indicated that further clarification was needed as to how the ACP would be calculated, and there was some discussion in the technical conferences as to how the payment should be determined and calculated. The discussion with the parties in the technical conferences indicated that the parties wanted to ensure that the ACP was not by definition the least cost option for compliance with the RCPS in order to encourage the utility to comply with

⁴⁴ One Clean Energy Credit results from (1) each MWh of electricity produced by a Zero Carbon Emissions Resource, (2) each MWh reduction in consumption resulting from DSM installed after January 1, 2021, (3) or each MWh consumed or produced by a Beneficial Electrification measure or a Qualified Measure.

RCPS rather than making an ACP payment to the greatest extent possible. Therefore, the Advisors recommend that the ACP payment be set at a price that should be higher than the highest market-based cost of purchasing RECs to comply with the RCPS, and thus would most likely only be relied upon where sufficient RECs were not available in the market to meet compliance. The revised proposed regulations state that the ACP will be established for a prospective three-year period in each RCPS Compliance Filing proceeding and will be determined by taking the highest market value of RECs in MISO of over the prior three years and applying a 1.15 multiplier (Section 5 (a)).

Because the ACP is not a penalty, but rather a mechanism to ensure that in years where compliance cannot be achieved by reasonable efforts, some progress can still be made towards the Council's targets (as limited by the Customer Protection Cost Cap), a further provision was added to clarify that the application of the ACP does not in any way limit the authority the Council has to impose penalties for the violation of its regulations. This preserves the Council's ability to penalize the utility where a showing is made that the utility's failure to comply with the RCPS was not reasonable or prudent.

11. Clarified Cost Recovery and the Customer Protection Cost Cap

Section 6 of the RCPS now addresses cost recovery by the utility and the Customer Protection Cost Cap. The changes to this provision clarify that because the ACP is not a penalty, the Utility will be permitted to recover the ACP from customers unless it is demonstrated to the Council that the Utility's failure to comply with the RCPS was unreasonable.

The language was also clarified to indicate that the Utility shall not exceed the Customer Protection Cost Cap in order to acquire RCPS Compliance Credits, and that if it can support a finding that it cannot comply within the Customer Protection Cost Cap, it will be deemed to have complied once it has spent up to the Customer Protection Cost Cap (including the ACP, which is

limited by the Customer Protection Cost Cap). In addition, the language previously included in this section in Alternative 2 permitting the Utility to seek a waiver of the Customer Protection Cost Cap has been deleted as redundant with the new Overview Section language regarding the Council's ability to waive any provision of the RCPS.

Air Products recommended in its comments on the Advisors' Report that if the Council decides to adopt an energy standard for New Orleans, that it adopt Alternative 2, RCPS, but include the Alternative 1 cap for large customers.⁴⁵ Air Products renewed this request in the technical conferences. ENO argued that the proposed large customer cap would harm the vast majority of ENO's customers for the exclusive benefit of two customers by shifting a portion of the costs above the cap to other customers.⁴⁶ Additionally, other parties expressed concern regarding the potential for such a cap to either shift the costs of compliance onto other customers or reduce the RCPS targets. While the Advisors considered the request for a large customer cost cap and initially concluded that it may be reasonable, the Advisors do not support a specific monetary cap sought by Air Products. Rather, in this proposed RCPS, the Advisors have included a cost cap provision that states that for rate classes with fewer than 3 customers, the Council will review and adjust rates through the Utility's decoupling mechanism, such that the increase in the allocated total cost of service related solely to RCPS Cost of Compliance for those rate classes is no greater than 1% (Section 6(b)(3)).

⁴⁵ Air Products Comments on Advisors' Report at 2-9.

⁴⁶ ENO Comments on Advisors' Report at 26.

Additional Issues

Net Energy Metering Customers

The Council's current NEM Rules that govern rooftop solar for ENO customers create certain issues with respect to RCPS compliance. Nevertheless, in the proposed RCPS, under certain conditions, such resources may be used for compliance.

One issue related to the current NEM Rules is that the NEM Rules do not specify who owns the REC associated with NEM facilities. The Advisors do not have access to a sufficiently broad selection of rooftop solar customer contracts to be able to ascertain where ownership of most RECs lies. However, the Advisors were provided with a PosiGen customer lease by a PosiGen customer and that lease specified that all environmental aspects of the solar panel, which would include any RECs associated with the output of the solar panels, remain the property of PosiGen and do not transfer to the rooftop solar customer. Therefore, that customer does not appear to own the RECs, meaning that the customer would have no legal right to sell the RECs to the utility, with or without the kWhs generated by the solar panel. This suggests that some portion of NEM customers may not actually own the RECs generated by their solar panels or have the legal right to sell them to the utility. Without the ability to perform a comprehensive review of rooftop solar contracts in the City, which are private contracts between the rooftop solar providers and their customers, the Advisors cannot ascertain the extent to which NEM customers do or do not own the RECs generated by solar panels on their roofs, or whether customers who own their solar panels are in a different position than customers who lease their solar panels. Under these current circumstances, it would be inappropriate to create a blanket provision allowing NEM kWhs to be used for RCPS compliance without any further verification. Therefore, under the proposed RCPS, if RECs related to a NEM facility's output can be Green-e certified and M-RETS tracked, they

may then be used for compliance in the same manner as any other REC, and if it is within Orleans Parish, would receive the Tier 2 1.25 multiplier. This would allow whatever entity can demonstrate it has ownership of the RECs to do so and to offer them for sale to the utility as a resource for RCPS compliance. Given the cost and procedures required for Green-e and M-RETS certifications, individual homeowners are unlikely to pursue this route, but there may be solar providers or other entities with the ability to aggregate RECs from a sufficient number of NEM customers to make it a viable business model.

In addition, however, given the current NEM Rules, RECs from NEM customers must be treated as RECs purchased without the associated energy. This is because under the current NEM Rules, the customer is given a full retail credit for the electricity that they put on to the Utility's grid. This one-for-one credit, essentially allows the customer to take back 100% of the kWhs of electricity that they put onto the grid when they need it, effectively using the Utility's distribution grid as a battery. In fact, because a physical battery would experience some loss of electricity over time, the customer is more effectively storing electricity on the utility system than if they had a home battery connected to their rooftop solar panels. The Advisors observe that not only does this allow customers to effectively use the utility system as a battery for free, it leaves customers with no monetary incentive to install an energy storage resource on their property, because they would not currently gain any monetary benefit from doing so. The only added benefit they would receive from a home battery would be the ability to power their property during a short blackout.

A further issue related to NEM is that neither the Utility, the Advisors, nor the Council has any method of measuring and verifying how many kWhs of electricity a NEM customer is producing. The meter associated with the NEM customer is located between the customer's facilities and the utility, and only measures the excess electricity the customer sends back to the

utility and the electricity the customer takes from the utility -- the “net” electricity use of the customer. It does not measure either the output of the solar panels or the solar electricity consumed by the customer’s home or business - it only measures how much “extra” electricity the solar panel generates. It is the Advisors’ understanding based on discussions with the parties in the technical conference that at least one local solar provider has the ability to measure and record the kWhs of electricity generated by the solar panels it leases to its customers. This ability would most likely permit such an entity to provide the data needed to get RECs Green-e and M-RETS certified and, assuming ownership of the RECs is also demonstrated, to sell them to the utility for RCPS compliance. No other solar providers have similarly indicated to the Advisors that they have that ability, so the Advisors do not currently have an understanding of whether the ability of solar providers to measure their customer’s output is widespread or whether it is limited within Orleans Parish. This issue, coupled with the other two significant issues discussed above, support the Advisors’ position that RECs related to NEM solar customers’ facilities should be included for RCPS compliance only where they have been Green-e certified and M-RETS tracked in the same manner as RECs from any other renewable resource. Otherwise, given the current NEM Rules, the Council can have very little confidence that the NEM RECs are legitimate, have actually been acquired by the utility, and have not been used for any other purpose.

The Advisors note that the problems set forth above are specific to the current NEM Rules and that changes to those Rules could enable greater participation of the NEM customers in RCPS compliance. The Council does have an existing docket, UD-13-02, where the NEM Rules are under consideration, but that docket was suspended indefinitely by order of the Hearing Officer on January 16, 2017,⁴⁷ due to the parties’ consensus that there was not at the time sufficient load

⁴⁷ Order, Docket No. UD-13-02, January 16, 2017.

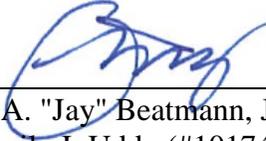
profile data representative of NEM customers upon which to base any proposed changes to NEM policies.⁴⁸ To the extent that the Council wishes to enable greater participation by NEM customers in RCPS compliance, the Advisors recommend that the Council re-open Docket No. UD-13-02 and establish a new intervention period for new parties wishing to participate in that docket, in order to address these issues as well as the issues already under consideration in that docket.

In conclusion, RECs associated with NEM facilities may be used for RCPS compliance where they have been Green-e and M-RETS certified and the person or entity owning such RECs sells them to the Utility. To the extent that such RECs are generated from facilities within Orleans Parish, they would be eligible for the Tier 2 multiplier.

Conclusion

Having considered all of the comments of the parties filed with the Council and made during the technical conferences or otherwise communicated to the Advisors, the Advisors recommend that the Council adopt the proposed RCPS as contained in Appendix A.

RESPECTFULLY SUBMITTED:



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⁴⁸ See *Entergy New Orleans, Inc.'s Limited Response to Comments Regarding ENO's Preliminary Proposal and Proposal to Refrain from Making Net Energy Metering Policy Changes at this Time*, UD-13-02, filed Jan. 11, 2017. The Advisors note that ENO's motion was unopposed by any party to that proceeding, including AAE, the Alliance for Solar Choice, PosiGen and Gulf States Renewable Energy Industry Association. See Order, Docket No. UD-13-02, January 16, 2017 at 1.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon the following parties of record by electronic mail on this 28th day of August 2020.



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Appendix A
Draft Proposed Regulation

DRAFT Renewable and Clean Portfolio Standard (“RCPS”)

SECTION 1: OVERVIEW

- a) **Intent:** It is the intent of the Renewable and Clean Portfolio Standard (“RCPS”) to:
1. Aggressively pursue reductions to carbon emissions to improve the health and quality of life of the citizens of New Orleans and to reduce the City’s impact on climate change, which is an existential threat to the City’s security.
 2. Ensure that the City has a safe and reliable power supply at a reasonable cost and retain as much flexibility as possible to employ a wide range of currently known and yet to be developed zero-emissions energy technologies.

This RCPS is intended to promote and foster these goals, and does not in any way limit the Council’s authority to pursue these intentions through additional measures. The Council may waive any provision of these rules in advance upon a showing of good cause under the circumstances and upon a demonstration that such waiver serves the intent of this RCPS and may deem the Utility to be in compliance. In particular, this RCPS does not prevent parties from proposing and the Council from considering and approving projects consistent with the intent of this RCPS that do not conform precisely to the interim goals, Customer Protection Cost Cap, or other requirements set forth herein if the party(ies) proposing the project are able to successfully demonstrate to the Council that the project is nevertheless consistent with the intent of the RCPS, would benefit the Utility’s customers, and meets any other Council standards or requirements applicable to that project (such as, for example, a project where interim goals and budget numbers are averaged and achieved over a block of years rather than strictly as provided in this RCPS). All proposals to modify or request to waive the goals or requirements of the RCPS shall be filed at the Council and served on parties to Docket No. UD-19-01, with opportunity for parties to issue discovery and provide comment.

- b) **Periodic Review:** In order to ensure that this RCPS continues to meet the Council’s intent as set forth in Section 1(a), it is the Council’s intention to conduct a review of this RCPS at least every five years. Such review shall consider a wide array of relevant factors, including, but not limited to: progress toward ultimate and interim goals, developments in climate science, impacts on customers, technological developments, market developments, and progress on actual emissions reductions of the Utility’s portfolio.⁴⁹ At the end of such

⁴⁹ Because the most significant of the utility’s generation-related emissions is carbon dioxide, and the most urgent climate problems at the time of the adoption of this RCPS are being caused by carbon dioxide, this RCPS focuses specifically upon reductions in carbon dioxide emissions. The Council recognizes that other forms of air emissions

review, the Council will make a determination as to whether the RCPS remains appropriate for the City or whether it requires modification. Nothing in this provision prevents the Council from conducting a more immediate or frequent review of the RCPS than set forth in this provision should the Council determine that circumstances warrant more frequent or immediate review. Projects undertaken prior to any change in the RCPS would be grandfathered, such that they continue to receive the RCPS Compliance Credit they were entitled to receive prior to the change in RCPS.

SECTION 2: DEFINITIONS

“Alternative Compliance Payment” or “ACP”: The ACP is a payment to be made by the utility when it is unable to comply with the RCPS through reasonable measures, but still has funding available to it under the cap set by the Customer Protection Cost Cap set forth in the rules. The ACPs (unit cost per MWh) shall be calculated in accordance with Section 5 of this RCPS, and will be placed in the CleanNOLA Fund established in Section 7 of this RCPS.

“Beneficial Electrification” means any program or process that replaces direct fossil fuel use as a source of power and/or heat with electricity in a way that -- when the electric utility’s emissions are accounted for -- reduces overall emissions, including, but not limited to, charging infrastructure supporting electrification of motor vehicles, electrification of home and commercial appliances that use natural gas, and electrification of municipal and commercial operations that currently rely on fossil-fuel use to power equipment. To qualify as a Beneficial Electrification resource under this RCPS, the measure must reduce net carbon emissions by no less than 1,500 pounds of CO₂ per Clean Energy Credit earned.

“Carbon Sequestration” means the fixation of atmospheric carbon dioxide in a carbon sink through biological or physical processes. A carbon sink is a reservoir that absorbs or takes up released carbon from another part of the carbon cycle.

“CCUS” means carbon capture, utilization and sequestration.

“Clean Energy Credit” or “CEC” one Clean Energy Credit results from (1) each MWh of electricity produced by a Zero Carbon Emissions Resource, (2) each MWh reduction in consumption resulting from DSM installed after January 1, 2021, (3) or each MWh consumed or produced by a Beneficial Electrification measure or a Qualified Measure.

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and pollution can also be harmful to the environment and human health, and does expect that this RCPS will also result in reductions of air emissions and pollution beyond carbon dioxide. The Council may consider broadening the focus of this RCPS to other forms of air emissions and pollution in the future.

“Community Solar Generation Facility” or **“CSG Facility”** means a solar energy facility that meets the definition of a Community Solar Generation Facility under the Council’s Community Solar Rules.

“Community Solar Rules” means the Community Solar Rules for the Council of the City of New Orleans adopted by Council Resolution No. R-19-111 (and as modified by any subsequent Council action).

“Conservation Program” means a program, often relying on encouraging customers to reduce energy use, in which a utility company provides energy-saving guidance or provides free or low cost devices for saving energy, such as energy efficient light bulbs, flow restrictors, weather stripping, and water heater insulation. To be applicable to RCPS compliance, the kWh reduction from a conservation program must be a deemed savings or prescriptive measure approved by the Council, such as with the Energy Smart program.

“Cost of Compliance” the cost of compliance with the RCPS shall be the incremental costs incurred by ENO over and above the costs to serve its load that are attributable solely to the compliance with the RCPS policy, as calculated in Section 4(d) of this RCPS.

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

“CURO” means the Council Utilities Regulatory Office.

“Demand-Side Management” or **“DSM”** means an action, usually under a utility-managed program, that reduces or curtails the load associated with end-use equipment or processes, often used to reduce customer load during peak demand and/or in times of supply constraint. DSM is the management of customer loads through programs such as energy efficiency and conservation measures, which actively reduce energy use, or demand response, which shifts customer loads from peak periods.

“Distributed Energy Resource” or **“DER”** means a resource site close to customers that can provide all or some of their immediate electric and power needs and can also be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the grid. The resources, if providing electricity or thermal energy, are small in scale and close to load. Examples of different types of DER include solar photovoltaic, wind, combined heat and power, demand response, electric vehicles, microgrids, and energy efficiency.

“Energy Efficiency Programs” or **“EE”** means programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

“Energy Storage Resource” means a resource that stores and manages energy and customer loads. Such resources may include chemical energy storage resources such as batteries, flow batteries, and fuel cells or mechanical energy storage resources such as pumped storage hydropower, flywheels, and pressurized gas storage systems.

“Green-e” means the formal certification of RECs provided by the Center for Resource Solutions' Green-e® certification program, distinct from the tracking of RECs.

“Incremental DSM” costs and corresponding kWh would include the Energy Smart program budgets and cumulative kWh in excess of the Council’s existing 2% goal.

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

“M-RETS” means the Midwest Renewable Energy Tracking System, a web-based system used by power generators, utilities, marketers, and qualified reporting entities. M-RETS registers projects in all states and provinces across North America. M-RETS tracks Renewable Energy Certificates (“RECs”) and facilitates REC transactions by issuing a unique, traceable digital certificate for every megawatt-hour (“MWh”) of renewable energy generated by registered units or imported into its system.

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“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO-Connected Renewable Energy Resource” means a renewable energy resource that is interconnected to transmission-level voltage within the MISO’s footprint.

“NEM Rules” means the New Orleans Net Energy Metering Rules adopted by Council Resolution No. R-07-132 (and as modified by any subsequent Council action).

“Net Zero Emissions” refers to the state in which the Utility has fully offset the carbon emissions associated with the resources serving its Retail Compliance Load through the acquisition of clean energy resources, as demonstrated by producing or purchasing enough RECs or CECs such that the resulting RCPS Compliance Credits offset 100% of the utility’s Retail Compliance Load. RECs utilized to reach Net Zero Emissions may be purchased by the utility without the purchase of the associated energy to the extent permitted in Section 3 of this RCPS.

“Qualified Measure” means a project, program or measure within Orleans Parish which produces a measurable net reduction in carbon emissions in Orleans Parish, is cost-

effective from the utility perspective, and is approved by the Council for purposes of RCPS compliance.

“RCPS” means the Renewable and Clean Portfolio Standard.

“RCPS Compliance Credits” means the sum of RECs and CECs multiplied by the applicable tier multiplier.

“Renewable Energy Credit” or **“REC”** means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWh of electric energy generated from a renewable energy resource. To qualify for compliance purposes, RECs must meet the following conditions: (1) they were generated from a Renewable Energy Resource in MISO, the Electric Reliability Council of Texas, or elsewhere that are deliverable into the MISO region; (2) they are Green-e certified at the time of their creation and are subsequently tracked with M-RETS or an equivalent; and (3) they are retired against the compliance requirements in the compliance year in which they were utilized for compliance.

“Renewable Energy Resource” means a facility that generates electricity using solar thermal, photovoltaic, wind, geothermal, fuel cell using renewable fuels, hydroelectric generation, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

“Retail Compliance Load” means the total jurisdictional retail sales, measured in kWh, for an electric utility during an annual period, as adjusted in Section 4(a) of this RCPS.

“Tier 1 Resource” means any resource or Qualified Measure that reduces carbon emissions from existing sources within Orleans Parish, including, but not limited to, new/additional CCUS on existing fossil-fired generation resources inside Orleans Parish and Beneficial Electrification of sources of emissions inside Orleans Parish. A measure qualifies as a Tier 1 Resource by producing a net reduction in existing carbon emissions in Orleans Parish of no less than 1,500 pounds of CO₂ per CEC earned. In order to receive compliance credits as a Tier 1 Resource, irrespective of whether the default tier multiplier is used, the Utility must submit to the Council either (1) a certified engineering calculation demonstrating the net reduction in emissions, or (2) data demonstrating the measured emissions of the resource prior to the implementation of the measure and after the implementation of the measure. Electric Vehicle charging stations located in Orleans Parish shall qualify as a Tier 1 Resource regardless of the level of emissions reductions a achieved, but the Utility must still provide the Council with either the certified engineering calculation demonstrating the net reduction or the data demonstrating measured emissions. To the extent that a proposed measure that would otherwise qualify for a different Tier can be demonstrated to have reduced net emissions from an existing source of emissions in

Orleans Parish by not less than 1,500 pounds of CO₂ per CEC earned, it may qualify as a Tier 1 resource.

“Tier 2 Resource” means any Renewable Energy Resource, Zero Carbon Emissions Resource, or DER in Orleans Parish, including Incremental DSM.

“Tier 3 Resource” means any Renewable Energy Resource or Zero Carbon Emissions Resource not eligible for Tier 1 or Tier 2, but that is in MISO or that is deliverable into the MISO region. This includes non-Incremental DSM installed after January 1, 2021.

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

“Zero Carbon Emissions Resource” means any resource that generates electricity without producing carbon emissions and that does not qualify as a Renewable Energy Resource under this RCPS, including, but not limited to nuclear, and fossil-fueled generators where 100% of carbon emissions are captured through CCUS.

SECTION 3: RENEWABLE AND CLEAN PORTFOLIO STANDARD

- a) The Utility must meet the specified percentages of Retail Compliance Load with a combination of Tier 1, 2 and 3 resources as follows:
 1. 2022: 64% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 2. 2023: 66% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 3. 2024: 68% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 4. 2025: 70% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 5. 2026: 72% of Retail Compliance Load, with not more than 24% compliance through RECs purchased without the associated energy.
 6. 2027: 74% of Retail Compliance Load, with not more than 23% compliance through RECs purchased without the associated energy.
 7. 2028: 76% of Retail Compliance Load, with not more than 22% compliance through RECs purchased without the associated energy.
 8. 2029: 78% of Retail Compliance Load, with not more than 21% compliance through RECs purchased without the associated energy.
 9. 2030: 80% of Retail Compliance Load, with not more than 20% compliance through RECs purchased without the associated energy.
 10. 2031: 82% of Retail Compliance Load , with not more than 19% compliance through RECs purchased without the associated energy.

11. 2032: 84% of Retail Compliance Load, with not more than 18% compliance through RECs purchased without the associated energy.
12. 2033: 86% of Retail Compliance Load, with not more than 17% compliance through RECs purchased without the associated energy.
13. 2034: 88% of Retail Compliance Load, with not more than 16% compliance through RECs purchased without the associated energy.
14. 2035: 90% of Retail Compliance Load, with not more than 15% compliance through RECs purchased without the associated energy.
15. 2036: 92% of Retail Compliance Load, with not more than 14% compliance through RECs purchased without the associated energy.
16. 2037: 94% of Retail Compliance Load, with not more than 13% compliance through RECs purchased without the associated energy.
17. 2038: 96% of Retail Compliance Load, with not more than 12% compliance through RECs purchased without the associated energy.
18. 2039: 98% of Retail Compliance Load, with not more than 11% compliance through RECs purchased without the associated energy.
19. 2040: 100% of Retail Compliance Load, with not more than 10% compliance through RECs purchased without the associated energy.
20. 2041: 100% of Retail Compliance Load, with not more than 9% compliance through RECs purchased without the associated energy.
21. 2042: 100% of Retail Compliance Load, with not more than 8% compliance through RECs purchased without the associated energy.
22. 2043: 100% of Retail Compliance Load, with not more than 7% compliance through RECs purchased without the associated energy.
23. 2044: 100% of Retail Compliance Load, with not more than 6% compliance through RECs purchased without the associated energy.
24. 2045: 100% of Retail Compliance Load, with not more than 5% compliance through RECs purchased without the associated energy.
25. 2046: 100% of Retail Compliance Load, with not more than 4% compliance through RECs purchased without the associated energy.
26. 2047: 100% of Retail Compliance Load, with not more than 3% compliance through RECs purchased without the associated energy.
27. 2048: 100% of Retail Compliance Load, with not more than 2% compliance through RECs purchased without the associated energy.
28. 2049: 100% of Retail Compliance Load, with not more than 1% compliance through RECs purchased without the associated energy.
29. 2050: 100% of Retail Compliance Load, with 0% compliance through RECs purchased without the associated energy.

- b) **RCPS Tier Multipliers:** For years 2021 through 2040, RECs or CECs from Tier 1 Resources shall be credited at a multiplier of 1.5; Tier 2 Resources at a multiplier of 1.25; and Tier 3 Resources at a multiplier of 1.0 for compliance purposes. After 2040, the tier multiplier for all tiers shall be 1.0. These tier multipliers shall be applied as default multipliers for determining compliance RECs or CECs unless the Utility can provide workpapers that support a different multiplier for a specific measure that can be evaluated and accepted by the Council. A resource shall only receive RCPS compliance credits in one Tier; to the extent a resource is eligible to be included in more than one Tier, it should receive the highest tier multiplier for which it is eligible. The Council shall specifically evaluate the continued appropriateness of the Tiers and applicable tier multipliers, and the years in which tier multipliers should be applied in each Periodic Review of this RCPS.
- c) **Credit Related to Energy Storage Resource:** Depending upon the manner in which an Energy Storage Resource is utilized, it may or may not be eligible for RCPS Compliance Credits. Council approval of the RCPS Compliance Crediting mechanism applicable to any specific Energy Storage Resource will be required prior to the inclusion of any Energy Storage Resource in the Utility's RCPS Compliance and will be based upon the proposed application of the Energy Storage Resource. To the extent that the Utility intends to utilize an Energy Storage Resource for RCPS Compliance, it should propose the project to the Council for the Council's consideration, with an explanation as to how the project specifically serves the goals of the RCPS and what RCPS Compliance Credit the Utility proposes be earned by the project. Nothing in this provision alters any other requirement for Council approval for the Utility to acquire or construct a resource or to include the costs of a resource in rates.

SECTION 4: COMPLIANCE AND REPORTING

- a) Calculation of Retail Compliance Load
 - 1. Retail Compliance Load is the reported annual MWh sales for each compliance year, increased by the cumulative MWh savings of DSM programs installed after January 1, 2021, and decreased by the additional MWh sales in that year related to a Beneficial Electrification measure.
- b) Calculation of RCPS Compliance Credits
 - 1. RCPS Compliance Credits for each compliance year are calculated by adding: (i) the RECs and the CECs associated with the compliance year, multiplied by the applicable tier multiplier; (ii) RECs as allowed through the Banking and Compliance Reserve provision that are applied in that year.
 - 2. CECs associated with Beneficial Electrification can be applied as RCPS Compliance Credits until 2040.
- c) Calculation of Percentage of Retail Compliance Load
 - 1. RCPS Compliance Credits (MWh) are divided by Retail Compliance Load (MWh), and expressed as a percentage.
- d) Calculation of RCPS Compliance Costs
 - 1. The RCPS Cost of Compliance is calculated as all incremental costs prudently incurred by the Utility in complying with RCPS Section 3, including, but not

limited to, the incremental costs of new resources for compliance, the Utility's net fixed costs related to Beneficial Electrification, the Incremental DSM costs, and other costs related to RCPS compliance.

2. Incremental costs are the total electric utility cost of service incurred as a result of the Utility's operations in compliance with the RCPS less the total electric utility cost of service associated with the optimized resource portfolio that may have been in place absent the requirements of the RCPS. The Utility's most recently filed Integrated Resource Plan shall inform the calculation of incremental costs as to the optimized resource portfolio that may have been in place absent the requirements of the RCPS.
- e) Upon the Utility's submission of its final Integrated Resource Plan ("IRP") Report for each triennial IRP cycle, the utility shall develop a three-year prospective RCPS Compliance Plan, including a three-year Banking and Compliance Reserve provision for RECs, and the Utility's calculation of the ACP. The RCPS Compliance Plan shall be submitted to the Council for the Council's review and approval. Within 90 days of the adoption of this RCPS, the Utility shall submit to the Council a proposed Initial RCPS Compliance Plan for the interim prior to the conclusion of the next triennial IRP cycle.
 - f) By May 1 of each calendar year, the Utility shall file a Compliance Demonstration Report with the Council regarding its achievement of the RCPS goal for the prior calendar year and its plan for achieving the goal in the current calendar year as part of the three-year RCPS Compliance Plan. The report should include the following clear and concise information that:
 1. Either (a) demonstrates that the Utility has complied with Section 3; or (b) explains the reason the Utility was unable to comply, the magnitude of the shortfall expressed in kWh, and the Utility's calculation of the applicable ACP.
 2. A calculation of the incremental cost (if any) of compliance with the RCPS over and above costs ENO would have otherwise incurred to serve its load in the preceding calendar year.
 3. An energy portfolio report for the preceding compliance year which shall identify the MWh hours produced by each supply and demand-side resource comprising the utility's total resource portfolio. RECs purchased and utilized by the utility and their associated MWh, including RECs that can be associated with net metering, and incremental MWh associated with DSM and other eligible resources should also be included in the energy portfolio report. For each resource in the portfolio, the utility shall identify the resource name, MWh, fuel type, the average per MWh energy-related cost associated with that resource, and the average per MWh energy-related revenue received from MISO for that resource.
 4. A carbon emissions report that details the carbon emissions resulting from the production of the electricity used by the Utility to serve its Retail Compliance Load, whether or not each generator is owned by the Utility.
 - g) The Utility shall maintain an easy-to-find web page with a user-friendly interface where it makes available to the public copies of all reports and documents related to the RCPS and

the Utility's carbon emissions that it submits to the Council or any other relevant government agency or public body.

h) Banking and Compliance Reserve Provision

The utility may use RECs produced and Green-e certified in one compliance year for compliance in either of the two subsequent compliance years, subject to a review of the accounting for the banking and compliance reserve, and provided that the utility was in compliance for the compliance year in which the RECs were created. In addition, the utility shall demonstrate to the satisfaction of the Council that such compliance credits:

- 1) were in excess of the compliance credits needed for compliance in the compliance year in which they were generated;
- 2) do not exceed the REC limitation specified in Section 3 for compliance with the RCPS in the year they were generated or produced; and
- 3) have not otherwise been, nor will be, sold, retired, claimed or represented as part of clean energy output or sales, or used to satisfy obligations in other jurisdictions.

SECTION 5: ENFORCEMENT

- a) In the event that the Utility is unable to comply with the RCPS standard using reasonable measures for the applicable calendar year, the Utility shall make an Alternative Compliance Payment ("ACP") into a CleanNOLA Fund established by the Council for the purposes of fostering efforts to reduce carbon emissions within Orleans Parish. The ACP shall be structured as \$/MWh of shortfall.
1. The ACP (\$ per MWh) will be determined by the Council in the Council's Resolution approving the Utility's RCPS Compliance Plan, and the ACP will be applicable for the prospective three calendar years.
 2. The ACP shall be based on the highest market value of RECs in MISO over the prior three years, multiplied by a 1.15 multiplier.
 3. The ACP, when combined with the RCPS compliance cost that is incurred in any calendar year, shall not exceed the Customer Protection Cost Cap set forth in Section 6.
- b) Nothing in this section limits the Council's authority to impose penalties for the violation of the Council's regulations.

SECTION 6: COST RECOVERY AND CUSTOMER PROTECTION COST CAP

- a) The Utility shall be allowed cost recovery for RCPS compliance as follows:
1. The Utility shall be allowed the opportunity to recover prudently incurred costs in complying with a mandated renewable and clean portfolio standard.
 2. The Utility shall be allowed to recover the ACP unless it is demonstrated to the Council and the Council finds that the Utility's failure to comply with the RCPS was unreasonable, in which case, ENO shall not recover the cost of the ACP from Customers.

- b) As a mechanism to provide customer protection from unreasonable rate increases, the Council hereby establishes an RCPS Customer Protection Cost Cap that the Utility shall not exceed to acquire RCPS Compliance Credits. The Customer Protection Cost Cap in any RCPS plan year is one percent (1%) of plan year total utility retail sales revenues, beginning in 2022.
1. If the Utility can support its finding that, in any given year, the cost of RCPS compliance through all reasonable measures is projected to be greater than the Customer Protection Cost Cap as established by the Council's RCPS, the Utility shall not be required to incur costs in excess of the Customer Protection Cost Cap, and will be deemed to have complied with that year's target as set forth in Section 3, once it has expended up to the Customer Protection Cost Cap (including any ACP).
 2. The existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the RCPS in subsequent years. When the utility can generate or procure RCPS Compliance Credits at or below the Customer Protection Cost Cap in order to comply with the RCPS, it shall be required to add such resources.
 3. For rate classes with fewer than 3 customers, the Council will review and adjust rates through the Utility's decoupling mechanism, such that the increase in the allocated total cost of service related solely to RCPS Cost of Compliance for those rate classes is no greater than 1%.

SECTION 7: CLEANNOLA FUND

The Council shall establish a CleanNOLA Fund ("Fund") for the purposes of fostering the reduction of carbon emissions in Orleans Parish. The Fund shall prioritize projects designed to reduce carbon emissions from existing sources of such emissions in Orleans Parish. The Fund shall not at any time be transferred to, or lapse into, or be comingled with the General Fund of the City of New Orleans and it shall be administered in accordance with the Council's directives.

Appendix B - Redline of Draft Proposed Regulations to Original Alternative 2

~~ALTERNATIVE 2~~ Appendix A

Draft Proposed Regulation

DRAFT Renewable and Clean Portfolio Standard ("RCPS")

SECTION 1: OVERVIEW

- a) Intent: It is the intent of the Renewable and Clean Portfolio Standard ("RCPS") to:
1. ~~+~~ Aggressively pursue reductions to carbon emissions to improve the health and quality of life of the citizens of New Orleans and to reduce the City's impact on climate change, which is an existential threat to the City's security.
 2. ~~+~~ Ensure that the City has a safe and reliable power supply at a reasonable cost and retain as much flexibility as possible to employ a wide range of currently known and yet to be developed zero-emissions energy technologies.

This RCPS is intended to promote and foster these goals, and does not in any way limit the Council's authority to pursue these intentions through additional measures. The Council may waive any provision of these rules in advance upon a showing of good cause under the circumstances and upon a demonstration that such waiver serves the intent of this RCPS and may deem the Utility to be in compliance. In particular, this RCPS does not prevent parties from proposing and the Council from considering and approving projects consistent with the intent of this RCPS that do not conform precisely in the interim goals, Customer Protection Cost Cap, or other requirements set forth herein if the party(ies) proposing the project are able to successfully demonstrate to the Council that the project is nevertheless consistent with the intent of the RCPS, would benefit the Utility's customers, and meets any other Council standards or requirements applicable to that project (such as, for example, a project where interim goals and budget numbers are reversed and achieved over a block of years rather than strictly as provided in this RCPS). All proposals to modify or request to waive the goals or requirements of the RCPS shall be filed at the Council and served on parties to Docket No. UID-19-01, with opportunity for parties to issue discovery and provide comment.

- b) Periodic Review: In order to ensure that this RCPS continues to meet the Council's intent as set forth in Section 1(a), it is the Council's intention to conduct a review of this RCPS at least every five years. Such review shall consider a wide array of relevant factors, including, but not limited to: progress toward ultimate and interim goals, developments in climate science, impacts on customers, technological developments, market developments, and progress on actual emissions reductions of the Utility's

portfolio¹. At the end of each review, the Council will make a determination as to whether the RCPS remains appropriate for the City or whether it requires modification. Nothing in this provision prevents the Council from conducting a more immediate or frequent review of the RCPS than set forth in this provision should the Council determine that circumstances warrant more frequent or immediate review. Projects undertaken prior to any change in the RCPS would be grandfathered, such that they continue to receive the RCPS Compliance Credit they were entitled to receive prior to the change in RCPS.

SECTION 2: DEFINITIONS

“Alternative Compliance Payment” or “ACP”: The ACP is a payment to be made by the utility when it is unable to comply with the RCPS through reasonable measures, but still has funding available to it under the caps set by the Customer Protection Cost Cap set forth in the rules. The ACPs (unit cost per MWh) shall be calculated in accordance with Section 5 of this RCPS, and will be placed in the CleanNO₂ & Fund established in Section 7 of this RCPS.

“Beneficial Electrification” means any program or process that replaces direct fossil fuel use as a source of power and/or heat with electricity in a way that -- when the electric utility’s emissions are accounted for -- reduces overall emissions, including, but not limited to, charging infrastructure supporting electrification of motor vehicles, electrification of home and commercial appliances that use natural gas, and electrification of municipal and commercial operations that currently rely on fossil-fuel use to power equipment. To qualify as a Beneficial Electrification resource under this RCPS, the measure must reduce net carbon emissions by no less than 1,500 pounds of CO₂ per Clean Energy Credit earned.

“Carbon Sequestration” means the fixation of atmospheric carbon dioxide in a carbon sink through biological or physical processes. A carbon sink is a reservoir that absorbs or takes up released carbon from another part of the carbon cycle.

“CCUS” means carbon capture, utilization and sequestration.

“Clean Energy Credit” or “CEC” one Clean Energy Credit results from (1) each MWh of electricity produced by a Zero Carbon Emissions Resource, (2) each MWh reduction in consumption resulting from DSM installed after January 1, 2021, (3) or each MWh consumed or produced by a Beneficial Electrification measure or a Qualified Measure.

¹ Because the most significant of the utility’s emission-related emissions is carbon dioxide, and the most urgent climate problems at the time of the adoption of this RCPS are being caused by carbon dioxide, this RCPS focuses specifically upon reductions in carbon dioxide emissions. The Council recognizes that other forms of air emissions and pollution can also be harmful to the environment and human health, and does expect that this RCPS will also result in reductions of air emissions and pollution beyond carbon dioxide. The Council may consider expanding the focus of this RCPS to other forms of air emissions and pollution in the future.

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

“Community Solar Generation Facility” or **“CSG Facility”** means a solar energy facility that meets the definition of a Community Solar Generation Facility under the Council’s Community Solar Rules.

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

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“Cost of Compliance” the cost of compliance with the ~~RCPS~~ RCPS shall be the incremental costs incurred by ENO over and above the costs to serve its load that are attributable solely to the compliance with the ~~RCPS~~ RCPS policy, ~~as calculated in Section 4(d) of this RCPS.~~

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

“CURO” means the Council Utilities Regulatory Office.

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“Distributed Energy Resource” or **“DER”** means a ~~generator that is located close to the particular load it is intended to serve, and is operated primarily to serve that load.~~ resource, site close to customers that can provide all or some of their immediate electric and power needs and can also be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the grid. The resources, if providing electricity or thermal energy, are small in scale and close to load. Examples of different types of DER include solar photovoltaic, wind, combined heat and power, demand response, electric vehicles, microgrids, and energy efficiency.

~~“Distribution System” the portion of the transmission and facilities of an electric system that is dedicated to delivering electric energy to an end user.~~

“Energy Efficiency Programs” or “EE” means programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

~~“Energy Storage Resource” means a resource that stores and manages energy and customer loads. Such resources may include chemical energy storage resources such as batteries, flow batteries, and fuel cells or mechanical energy storage resources such as pumped storage hydropower, flywheels, and pressurized gas storage systems.~~

~~“Green-e” means the formal certification of RECs provided by the Center for Resource Solutions’ Green-e® certification program, distinct from the tracking of RECs.~~

~~“Incremental DSM” costs and corresponding kWh would include the Energy Smart program budgets and cumulative kWh in excess of the Council’s existing 2% goal.~~

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

“M-RETS” means the Midwest Renewable Energy Tracking System, a web-based system used by power generators, utilities, marketers, and qualified reporting entities. M-RETS registers projects in all states and provinces across North America. ~~M-Rate-RETS~~ tracks Renewable Energy Certificates (“RECs”) and facilitates REC transactions by issuing a unique, traceable digital certificate for every megawatt-hour (“MWh”) of renewable energy generated by registered units or imported into its system.

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“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO-Connected Renewable Energy Resource” means a renewable energy resource ~~that is first put into service on or after January 1, 2020 and~~ is interconnected to transmission-level voltage within the ~~Midwest Independent System Operator~~ MISO’s footprint.

“NEM Rules” means the New Orleans Net Energy Metering Rules adopted by Council Resolution No. R-07-132 (and as modified by any subsequent Council action).

“Net Zero Emissions” refers to the state in which the Utility has fully offset the carbon emissions associated with the resources serving its Retail Compliance Load through the acquisition of clean energy resources, as demonstrated by producing or purchasing enough RECs or CECs such that the resulting RCPS Compliance Credits offset 100% of the utility’s Retail Compliance Load. RECs utilized to reach Net Zero Emissions may be purchased by the utility without the purchase of the associated energy to the extent permitted in Section 3 of this RCPS.

“Qualified Measure” means a project, program or measure within Orleans Parish which produces a measurable net reduction in carbon emissions in Orleans Parish, is cost-effective from the utility perspective, and is approved by the Council for purposes of RCPS compliance.

“RCPS” means the Renewable and Clean Portfolio Standard.

“RCPS Compliance Credits” means the sum of RECs and CECs multiplied by the applicable tier multiplier.

“Renewable Energy Credit” or “REC” means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWh of electric energy generated from a renewable energy resource. To qualify for compliance purposes, RECs must meet the following conditions: (1) they were generated from a Renewable Energy Resource in MISO ~~or that is~~ the Electric Reliability Council of Texas, or elsewhere that are deliverable into the MISO region; (2) they are Green-e certified ~~and at the time of their creation and are subsequently~~ tracked with MRETS or an equivalent; and (3) they are retired against the compliance requirements in the compliance year in which they were ~~created~~ utilized for compliance.

“Renewable Energy Resource” means a facility that generates electricity using solar thermal, photovoltaic, wind, geothermal, fuel cell using renewable fuels, hydroelectric generation, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology. ~~For a Renewable Energy Resource to qualify for compliance purposes, any RECs associated with that resource in the compliance year must be retired.~~

“Retail Compliance Load” means the total jurisdictional retail sales, measured in kWh, for an electric utility during an annual period, as adjusted in Section 4(a) of this RCPS.

“Tier 1 Resource” means any resource or ~~resource~~ Qualified Measure that reduces carbon emissions from existing sources within Orleans Parish, including, but not limited to,

~~new/additional CCUS on existing fossil-fired generation resources inside Orleans Parish and Beneficial Electrification, and EV charging stations~~ of sources of emissions inside Orleans Parish. A measure qualifies as a Tier 1 Resource by producing a net reduction in existing carbon emissions in Orleans Parish of no less than 1,500 pounds of CO₂ per CEC earned. In order to receive compliance credits as a Tier 1 Resource, irrespective of whether the default tier multiplier is used, the Utility must submit to the Council either: (1) a certified engineering calculation demonstrating the net reduction in emissions, or (2) data demonstrating the measured emissions of the resource prior to the implementation of the measure and after the implementation of the measure. Electric Vehicle charging stations located in Orleans Parish shall qualify as a Tier 1 Resource regardless of the level of emissions reductions achieved, but the Utility must still provide the Council with either the certified engineering calculation demonstrating the net reduction or the data demonstrating measured emissions. To the extent that a proposed measure that would otherwise qualify for a different Tier can be demonstrated to have reduced net emissions from an existing source of emissions in Orleans Parish by not less than 1,500 pounds of CO₂ per CEC earned, it may qualify as a Tier 1 resource.

“Tier 2 Resource” means any ~~renewable or zero-emissions distributed generation resource~~ Renewable Energy Resource, Zero Carbon Emissions Resource, or DER in Orleans Parish, ~~as well as any utility DSM Program or utility Conservation Program, including the Energy Smart Program and any successor thereto~~ including Incremental DSM.

“Tier 3 Resource” means any Renewable Energy Resource or ~~zero-emissions resource not in Orleans Parish~~ Zero Carbon Emissions Resource not eligible for Tier 1 or Tier 2, but that is in MISO or that is deliverable into the MISO region. This includes ~~non-Incremental DSM installed after January 1, 2021.~~

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

“Zero-Carbon Emissions Resource” means any ~~form of generative resource~~ resource that generates electricity without producing carbon emissions and that does not qualify as a Renewable Energy Resource under this RCPS, including, but not limited to, ~~Renewable Energy Resources~~, nuclear, and fossil-fueled generators where 100% of carbon emissions are captured through CCUS.

SECTION 3: RENEWABLE AND CLEAN PORTFOLIO STANDARD

- a) The Utility must meet the specified ~~RCPS~~ percentages of ~~retail kWh sales~~ Retail Compliance Load with a combination of Tier 1, 2 and 3 resources as follows:
 - ~~i. 2021: 62% of retail compliance kWh sales, with not more than 25% compliance through REC;~~

~~21-2041: 100% of retail compliance kWh sales, with not more than 10% compliance through RECs.~~

~~22-2042: 100% of retail compliance kWh sales, with not more than 16% compliance through RECs.~~

~~23-2043: 100% of retail compliance kWh sales, with not more than 14% compliance through RECs.~~

~~24-2044: 100% of retail compliance kWh sales, with not more than 12% compliance through RECs.~~

~~25-2045: 100% of retail compliance kWh sales, with not more than 10% compliance through RECs.~~

~~26-2046-2041: 100% of retail compliance kWh sales~~ Retail Compliance Load, with not more than 9% compliance through RECs purchased without the associated energy.

21-2042: 100% of Retail Compliance Load, with not more than 8% compliance through RECs purchased without the associated energy.

~~27-2047: 100% of retail compliance kWh sales, with not more than 6% compliance through RECs.~~ 2043: 100% of Retail Compliance Load, with not more than 7% compliance through RECs purchased without the associated energy.

23-2044: 100% of Retail Compliance Load, with not more than 6% compliance through RECs purchased without the associated energy.

24-2045: 100% of Retail Compliance Load, with not more than 5% compliance through RECs purchased without the associated energy.

25-2046: 100% of Retail Compliance Load, with not more than 4% compliance through RECs purchased without the associated energy.

26-2047: 100% of Retail Compliance Load, with not more than 3% compliance through RECs purchased without the associated energy.

~~27-2048: 100% of retail compliance kWh sales~~ Retail Compliance Load, with not more than 4.2% compliance through RECs purchased without the associated energy.

~~28-2049: 100% of retail compliance kWh sales~~ Retail Compliance Load, with not more than 2.1% compliance through RECs purchased without the associated energy.

~~29-2050: 100% of retail compliance kWh sales~~ Retail Compliance Load, with 0% compliance through RECs purchased without the associated energy.

- b) **RCPS Credit/Tier Multipliers:** For years 2021 through 2040, RECs or CECs from Tier 1 Resources shall be credited at a ~~factor~~ multiplier of 1.5 and Tier 2 at 1.25; Tier 2 Resources at a multiplier of 1.25; and Tier 3 Resources at a multiplier of 1.0 for compliance purposes. After 2040, the tier multiplier for all tiers shall be 1.0. These tier multipliers shall be applied as default multipliers for determining compliance RECs or CECs unless the Utility can provide workpapers that support a different multiplier for a specific measure that can be evaluated and accepted by the Council. A resource shall only receive RCPS compliance credits in one Tier, to the extent a resource is eligible to

be included in more than one Tier, it should receive the highest tier multiplier for which it is eligible. The Council shall specifically evaluate the continued appropriateness of the Tiers and applicable tier multipliers, and the years in which tier multipliers should be applied in each Periodic Review of this RCPS.

- c) ~~Beneficial Electrification. The Utility may count the known and measurable increase in retail electric kWh sales that is directly attributable to beneficial electrification of conversion of the use of Sewerage & Water Board fossil-fuel generators to electric services provided by the Utility or from electric vehicle charging stations as a decrement to minimum compliance load in the years 2021 through 2023. Credit Related to Energy Storage Resource. Depending upon the manner in which an Energy Storage Resource is utilized, it may or may not be eligible for RCPS Compliance Credits. Council approval of the RCPS Compliance Crediting mechanism applicable to any specific Energy Storage Resource will be required prior to the inclusion of any Energy Storage Resource in the Utility's RCPS Compliance and will be based upon the proposed application of the Energy Storage Resource. To the extent that the Utility intends to utilize an Energy Storage Resource for RCPS Compliance, it should propose the project to the Council for the Council's consideration, with an explanation as to how the project specifically serves the goals of the RCPS and what RCPS Compliance Credit the Utility proposes be earned by the project. Nothing in this provision alters any other requirement for Council approval for the Utility to acquire or construct a resource or to include the costs of a resource in rates.~~
- d) ~~To design an effective CES policy and help mitigate unintended consequences, the Council needs consider several key assumptions and considerations such as technology, system operation and physical constraints. Incorporating clean energy standards into ENO's IRP process as a portfolio strategy reflecting the Council's policies, is an important evaluation forum that considers market, economic, technical, and resource potential. Such a modified IRP process also ensures long-term planning decisions are consistent with achieving the lowest reasonable costs for customers.~~

SECTION 4: ~~ENFORCEMENT~~ COMPLIANCE AND REPORTING

- a) Calculation of Retail Compliance Load
- Retail Compliance Load is the reported annual MWh sales for each compliance year, increased by the cumulative MWh savings of DSM programs installed after January 1, 2021, and decreased by the additional MWh sales in that year related to a Beneficial Electrification measure.
- b) Calculation of RCPS Compliance Credits
- RCPS Compliance Credits for each compliance year are calculated by adding: (i) the REC's and the CEC's associated with the compliance year, multiplied by the applicable tier multiplier; (ii) REC's as allowed through the Banking and Compliance Reserve provision that are applied in that year.
 - CEC's associated with Beneficial Electrification can be applied as RCPS Compliance Credits until 2040.

c) Calculation of Percentage of Retail Compliance Load

1. RCPS Compliance Credits (MWh) are divided by Retail Compliance Load (MWh) and expressed as a percentage.

d) Calculation of RCPS Compliance Costs

1. The ~~Utility's progress toward the RPS goal shall be monitored and enforced as follows:~~ RCPS Cost of Compliance is calculated as all incremental costs presently incurred by the Utility in complying with RCPS Section 3, including, but not limited to, the incremental costs of new resources for compliance, the Utility's net fixed costs related to Beneficial Electrification, the Incremental DSM costs, and other costs related to RCPS compliance.
2. Incremental costs are the total electric utility cost of service incurred as a result of the Utility's operations in compliance with the RCPS less the total electric utility cost of service associated with the optimized resource portfolio that may have been in place absent the requirements of the RCPS. The Utility's most recently filed Integrated Resource Plan shall inform the calculation of incremental costs as to the optimized resource portfolio that may have been in place absent the requirements of the RCPS.

e) Upon the Utility's submission of its final Integrated Resource Plan ("IRP") Report for each triennial IRP cycle, the utility shall develop a three-year prospective RCPS Compliance Plan, including a three-year Banking and Compliance Reserve provision for RECs, and the Utility's calculation of the ACP. The RCPS Compliance Plan shall be submitted to the Council for the Council's review and approval. Within 90 days of the adoption of this RCPS, the Utility shall submit to the Council a proposed Initial RCPS Compliance Plan for the interim prior to the conclusion of the next triennial IRP cycle.

f) ~~By April~~ By May 1 of each calendar year, the Utility shall file a ~~report~~ Compliance Demonstration Report with the Council regarding its achievement of the ~~44%~~ RCPS goal for the prior calendar year and its plan for achieving the goal in the current calendar year, as part of the three-year RCPS Compliance Plan. The report should include the following clear and concise information that:

1. Either (a) demonstrates that the Utility has complied with ~~the applicable standard under Section 3, including the submission of any RECs utilized;~~ or (b) ~~demonstrates the amount of kWh sales by which the Utility fails to meet~~ Section 3; or (c) explains the reason the Utility was unable to comply, the magnitude of the shortfall expressed in kWh, and the Utility's calculation of the applicable ~~standard under Section 3 ACP.~~
2. ~~A calculation of the incremental cost (if any) of compliance with the RCPS over and above costs ENO would have otherwise incurred to serve its load in the preceding calendar year.~~
3. ~~2-~~ An energy portfolio report for the preceding ~~calendar~~ compliance year which shall identify the MWh hours produced by each supply and demand-side resource comprising the utility's total resource portfolio. RECs purchased and utilized by the utility and their associated MWh, ~~as well as MWh~~ including RECs that can be

associated with net metering, and incremental MWh associated with DSM and other eligible resources; should also be included in the energy portfolio report. For each resource in the portfolio, the utility shall identify the resource name, MWh, fuel type, the average per MWh energy-related cost associated with that resource, and the average per MWh energy-related revenue received from MISO for that resource. ~~The energy portfolio report should include a calculation of the incremental cost (if any) of compliance with the RCPS over and above costs ENG would have otherwise incurred to serve its load in the preceding calendar year.~~

4. A carbon emissions report that details the carbon emissions resulting from the production of the electricity used by the Utility to serve its Retail Compliance Load, whether or not each generator is owned by the Utility.

g) The Utility shall maintain an easy-to-find web page with a user-friendly interface where it makes available to the public copies of all reports and documents related to the RCPS and the Utility's carbon emissions that it submits to the Council or any other relevant government agency or public body.

b) **Banking and Compliance Reserve Provision**

The utility may use REC's produced and Green-e certified in one compliance year for compliance in either of the two subsequent compliance years, subject to a review of the accounting for the banking and compliance reserve, and provided that the utility was in compliance for the compliance year in which the REC's were created. In addition, the utility shall demonstrate to the satisfaction of the Council that such compliance credits:

- 1) were in excess of the compliance credits needed for compliance in the compliance year in which they were generated;
- 2) do not exceed the REC limitation specified in Section 3 for compliance with the RCPS in the year they were generated; and
- 3) have not otherwise been, nor will be, sold, retired, claimed or represented as part of clean energy output or sales, or used to satisfy obligations in other jurisdictions.

SECTION 5: ENFORCEMENT

a) ~~2-~~In the event that the Utility ~~fails~~ is unable to comply with the RCPS standard using reasonable measures for the applicable calendar year, the Utility shall make an Alternative Compliance Payment ("ACP") into a CleanNOLA Fund established by the Council for the purposes of fostering efforts to reduce carbon emissions within Orleans Parish. The ~~Alternative Compliance Payment~~ ACP shall be structured as \$~~4~~MMb/MWh of shortfall ~~and shall be based on the relative cost of eligible resources and RECs in Tier 3.~~

~~+ Recognizing that energy resources are not always perfectly sized to match load in any specific year and notwithstanding the ACP in Section 4.215 above, the Utility may propose and the Council may approve a plan to satisfy compliance for a block of compliance years upon demonstration that such plan is prudent, just and reasonable. The completion of such plan, as approved by the Council, shall be deemed compliance with the RCPS for the full block of compliance years so long as the target for the end of the block of compliance years is met and the RCPS compliance cost cap/ bill impact limitation for the total block of compliance years~~

Cap, and will be deemed to have complied with that year's target as set forth in Section 3, once it has expended up to the Customer Protection Cost Cap (including any ACP).

2. ~~The~~ existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the ~~renewable portfolio standard~~ RCPS, in subsequent years. When the utility can generate or procure ~~renewable energy and eligible resources~~ RCPS Compliance Credits at or below the ~~cost cap~~ Customer Protection Cost Cap in order to comply with the RCPS, it shall be required to add such resources ~~to meet the renewable portfolio standard applicable in the year when the renewable energy resources are being added.~~
- ~~2. The utility may either request a waiver from its RPS requirements and/or request modifications to specific requirements, if it believes that compliance will be in excess of the rate impact cost cap.~~
3. ~~The Utility may petition the Council for authorization to exceed the bill impact cost cap for good cause shown. To the extent that the Council is satisfied that good cause exists to allow the Utility to exceed the cap in a specific year, and that such costs are reasonable and prudent, it may, at its discretion, authorize the Utility to exceed the rate impact cap. For rate classes with fewer than 3 customers, the Council will review and adjust rates through the Utility's decoupling mechanism, such that the increase in the allocated total cost of service related solely to RCPS Cost of Compliance for those rate classes is no greater than 1%.~~

SECTION ~~6~~7: CLEANOLA FUND

The Council shall establish a CleanNOLA Fund (~~"~~Fund~~"~~) ~~for~~ for the purposes of fostering the reduction of carbon emissions in Orleans Parish. The Fund shall prioritize projects designed to reduce carbon emissions from existing sources of such emissions in Orleans Parish. The Fund shall not at any time be transferred to, or lapse into, or be commingled with the General Fund of the City of New Orleans and it shall be administered ~~by _____~~ in accordance with the Council's directives.

Appendix C

RCPS Compliance Credit Hypotheticals Under Proposed RCPS Rules

Category	Source	RECs/ CECs	Multiplier	Compliance Credits	Compliance Load Adjustment
Supply-side	ENO produces 100 MWh of electricity from the New Orleans Solar Station plant (and has its RECs M-RETS and Green-e tracked and certified)	100 RECs	Tier 2 1.25	125 MWh	None
	ENO produces 100 MWh of electricity from Grand Gulf	100 CECs	Tier 3 1.0	100 MWh	None
	ENO purchases 100 MWh of electricity (and associated RECs) from the solar plant in St. James Parish	100 RECs	Tier 3 1.0	100 MWh	None
REC purchased without associated MWhs electricity	ENO purchases 100 RECs from a source outside of Orleans Parish (with appropriate M-RETS and Green-e certification and tracking)	100 RECs	Tier 3 1.0	100 MWh	None
	ENO purchases 100 RECs generated from a source inside Orleans Parish (such as a Community Solar or microgrid project with M-RETS and Green-e certification and tracking)	100 RECs	Tier 2 1.25	125 MWh	None

Category	Source	RECs/ CECs	Multiplier	Compliance Credits	Compliance Load Adjustment
	ENO purchases 100 RECs from a rooftop solar provider that has aggregated the RECs produced by their rooftop solar customers in Orleans Parish and gotten the RECs M-RETS and Green-e certified and tracked	100 RECs	Tier 2 1.25	125 MWh	None
DSM	The Energy Smart Program had a target of 100 MWh to meet the Council's 2% goal, and it achieved 200 MWh in savings through the measures installed after January 1, 2021	100 CECs under 2% goal	Tier 3 1.0	225 MWh	200 MWhs jurisdictional sales added back into Retail Compliance Load
		100 CECs above 2% goal	Tier 2 1.25		

Category	Source	RECs/ CECs	Multiplier	Compliance Credits	Compliance Load Adjustment
Beneficial Electrification	ENO undertakes a Beneficial Electrification project replacing a natural-gas fired (carbon-emitting) boiler on an industrial customer’s property within Orleans Parish with an electric boiler that consumes 100 MWh of electricity. ENO and the industrial customer are able to demonstrate that the net reduction in carbon emissions related to the 100 MWh of ENO electricity is greater than the minimum level of 1,500 lbs. of CO2 per CEC (1 CEC is earned from 1 MWh of beneficial electrification)	100 MWh CECs	Tier 1 ⁵⁰ 1.50	150 MWh	100 MWh reduction to Retail Compliance Load
	ENO installs EV charging stations in Orleans Parish. Customers consume 100 MWh of electricity at the chargers to charge their EVs.	100 MWh in CECs	Tier 1 1.50	150 MWh	100 MWh reduction to Retail Compliance Load
CCUS	ENO installs CCUS on NOPS to eliminate 100% of its carbon emissions. NOPS generates 100 MWh of carbon-free electricity.	100 CECs	Tier 1 1.50	150 MWh	

⁵⁰ Alternatively, pursuant to Section 3(b), if ENO believes a higher multiplier for the proposed Beneficial Electrification project is appropriate it can submit workpapers to the Council requesting and supporting a higher multiplier. Presumably, the support for a higher multiplier would likely be based on the net reduction in carbon emissions due to the beneficial electrification. The Council would then determine if the requested higher multiplier was appropriate and then ENO could apply the higher multiplier in lieu of the default multiplier.

Appendix D

Summaries of the Comments of the Parties and The Advisors' Responses Thereto

PosiGen Solar has now demanded a detailed response to its various filings in this proceeding numerous times, including in the July 29, 2020 technical meeting of the parties to UD-19-01. In response to PosiGen's demand, the Advisors in this Appendix summarize and provide the responses of the Advisors to each of the comments raised by the parties thus far in this proceeding.

The following parties submitted timely interventions in these proceedings: the Alliance for Affordable Energy ("AAE"),⁵¹ Air Products and Chemicals, Inc. ("Air Products"),⁵² Center for Climate and Energy Solutions ("C2ES"),⁵³ Gulf States Renewable Energy Industries Association ("GSREIA"),⁵⁴ National Audubon Society ("Audubon"),⁵⁵ Southern Renewable Energy Association ("SREA"),⁵⁶ 350 New Orleans ("350 NO"),⁵⁷ New Orleans Chamber⁵⁸, PosiGen,⁵⁹ Vote Solar,⁶⁰ and Deep South Center for Environmental Justice ("DSCEJ").⁶¹ In addition, the Sierra Club filed a petition to intervene after the deadline for interventions,⁶² which petition was granted by the Hearing Officer by Order issued June 11, 2019.⁶³

⁵¹ The Alliance for Affordable Energy Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 2, 2019.

⁵² Air Products and Chemicals, Inc. Motion for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 30, 2019.

⁵³ Center for Climate and Energy Solutions' Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 24, 2019.

⁵⁴ Gulf States Renewable Energy Industries Association, Motion of Intervention, Docket No. UD-19-01, Apr. 25, 2019.

⁵⁵ The National Audubon Society (dba Audubon Louisiana) Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, May 1, 2019.

⁵⁶ Southern Renewable Energy Association Petition for Intervention and inclusion on Service List, Docket NO. UD-19-01, May 1, 2019.

⁵⁷ 350 New Orleans Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 10, 2019.

⁵⁸ New Orleans Chamber Petition for Intervention and Inclusion on Service List, Docket UD-19-01, April 30, 2019.

⁵⁹ PosiGen Solar Motion to Intervene, Docket UD-19-01, April 29, 2019.

⁶⁰ Vote Solar Motion to Intervene, Docket UD-19-01, April 26, 2019.

⁶¹ Deep South Petition for Intervention and Inclusion on Service List, Docket UD-19-01, May 1, 2019.

⁶² Sierra Club Late-Filed Petition to Intervene and for Inclusion on Service List, Docket NO. UD-19-01, June 3, 2019.

⁶³ Docket UD-19-01, Order, issued June 11, 2019.

Many of the parties to the case filed multiple rounds of comments and reply comments regarding an RPS for New Orleans. Entergy New Orleans, LLC (“ENO”) filed or participated in five sets of comments: *Entergy New Orleans, LLC’s Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards*⁶⁴ (“ENO Comments”), *Entergy New Orleans, LLC’s Reply Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards*⁶⁵ (“ENO Reply Comments”); *Entergy New Orleans, LLC’s Comments in Response to the Advisors’ Report and Proposed Alternative Frameworks Concerning Renewable Portfolio Standards*⁶⁶ (“ENO Comments in Advisors’ Report”), *Entergy New Orleans, LLC’s Reply Comments Concerning the October 15, 2019 Filings of Various Parties*⁶⁷ (“ENO Reply Comments on Advisors’ Report”) and a letter filed jointly with Air Products on August 21, 2020.⁶⁸

Air Products also filed or participated in five sets of comments: *Air Products and Chemicals, Inc. Response to Request for Comment*⁶⁹ (“Air Products Comments”), *Air Products and Chemicals, Inc. Reply Comments*⁷⁰ (“Air Products Reply Comments”), *Air Products and Chemicals, Inc. Comments on Advisors Report*⁷¹ (“Air Products Comments on Advisors’ Report”), *Air Products and Chemicals, Inc. Reply Comments on Advisors Report*⁷² (“Air Products Reply Comments on Advisors’ Report”) and the August 21, 2020 ENO Letter.

⁶⁴ Filed June 3, 2019 in Docket No. UD-19-01.

⁶⁵ Filed July 15, 2019 in Docket No. UD-19-01.

⁶⁶ Filed Oct. 15, 2019 in Docket No. UD-19-01.

⁶⁷ Filed Nov. 19, 2019 in Docket No. UD-19-01.

⁶⁸ Entergy New Orleans Letter, submitted in Docket UD-19-01 on August 21, 2020 (“August 21, 2020 ENO Letter”).

⁶⁹ Filed June 3, 2019 in Docket No. UD-19-01.

⁷⁰ Filed July 15, 2019 in Docket No. UD-19-01.

⁷¹ Filed Oct. 15, 2019 in Docket No. UD-19-01.

⁷² Filed Nov. 19, 2019 in Docket No. UD-19-01

AAE filed or participated in eleven sets of comments. AAE filed *The Alliance for Affordable Energy's First Comments Responsive to Resolution R-19-109*⁷³ ("AAE Comments"), *Alliance for Affordable Energy's Reply Comments*⁷⁴ ("AAE Reply Comments"), and *Comments of the Alliance for Affordable Energy*⁷⁵ ("AAE Comments on Advisors' Report"). AAE participated in the *Joint Reply of 350 New Orleans, Alliance for Affordable Energy, National Audubon Society, Deep South Center for Environmental Justice, PosiGen Solar, Sierra Club, Southern Renewable Energy Association, and Vote Solar (Collectively the "Energy Future New Orleans" Coalition or "EFNO") Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans*⁷⁶ ("EFNO Reply Comments"), the *Comments Supporting Consideration of Issues Raised by PosiGen*⁷⁷ ("Intervenor Group Comments Supporting PosiGen"), the *Comments of Audubon Louisiana, Vote Solar, 350 New Orleans, PosiGen Solar, Sierra Club, and Alliance for Affordable Energy on Advisors' Report on Renewable Portfolio Standards*⁷⁸ ("Intervenor Group Comments on Advisors' Report"), the *Comments of Audubon Louisiana, Vote Solar, 350 New Orleans, and Alliance for Affordable Energy on Replies to Advisors' Report on Renewable Portfolio Standards*⁷⁹ ("Intervenor Group Reply Comments on Advisors' Report"), the *Comments of Alliance for Affordable Energy and 350 New Orleans on Replies to the Advisors' Report on UD-19-01*⁸⁰ ("AAE + 350 NO Reply Comments on Advisors' Report"), a letter enclosing comments from the EFNO Coalition on May 11, 2020 ("May 11, 2020 EFNO Letter"),⁸¹ the *Issues of Concern Raised during*

⁷³ Filed June 3, 2019 in Docket No. UD-19-01.

⁷⁴ Filed July 15, 2019 in Docket No. UD-19-01.

⁷⁵ Filed Oct. 15, 2019 in Docket No. UD-19-01.

⁷⁶ Filed July 15, 2019 in Docket No. UD-19-01.

⁷⁷ Filed Oct. 15, 2019 in Docket No. UD-19-01.

⁷⁸ Filed Oct. 15, 2019 in Docket No. UD-19-01.

⁷⁹ Filed Nov. 19, 2019 in Docket No. UD-19-01.

⁸⁰ Filed Nov. 19, 2019 in Docket No. UD-19-01.

⁸¹ Filed May 11, 2020 in Docket No. UD-19-01. This filing states that the EFNO Coalition consists of 350 NO, AAE, Audubon, DSCEJ, PosiGen, Sierra Club and Vote Solar, see p. 4.

the First Technical Conference of June 5, 2020 Pursuant to the Resolution and Order Providing the Council’s Guidance Regarding the Development of Renewable Portfolio Standards, R-20-104, Comments by Energy Future New Orleans to the Council of the City of New Orleans and Parties to Docket UD-19-01 (“June 22, 2020 EFNO Comments”),⁸² and an August 27, 2020 letter from the EFNO Coalition to the City Councilmembers (“August 27, 2020 EFNO Letter:”).⁸³

Audubon filed or participated in nine sets of comments. Audubon filed the *Comments of Audubon Louisiana*⁸⁴ (“Audubon Comments”) and the *Reply Comments of National Audubon Society/Audubon Louisiana*⁸⁵ (“Audubon Reply Comments”). Audubon participated in the EFNO Reply Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Comments Supporting PosiGen Comments, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments, and the August 27, 2020 EFNO Letter.

C2ES filed an initial set of comments regarding the RPS rulemaking proceeding (“C2ES Comments”).⁸⁶

DSCEJ joined in the EFNO Reply Comments, the May 11, 2020 EFNO Letter and the June 22, 2020 EFNO Comments.

GSREIA filed *Gulf States Renewable Energy Industries Association Response to Request for Reply Comments*⁸⁷ (“GSREIA Reply Comments”).

⁸² Filed June 22, 2020. This filing states that the EFNO Coalition consists of 350 NO, AAE, Audubon, DSCEJ, Sierra Club and Vote Solar, see p. 1, n. 1.

⁸³ Filed August 27, 2020 in Docket No. UD-19-01. This filing states that the EFNO Coalition consists of 350 NO, AAE, Audubon, Greater New Orleans Housing Alliance, Union of Concerned Scientists, and Vote Solar.

⁸⁴ Filed June 3, 2019 in Docket No. UD-19-01.

⁸⁵ Filed July 15, 2019 in Docket No. UD-19-01.

⁸⁶ Letter from C2ES to the Council dated May 30, 2019 in Docket No. UD-19-01.

⁸⁷ Filed June 12, 2019 in Docket No. UD-19-01.

PosiGen filed or participated in eight sets of comments. PosiGen filed the *Comments of PosiGen Solar*⁸⁸ (“PosiGen Comments”), the *Reply Comments of PosiGen Solar*⁸⁹ (“PosiGen Reply Comments”), the *Letter to City Council Clarifying Position from Joint Statement*⁹⁰ (“PosiGen Letter”), *Reply Comments of PosiGen Solar*⁹¹ (“PosiGen Comments on Advisors’ Report”), and *Reply Comments of PosiGen on Advisors’ Report on Renewable Portfolio Standards*⁹² (“PosiGen Reply Comments on Advisors’ Report”). PosiGen participated in the EFNO Reply Comments, the Intervenor Group Comments on Advisors’ Report, and the May 11, 2020 EFNO Letter.

Sierra Club included some comments in its late-filed intervention and also participated in the EFNO Reply Comments, Intervenor Group Comments on Advisors’ Report, the Intervenor Group Comments Supporting PosiGen Comments, the May 11, 2020 EFNO Letter and the June 22, 2020 EFNO Comments.

SREA filed or participated in four sets of comments. SREA filed the *Southern Renewable Energy Association Comments Regarding a New Orleans Renewable Portfolio Standard*⁹³ (“SREA Comments”), *Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard*⁹⁴ (“SREA Reply Comments”) and *Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard*⁹⁵ (“SREA Comments on Advisors’ Report”). SREA also participated in the EFNO Reply Comments.

⁸⁸ Filed June 3, 2019 in Docket No. UD-19-01.

⁸⁹ Filed July 15, 2019 in Docket No. UD-19-01.

⁹⁰ Filed Sept. 23, 2019 in Docket No. UD-19-01.

⁹¹ Filed Oct. 15, 2019 in Docket No. UD-19-01.

⁹² Filed Nov. 19, 2019 in Docket No. UD-19-01.

⁹³ Filed June 3, 2019 in Docket No. UD-19-01.

⁹⁴ Filed July 15, 2019 in Docket No. UD-19-01.

⁹⁵ Filed Oct. 15 in Docket No. UD-19-01.

Vote Solar participated in eight sets of comments, the *Opening Comments of Vote Solar and 350 New Orleans on Establishment of a Resilient and Renewable Portfolio Standard (R-RPS)*⁹⁶ (“Vote Solar + 350 NO Comments”), the EFNO Reply Comments, the Intervenor Group Comments Supporting PosiGen Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments, and the August 27, 2020 EFNO Letter

350 NO filed or participated in eleven sets of comments. 350 NO filed *350 New Orleans Reply Comments*⁹⁷ (“350 NO Reply Comments”) and *350 New Orleans Reply Comments*⁹⁸ (“350 NO Comments on Advisors’ Report”). 350 NO participated in the Vote Solar + 350 NO Comments, the AAE + 350 NO Reply Comments on Advisors’ Report, the EFNO Reply Comments, the Intervenor Group Comments Supporting PosiGen Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments and the August 27, 2020 EFNO Letter.

The Intervenor Group Comments Supporting PosiGen Comments were joined by several organizations that did not intervene in the case and thus are not parties to the proceeding, including The Justice Alliance, Greater New Orleans Housing Alliance, and Center for Sustainable Engagement and Development.

The Greater New Orleans Housing Alliance also participated in the August 27, 2020 EFNO Letter, as did the Union of Concerned Scientists, which also never intervened and became a party to the proceeding.

⁹⁶ Filed June 3, 2019 in Docket No. UD-19-01.

⁹⁷ Filed July 15, 2019 in Docket No. UD-19-01.

⁹⁸ Filed Oct. 14, 2019 in Docket No. UD-19-01.

Thus far in this proceeding, there have been a total of thirty-seven sets of comments, reply comments, and letters commenting on the RPS design for New Orleans submitted by both the parties in this docket and by organizations who are not parties in this docket. The comments and reply comments of the parties were wide-ranging and set forth additional models beyond the traditional RPS structure the Council had contemplated in Resolution No. R-19-109.

ENO proposed a voluntary CES that would pursue the goal of decarbonization and reducing carbon emissions.⁹⁹ The EFNO parties, on the other hand, proposed a Resilient and Renewable Portfolio Standard (“R-RPS”) with stated purposes to (1) strengthen New Orleans through a focus on energy resilience and local energy resources; (2) ensure that the benefits of renewable energy are equitable, accessible, and affordable for all residents; (3) provide new economic opportunities to underserved communities by expanding and diversifying the energy workforce and enabling programs that reduce energy cost burdens on low-income residents; and (4) attract and retain companies and industries that value ready access to renewable energy resources.¹⁰⁰

The Advisors do not support either the CES as proposed by ENO or the R-RPS as proposed by the EFNO coalition, though in their Advisors’ Report the Advisors provided the Council with not only an example of a traditional RPS standard to consider, but also examples of a more aggressive CES and an R-RPS that would be less of a straight economic development measure and more consistent with both the goal of rapid reductions in emissions with a lower impact on customer bills and more consistent with sound utility regulatory principles.¹⁰¹ The Advisors included an Appendix to their Advisors’ Report with three different potential RPS standards to

⁹⁹ Advisors’ Report at 32.

¹⁰⁰ EFNO Reply Comments Appendix A, Section 1. Purpose.

¹⁰¹ Advisors’ Report at 32.

illustrate what the final rule could look like to help inform the Council's decision making.¹⁰² The Advisors stated that these three models are all merely illustrative examples that the Advisors believe would be viable, and flexibility remains to continue to adjust any of them to better suit the Council's policy goals and concerns.¹⁰³ The Advisors explained that the three examples of RPS standards set forth in the Advisors' Report were designed to elicit comment on various specific proposals to stimulate dialog among the parties regarding the best way to accomplish various goals.¹⁰⁴

In constructing the three samples of RPS standards, the Advisors contemplated that parties might voice a preference for combining features of the different models and/or introducing potential additional methods of accomplishing a particular goal in the spirit of collaboration¹⁰⁵ and noted that in response to the Advisors' Report, several of the parties did respond with comments regarding the merits of the various proposals and options set forth in the Report.¹⁰⁶ Six of the eight members of the EFNO Coalition, however, jointly continued to maintain that the EFNO Coalition's R-RPS proposal should be adopted as it was proposed by them, and acknowledged that implementing the R-RPS would mean that some Council procedures must be changed, and that certain rules that might limit the R-RPS might need amendment.¹⁰⁷

On the whole, the comments and reply comments of the parties regarding the Advisors' Report indicated that parties appeared to be moving farther apart from each other on the design of an appropriate RPS for New Orleans, rather than working toward a consensus model.

¹⁰² Advisors' Report at 32.

¹⁰³ Advisors' Report at 32-33.

¹⁰⁴ Advisor Reply Comments at 3.

¹⁰⁵ Advisor Reply Comments at 3.

¹⁰⁶ Advisor Reply Comments at 4.

¹⁰⁷ Intervenor Group Comments on Advisors' Report at 4.

ENO argued that the record established in this proceeding to date provided adequate support for the Council to (i) clarify that its desired policy objective is to combat climate change; (ii) reject the call of those who would use the climate crisis as a pretext for subsidizing the local rooftop solar installation sector at a significant, unacceptably high cost to ENO's customers; (iii) establish a near-term, potentially mandatory CES target that is specifically tailored to New Orleans' energy needs; and (iv) establish an aspirational long-term objective for further decarbonizing ENO's resource portfolio.¹⁰⁸ The Advisors agreed that the Council had enough information at that time to choose an RPS alternative and set forth a further procedural schedule to develop detailed regulations implementing the standard.¹⁰⁹

ENO argued that further work beyond what is required in the current procedural schedule will be needed to establish the details of compliance and other mechanics of tracking progress toward whatever goals the Council sets in this Docket.¹¹⁰ The Advisors agreed and recommended that the Council issue a Resolution indicating which of the RPS alternatives the Council will pursue and setting forth a further procedural schedule for the development of regulations to implement the RPS,¹¹¹ which the Council did when it adopted Resolution No. R-20-104.

Initial Comments and Reply Comments of the Parties

The Council in Resolution No. R-19-109 did set forth specific questions to the parties to facilitate the Council's consideration of an RPS design and the parties did respond to those questions in their initial rounds of comments and reply comments.

Responses to the Council's Specific Questions

¹⁰⁸ ENO Comments on Advisors' Report at 3.

¹⁰⁹ Advisor Reply Comments at 34.

¹¹⁰ ENO Comments on Advisors' Report at 20.

¹¹¹ Advisors' Reply Comments at 36.

1. What would an appropriate RPS target for New Orleans be, and should it be a requirement or a goal?

ENO advocates for a voluntary goals-based clean energy standard for New Orleans.¹¹² ENO argues that the unintended consequences of a mandatory renewables-only RPS could harm customers by raising costs and compromising reliability.¹¹³ Air Products argues that there should be no RPS requirement at all, but if there is one, it should be voluntary.¹¹⁴

C2ES argues that, given the urgency of addressing climate change, voluntary goals would not be sufficient in reducing emissions on a timeline consistent with avoiding the worst impacts of climate change.¹¹⁵ C2ES recommends that New Orleans consider establishing an economy-wide greenhouse gas reduction target as part of a multi-sectoral framework to tackle the climate challenge.¹¹⁶

The Advisors support a mandatory standard.¹¹⁷ The Advisors argue that voluntary standards leave too much discretion to the utility on whether or not to comply and provide the Council with no method to enforce the goals it has set.¹¹⁸

PosiGen argues that ENO's troubling track record of poor reliability, delayed and costly renewables investment, and misleading the public and Council has seriously eroded public trust in the utility and that a legally binding standard is necessary to ensure ENO takes its obligations seriously and attains the Council's objectives.¹¹⁹

¹¹² ENO Comments at 2.

¹¹³ ENO Comments at 11.

¹¹⁴ Air Products Comments at 1; Air Products Reply Comments at 1.

¹¹⁵ C2ES Comments at 2, citing a recent report from the Intergovernmental Panel on Climate Change, IPCC Special Report: Global Warming of 1.5°C, (2018), <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>.

¹¹⁶ C2ES Comments at 2.

¹¹⁷ Advisors' Report at 14.

¹¹⁸ Advisors' Report at 14.

¹¹⁹ PosiGen Reply Comments on Advisors' Report at 2.

Vote Solar and 350 NO urge the Council to adopt a mandatory renewable energy standard, rather than a voluntary goal.¹²⁰

AAE and 350 NO speculate that without a firm RPS, ENO would recommend excessively expensive nuclear license extensions or replacements for the retiring nuclear power with additional fossil-fueled capacity, and they assert that nuclear reactors are both costly and time intensive assets to build.¹²¹

a. What percentage of ENO's load should be met through renewable resources, and what data or other information exists indicating that the target is achievable in New Orleans?

and

b. In what year should ENO be required to meet this target, and should ENO have specific, incremental targets to meet?

ENO proposes that the Council adopt a goal of 70% of ENO's retail sales served by zero-emission resources by 2030.¹²² ENO argues that this would reduce carbon emissions by 605,000 tons and allow for beneficial electrification projects to be encouraged in New Orleans and for solar resources, energy efficiency, and demand-side management ("DSM") to continue to grow.¹²³

While ENO proposed a simple, voluntary CES of 70% zero-emissions resources by 2030, in light of ENO starting from a position of 60.7% zero-emissions resources in 2021, the Advisors believe this goal represents what ENO is confident it could do, but does not require ENO to

¹²⁰ Vote Solar + 350 NO Comments at 4.

¹²¹ AAE + 350 NO Reply Comments on Advisors' Report at 3.

¹²² ENO Comments at 19.

¹²³ ENO Comments at 20.

stretch.¹²⁴ In short, the Advisors argue that ENO's proposed CES is not ambitious enough, and is incomplete,¹²⁵

PosiGen supports a mandate requiring ENO to meet 15% of its retail electricity sales (in MWh) with renewable energy resources by 2022, 25% of 2025, 40% by 2029, 55% by 2033, and 100% by 2040.¹²⁶

PosiGen agrees with the Advisors' conclusion that a more ambitious RPS than the 70% CES proposed by ENO is appropriate.¹²⁷ PosiGen argues that since almost all of ENO's proposed CES would be met with existing nuclear generation, it would only create a miniscule opportunity for new renewable energy resources and energy efficiency solutions.¹²⁸ PosiGen argues that even states that have recently established a 100% CES also have in place specific renewable energy targets to incentivize the construction of new renewable resources.¹²⁹

Audubon supports a goal of 100% decarbonization and a 100% RPS goal by 2040.¹³⁰ Audubon states that (1) all electricity generation for all loads served in the City should be fueled by renewable energy, (2) all heat and process loads should be served by renewable natural gas or converted to renewable electricity, (3) all heat, process, and transportation loads served by petroleum should be converted to renewable electricity or gas, and (4) all new electric loads, such as those relating to electrified transportation, building electrification, or others should be driven by renewable electricity.¹³¹ According to Audubon, decarbonization should be achieved through the principles of equity, affordability, reliability, resilience, and technological innovation.¹³²

¹²⁴ Advisors' Report at 37.

¹²⁵ Advisors' Report at 37.

¹²⁶ PosiGen Comments at 3, 11.

¹²⁷ PosiGen Reply Comments on Advisors' Report at 1.

¹²⁸ PosiGen Reply Comments on Advisors' Report at 2.

¹²⁹ PosiGen Reply Comments on Advisors' Report at 2.

¹³⁰ Audubon Comments at 3-4, Audubon Reply Comments at 2.

¹³¹ Audubon Comments at 5.

¹³² Audubon Comments at 304; Audubon Reply Comments at 2,

Audubon argues that achieving the goal would entail (a) ENO's accelerated and complete exit from reliance on coal as a source of electricity for New Orleans, (b) ENO's development of an aggressive plan for an accelerated and complete exit from reliance on methane gas as a fuel for all purposes, (c) ENO's continued reliance on nuclear generation should only be considered as a bridge technology to a 100% renewable energy future, and only if and for so long as nuclear generation is cost-competitive at market rates - even if that period is shorter than the currently expected retirement dates for such generation, and (d) ENO's development of a plan and agenda of action to create non-utility market opportunities to develop and rely upon carbon-free resources for energy services.¹³³

Vote Solar and 350 NO support an RPS requirement of 55% renewable energy by 2033 to coincide with the retirement of the Union Power Station in 2033.¹³⁴

ENO argues that the Council should (i) make reducing emissions and addressing climate change the primary focus of this proceeding, and as such (ii) adopt a technology neutral CES.¹³⁵ ENO says as far as a long-term goal, ENO will work with the Council towards a net-zero carbon emissions by 2050 if the Council chooses to adopt that policy, but it should not be mandatory or a cause for penalizing ENO.¹³⁶ ENO argues that penalizing ENO for failing to meet an impossible goal would not be viable or enforceable under Louisiana law.¹³⁷

ENO proposes that the Council (i) adopt a near-term 70% CES for 2030, requiring that ENO plan to serve 70% of its customer load with zero-emitting resources by 2030, and (ii) use its

¹³³ Audubon Reply Comments at 5-6.

¹³⁴ Vote Solar + 350 New Orleans Comments at 5-6.

¹³⁵ ENO Comments on Advisors' Report at 2.

¹³⁶ ENO Comments on Advisors' Report at 2.

¹³⁷ ENO Comments on Advisors' Report at 2.

existing Integrated Resource Plan (“IRP”) process to monitor technology, costs, resource diversity, and system reliability as ENO and the Council chart the course to net-zero emissions by 2050.¹³⁸

PosiGen argues that ENO’s CES proposal improperly attempts to constrain the focus of the RPS by focusing on carbon emissions reductions, maintaining reliability and minimizing rate increases.¹³⁹ PosiGen argues that ENO fails to focus on adding new renewables, improving customer bill affordability and equity.¹⁴⁰

Air Products argues any RPS should only encourage ENO to acquire clean resources when there is a need for additional generation and the proposed resource is the lowest reasonable cost resource to meet the need and provide reliability of service.¹⁴¹

PosiGen argues that “uneconomic” generation is any resource that continues to contribute to our shared destruction and that what is economical must be based on an accurate reflection of total cost, which means incorporating spillover costs into planning and resource modeling.¹⁴²

AAE argues that there is potential for ENO to meet a 100% RPS, and recommends that the Council set a goal of 100% renewable energy by 2040.¹⁴³ AAE bases its conclusion on its review of “publicly available data” and on Google Project Sunroof data indicating that 94% of rooftops in the City are suitable for rooftop solar.¹⁴⁴ AAE also argues that ENO’s expected retirement of the Union Power Block 1 unit in approximately 2032 and the potential for ENO to terminate its power purchase agreements early also speak in support of this target being achievable.¹⁴⁵ AAE supports a proposed deadline of 55% by 2033 and 100% by 2040 on the grounds that climate

¹³⁸ ENO Comments on Advisors’ Report at 8.

¹³⁹ PosiGen Reply Comments on Advisors’ Report at 10.

¹⁴⁰ PosiGen Reply Comments on Advisors’ Report at 11.

¹⁴¹ Air Products Comments at 1; Air Products Reply Comments at 1.

¹⁴² PosiGen Reply Comments at 6.

¹⁴³ AAE Comments at 4.

¹⁴⁴ AAE Comments at 4-5.

¹⁴⁵ AAE Comments at 5-6.

science strongly indicates the need to get to net-zero carbon emissions by mid-century.¹⁴⁶ AAE also recommends that there be further, straight line incremental targets for ENO to meet.¹⁴⁷

Sierra Club supports AAE's assessment that there is potential for ENO to meet a 100% RPS and that the Council should set a goal to meet that mandate by 2040 with an interim target of 55% by 2033.¹⁴⁸

The EFNO Coalition and its members argue for the adoption of a R-RPS that would require 55% of ENO's retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040.¹⁴⁹ GSREIA supports this position.¹⁵⁰

C2ES argues for an RPS with 30% of electricity sales coming from renewable resources and 90% from clean energy resources by 2030 with 60% from renewables and 100% from clean energy sources by 2050.¹⁵¹ C2ES explains that while New Orleans is starting from a very low level of deployed renewable electricity sources, an RPS mandatory target of 30% by 2030 and 60% by 2050 should be achievable and recommends that the Council consider expanding the RPS to a CES, which would ensure that the City could expand the amount of clean energy it procures sooner, allowing the City to achieve a nearly 90% clean target by 2030 and a 100% clean electricity target by 2050.¹⁵²

SREA recommends a near-term mandate of 20% renewable energy penetration by 2023, with a 60% renewable energy mandate by 2030, and a long-term goal of 100% clean energy when the rest of ENO's contracted nuclear energy resources are retired.¹⁵³

¹⁴⁶ AAE Comments at 6.

¹⁴⁷ AAE Comments at 7.

¹⁴⁸ Sierra Club's Intervention at 6.

¹⁴⁹ EFNO Reply Comments at 8.

¹⁵⁰ GSREIA Reply Comments at 1.

¹⁵¹ C2ES Comments at 1.

¹⁵² C2ES Comments at 2.

¹⁵³ SREA Comments at 11.

ENO argues that to its knowledge and understanding, providing enough generation to meet 55%, let alone 100% of customer load with renewable-only technologies with 50% of the resources located within Orleans Parish is a physical impossibility.¹⁵⁴ ENO also notes that such resources would not meet ENO’s load shape, meaning that if ENO were to add solar photovoltaic (“PV”) generation to meet a 55% RPS, approximately 70% of that generation would be in excess of ENO’s needs at the time it is generated, and would be sold into the Midcontinent Independent System Operator, Inc. (“MISO”) market instead of used by ENO customers.¹⁵⁵ ENO also argues that this proposal would also result in massive rate increases.¹⁵⁶ ENO estimates the cost of complying with such a mandate would raise ENO’s system average rate by 30% or more, even before incorporating the cost of adequate battery storage capacity.¹⁵⁷ ENO also argues that the use of Google Project Sunroof data as proof that 94% of roofs in New Orleans could host an aggregate of 2.7 GW of solar PV is a “superficial and unsound approach to resource planning that withers under the slightest scrutiny.”¹⁵⁸ ENO notes that its own study of rooftop solar potential, conducted in connection with its 5 MW rooftop solar project, which was a much more refined study performed by Brighter Louisiana, LLC, identified only approximately 200 MW of potential rooftop solar capacity in New Orleans, a mere 7.4% of the EFNO Coalition’s estimate.¹⁵⁹

The Advisors agree that current climate science strongly indicates the need to get to net-zero carbon emissions by mid-century.¹⁶⁰ For that reason, the Advisors support at a minimum a target of not less than 100% clean energy by 2050.¹⁶¹ The Advisors note that the concept of 100%

¹⁵⁴ ENO Reply Comments at 6.

¹⁵⁵ ENO Reply Comments at 6.

¹⁵⁶ ENO Reply Comments at 8.

¹⁵⁷ ENO Reply Comments at 8.

¹⁵⁸ ENO Reply Comments at 20.

¹⁵⁹ ENO Reply Comments at 20.

¹⁶⁰ Advisors’ Report at 15.

¹⁶¹ Advisors’ Report at 15.

clean energy does not exclude the concept of 100% renewable energy.¹⁶² It is the Advisors' opinion that the mid-century target likely can be met with only reasonable bill impacts to customers through the use of a clean energy standard.¹⁶³ The Advisors state they have not seen convincing proof that the 100% clean energy by 2050 target can be met at a reasonable cost using only renewables.¹⁶⁴

The Advisors state they are encouraged by ENO's commitment to reducing carbon emissions, and accept that 70% clean energy by 2030 is what ENO believes upon informed analysis that it can do within its business plan with an acceptable bill impact to customers.¹⁶⁵ However, the Advisors state they would like to see a target that is more ambitious, but still has at least a reasonable possibility for success.¹⁶⁶ The Advisors state they believe that the EFNO Coalition's estimates of the potential of its plan for success are based on incomplete and potentially faulty data because the studies upon which they base their estimates do not take all relevant factors into account.¹⁶⁷

SREA recommends that the Council establish a 20%+ by 2023 RPS, ramping up to 60% by 2030 for renewable energy only, and a longer-term goal of 100% clean (zero carbon) energy, create a competitive bidding process for fulfilling the RPS, allow for modest carve-outs for local generation, and require ENO to move beyond capacity-only planning.¹⁶⁸

¹⁶² Advisors' Report at 15.

¹⁶³ Advisors' Report at 15.

¹⁶⁴ Advisors' Report at 15.

¹⁶⁵ Advisors' Report at 15.

¹⁶⁶ Advisors' Report at 15.

¹⁶⁷ Advisors' Report at 16, Advisors' Reply Comments at 25-28. The Advisors explain that both the Google Project Sunroof data relied upon by the EFNO coalition and the NREL study relied upon by PosiGen take into account factors that would likely reduce the deployment of solar in New Orleans from Google and NREL's projections, such as zoning restrictions, historical designations and known limitations on the distribution system. *Id.*

¹⁶⁸ SREA Comments on Advisors' Report at 2.

The Advisors note that ramping up to 60% renewable energy by 2030 would require ENO to retire several plants early, likely leaving customers to absorb significant stranded costs. They state it would also require ENO to replace some of its existing zero-emissions nuclear capacity with renewables. The Advisors express concern that the economic impacts of forcing the early retirement of existing resources and/or early termination of contracts to satisfy an RPS could be significant. The Advisors explain that for many such ENO resources, the Federal Energy Regulatory Commission, and not the Council, would determine the extent to which ENO would be permitted to escape its commitments to the resources and what price New Orleans customers would be required to pay for it. Given the likely lifespan of ENO's plants, the Advisors believe that there is a reasonable opportunity for ENO to exceed mid-century emissions reductions goals without the need to retire resources early and incur significant stranded costs.¹⁶⁹

SREA recommends that the Advisors' suggested target of "not less than 100% clean energy by 2050" be mandated.¹⁷⁰

ENO further argues that any targets adopted should pursue decarbonization in a responsible, realistically achievable manner.¹⁷¹ ENO argues that setting a technology-neutral CES target alone is not enough to maintain low rates and preserve reliability, the specific targets for such a standard must be tailored to New Orleans' unique circumstances and ENO's existing (and approved) least-cost resource portfolio.¹⁷² ENO also argues that it does not have the same access to resources as utilities in other regions.¹⁷³ The Advisors note, however, that the RPS Alternatives in the Advisors' Report have left room for standards to be satisfied through purchase of RECs.¹⁷⁴

¹⁶⁹ Advisors' Reply Comments at 29-30.

¹⁷⁰ SREA Comments on Advisors' Report at 2.

¹⁷¹ ENO Comments on Advisors' Report at 5.

¹⁷² ENO Comments on Advisors' Report at 5.

¹⁷³ ENO Comments on Advisors' Report at 6.

¹⁷⁴ Advisors' Reply Comments at 35.

ENO argues there is some thought that current goals of carbon free electricity by 2045 or net-zero-emission resource portfolios by 2050 cannot be reached with currently viable technologies and further research and development, along with relying on existing dispatchable generation, will be necessary.¹⁷⁵ ENO states electric sector decarbonization at a reasonable cost requires (i) utilization of all zero-emitting and emission-reducing technologies; (ii) near-term goals that take technological limitations into account; and (iii) long-term goals that are flexible and have been carefully analyzed considering a utility's specific circumstances.¹⁷⁶ The Advisors note that RPS standards adopted by other states are regularly adjusted and updated to reflect new market dynamics and achievements. The Advisors would expect the same to happen here, and are open to adding a provision that the Council would re-examine the RPS goals periodically and adjust them as circumstances warrant.¹⁷⁷

ENO argues that the Advisors' recommendation for a more ambitious target ignores that ENO's target was optimized to make sure that incremental clean energy added to ENO's portfolio is mainly serving ENO's customers, rather than being exported to MISO's markets as surplus.¹⁷⁸ ENO argues that going beyond what its analysis supports would not actually result in more clean energy serving New Orleans customers; instead, it would result in ENO "going long" on renewable generation to meet an arbitrarily imposed standard where that long position would result in ENO being a significant seller in the market, subject to the risk inherent in being a significant net-exporter to MISO.¹⁷⁹ The Advisors note that ENO's scenario ignores the possibility of purchasing RECs rather than building capacity to meet the RPS standard.¹⁸⁰

¹⁷⁵ ENO Comments on Advisors' Report at 7.

¹⁷⁶ ENO Comments on Advisors' Report at 8.

¹⁷⁷ Advisors' Reply Comments at 35.

¹⁷⁸ ENO Comments on Advisors' Report at 9.

¹⁷⁹ ENO Comments on Advisors' Report at 10.

¹⁸⁰ Advisors' Reply Comments at 34.

2. How should a New Orleans RPS target be satisfied?

The parties' comments in response to these questions fall into roughly three categories: those advocating for all clean (zero-emissions) resources, those advocating for a wide array of renewable resources, and those advocating for giving heavy priority to locally-sited distributed generation renewable resources.¹⁸¹

- a. *Should ENO be allowed to purchase RECs to satisfy the requirement, and if so what, if any, limitations should be applied to the use of RECs? If RECs are allowed, how should they be certified or verified?*

Nearly all parties support allowing the use of RECs.¹⁸² There is also general agreement that RECs used to satisfy the RPS targets must be retired and be subject to verification or certification and tracking by third parties, though there is some debate as how that should be done.¹⁸³

AAE supports the use of RECs registered with the Midwest Renewable Energy Tracking System ("M-RETS"), which registers and tracks RECs both inside and outside the MISO system.¹⁸⁴ However, AAE opposes allowing RECs to be "banked" for use in future years, rather, to the extent ENO has excess RECs, AAE argues ENO should be required to sell them.¹⁸⁵

Audubon argues that RECs should be allowed in order to set aggressive and affordable milestones, allowing high REC percentages in early years, while building toward high local distributed generation content as the deadline for 100% renewable resources nears.¹⁸⁶ Audubon

¹⁸¹ Advisors' Report at 17.

¹⁸² Advisors' Report at 20, citing Air Products Comments at 2, C2ES Comments at 1, and ENO Reply Comments at 14. The EFNO R-RPS proposal also contemplates the use of RECs. *See e.g.* EFNO Reply Comments at Appendix A, Sections 2 and 7.

¹⁸³ Advisors' Report at 20, citing Air Products Comments at 2 and ENO Reply Comments at 14. *See also*, EFNO Reply Comments at Appendix A, Sections 2 and 7.

¹⁸⁴ AAE Comments at 8-11.

¹⁸⁵ AAE Comments at 26.

¹⁸⁶ Audubon Comments at 7.

also argues that RECs must be Green-e certified and the Council may wish to consider requiring that RECs be tracked through M-RETS.¹⁸⁷

Sierra Club also opposes allowing ENO to bank RECs arguing ENO should instead sell excess RECs.¹⁸⁸

SREA argues that RECs do not stabilize energy costs and although low-cost they are additional to existing ratepayer cost structures, and therefore recommends that if RECs are allowed, they should be Green-e certified, subscriptions should be voluntary based on ratepayer opt-in, and should only make up a very small portion of the overall renewable energy portfolio.¹⁸⁹

Vote Solar and 350 NO envision a three-tier framework through which ENO could satisfy its compliance obligations through customer programs that reduce compliance load (e.g., community solar and net metering) and other renewable energy resources that are registered with M-RETS (Tier 3).¹⁹⁰

The Advisors state that if the Council chooses deep decarbonization as the public policy to be prioritized, then they recommend that RECs purchased without the associated energy be viewed as a transitional mechanism to allow ENO the flexibility to satisfy the RPS as cost-effectively as possible until such time as ENO begins to see significant deactivations that allow cost effective opportunities to satisfy the RPS with ENO-owned resources.¹⁹¹ To that end, for a carbon emissions reductions goal, the Advisors state the purpose should be to ensure that ENO is serving its load entirely through zero-carbon resources by 2050, and the use of RECs without the associated energy to satisfy the requirement should be phased out by that date.¹⁹²

¹⁸⁷ Audubon Comments at 7.

¹⁸⁸ Sierra Club Intervention at 7.

¹⁸⁹ SREA Comments at 11.

¹⁹⁰ Vote Solar + 350 NO Comments at 7.

¹⁹¹ Advisors' Report at 20.

¹⁹² Advisors' Report at 20.

The Advisors suggest that New Orleans should work toward having an energy portfolio that is 100% free of carbon emissions, not merely “net zero.”¹⁹³ To that end, allowing the utility to purchase RECs without purchasing the associated energy is helpful toward achieving a “net zero” status quickly and less expensively, and use of multipliers for certain high-value resources can help boost earlier adoption of those resources than might otherwise occur.¹⁹⁴ However, the Advisors argue that eventually the practice of using RECs purchased without the associated energy in order to offset emissions from other resources used to provide energy will need to be phased out if the goal is to eventually get to an actual emissions-free portfolio.¹⁹⁵

The Advisors suggest that the Council consider pushing ENO to achieve “net zero,” the state where they are able to obtain a REC balance sufficient to offset any emissions caused by their portfolio by 2040, but then to spend the next decade phasing out that practice in favor of eliminating the sources of emissions entirely from ENO’s portfolio to achieve a true zero-emissions portfolio by 2050.¹⁹⁶ RECs would be used as the accounting mechanism to ensure that ENO’s carbon emissions are offset until such time as ENO is able to demonstrate that it has no emissions-producing resources in its portfolio that need to be offset.¹⁹⁷ ENO is correct to note in its comments that this would create a jump-step of compliance requirements that may cause additional costs;¹⁹⁸ however, the Advisors note that 2040 is still 20 years into the future, meaning that (1) the utility, Council and stakeholders would have 20 years to develop a strategy for managing the transition; and (2) if it becomes evident over the next 20 years that phasing out the

¹⁹³ Advisors’ Reply Comments at 8.

¹⁹⁴ Advisors’ Reply Comments at 8-9.

¹⁹⁵ Advisors’ Reply Comments at 9.

¹⁹⁶ Advisors’ Reply Comments at 9.

¹⁹⁷ Advisors’ Reply Comments at 9.

¹⁹⁸ ENO Comments on Advisors’ Report at 29.

use of RECs not paired with the associated energy will not be feasible, adjustments can be made to the RPS.¹⁹⁹

The Advisors also state that, to the extent that fostering new growth of the renewable industry is the public policy goal taking priority, however, use of RECs only for resources built after a particular date would foster that goal.²⁰⁰

- b. What resources should be included in the definition of resources that may be used to meet the target (whether through the addition of resources to ENO's system or through the purchase of RECs) -- Solar Water Heat, Solar Space Heat, Geothermal Electric, Solar Thermal Electric, Solar Thermal Process Heat, Solar Photovoltaics, Wind (Large and Small), Biomass, Hydroelectric, Geothermal Heat Pumps, Combined Heat & Power, Landfill Gas, Hydroelectric (Large and Small), Geothermal Direct-Use, Anaerobic Digestion, Fuel Cells using Renewable Fuels, other?*

ENO argues for the adoption of a clean energy standard that would allow the inclusion of future renewable resources, emission-free nuclear resources, distributed generation and utility-scale solar PV resources; existing legacy renewable resources like conventional hydropower projects; reductions in kWh sales and kW demand through energy efficiency (Energy Smart) and DSM programs; electrification; assisting key customers like S&WB to help reduce the use of older, legacy assets that use fossil fuel; and customer owned and operated distributed generation-scale renewables like rooftop solar PV that take advantage of Council policies like Net Energy Metering ("NEM").²⁰¹ ENO suggests that if Combined Heat and Power or Fuel Cell technologies are

¹⁹⁹ Advisors' Reply Comments at 9.

²⁰⁰ Advisors' Report at 20-21.

²⁰¹ ENO Comments at 21.

permitted, it should be clarified that they only count toward compliance if they are fueled with renewable resources.²⁰²

C2ES recommends that solar water heat, solar space heat, geothermal electric, solar thermal electric, solar thermal process heat, solar PV, wind (large, small, and offshore), biomass, hydroelectric (large and small), geothermal heat pumps, combined heat and power, municipal solid waste, landfill gas, tidal, wave, ocean thermal, geothermal direct-use, anaerobic digestion, and fuel cells using renewable fuels all be eligible in the definition of resources that may be used to meet the RPS target.²⁰³

C2ES also argues that in order to lock in higher levels of clean energy earlier, the City should consider expanding the RPS to a CES.²⁰⁴

In its initial comments, AAE states that it recommends keeping efficiency and/or thermal technologies out of the RPS or to have them in their own tier;²⁰⁵ however, AAE subsequently joined in the EFNO proposal, which included solar thermal resources and geothermal resources in the definition of Renewable Energy Resource²⁰⁶ and included energy efficiency measures in Tier 2 along with net energy metering, community solar with virtual net metering, and any non-Tier 1 resource that supports renewables, demand response or energy efficiency for low-income customers.²⁰⁷ AAE also states that it supports wind (large and small), solar PV, biomass (with strict sustainability criteria), geothermal electric, power produced from landfill gas and anaerobic digesters and fuel cells fueled by renewable power.²⁰⁸ However, the EFNO proposal subsequently

²⁰² ENO Comments at 21.

²⁰³ C2ES Comments at 3-4.

²⁰⁴ C2ES Comments at 4.

²⁰⁵ AAE Comments at 11.

²⁰⁶ EFNO Comments at Appendix A, Section 2.

²⁰⁷ EFNO Comments at Appendix A, Section 5.

²⁰⁸ AAE Comments at 11-12.

supported by AAE includes only solar PV, solar thermal, wind, run-of-river hydroelectric, geothermal and tidal or wave energy resources as renewable energy resources.²⁰⁹

Vote Solar + 350 NO argue that this list of eligible technologies should be expansive, but should not include any resources that produce local air emissions (biomass or anaerobic digestion) or that require water discharge permits, and all Tier 3 resources (MISO-connected renewables) should exclude carbon-emitting technologies.²¹⁰

Audubon recommends adoption of an established renewable energy fuels and technologies definition and eligibility standard, such as that promulgated by Green-e.²¹¹

Sierra Club supports wind (large and small), solar PV, and geothermal electric as renewable resources.²¹² Sierra Club does not oppose fuel cells as long as they are using renewable energy and double-counting is avoided.²¹³ Sierra Club argues that hydro-electric power may be appropriate, depending on site-specific considerations, and does not support biomass or landfill gas resources.²¹⁴

The EFNO Coalition proposes limiting the resources that qualify as renewable resources to solar PV and solar thermal resources, wind resources, run-of-river hydroelectric resources, geothermal resources, and tidal and wave resources, and would include as “resilient” resources those renewable resources plus any enhancements like battery storage that can perform both in “islanded-mode” (standing alone or in a microgrid) and connected to the grid.²¹⁵

²⁰⁹ EFNO Reply Comments at Appendix A, Section 2.

²¹⁰ Vote Solar + 350 NO Comments at 7.

²¹¹ Audubon Comments at 8.

²¹² Sierra Club Intervention at 6.

²¹³ Sierra Club Intervention at 6.

²¹⁴ Sierra Club Intervention at 6.

²¹⁵ EFNO Reply Comments at Appendix A, Section 2.

The EFNO Coalition members generally oppose a clean energy resource standard.²¹⁶ In response to ENO's comments, several EFNO Coalition members argue that ENO's proposal will not result in new renewable generation being built and that relying on nuclear will raise costs to customers because the Grand Gulf plant has been underperforming in recent years, significantly reducing its output and decreasing the amount of ENO load served by zero-emissions resources, and that nuclear is more expensive than renewables.²¹⁷

350 NO argues that CCUS is expensive and that it could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing more economical and strategically deployed renewable energy infrastructure.²¹⁸ It also argues that there are serious reliability and cost issues associated with ENO's nuclear fleet.²¹⁹

SREA argues that, although it is not inherently opposed to nuclear energy, there are concerns that ENO's units are uneconomic, and that nuclear power is relatively inflexible, both due to its operational requirements and the need to maintain a high capacity factor to justify the capital expense, with little or no ramping services to respond to customer demand or other generation sources.²²⁰ SREA argues that ENO's existing nuclear contracts may be the largest limiting factor in achieving exceptionally high penetration levels of renewable energy resources.²²¹ SREA argues that ENO affiliates are likely depending on New Orleans residents paying higher-than-market rates to keep those units running, and that if New Orleans stops buying energy from Entergy's nuclear reactors, those facilities would likely be unable to compete in the MISO market and would eventually retire.²²² SREA also points out that the costs of renewables and energy

²¹⁶ AAE Reply Comments at 2; SREA Reply Comments at 2-3, 350 NO Reply Comments at 3.

²¹⁷ AAE Reply Comments at 2; SREA Reply Comments at 32; 350 NO Reply Comments at 5-6.

²¹⁸ 350 NO Comments on Advisors' Report at 5.

²¹⁹ 350 NO Reply Comments at 5-6.

²²⁰ SREA Reply Comments at 3.

²²¹ SREA Comments at 3.

²²² SREA Reply Comments at 3.

storage have been falling over time and that their analysis shows that renewable energy is a lower cost than existing Energy facilities.²²³

The Advisors argue that while the EFNO Coalition members point to the problems at Grand Gulf as a reason that only renewable resources should be relied upon to meet the Council's chosen target, their argument actually speaks in favor of a clean energy standard rather than against it.²²⁴ The Advisors point out that if, as the EFNO Coalition argues, ENO's nuclear resources are unreliable and costly, then it is more likely that to meet a 55% renewables target, ENO would replace its failing nuclear resources with renewables.²²⁵ The Advisors state that as ENO's current nuclear resources represent approximately 56.9% of its energy resources, ENO could, in theory reach a 55% renewables interim target by replacing its nuclear fleet with renewables while keeping all of its fossil fuel plants on line, resulting in no actual reduction in emissions.²²⁶ The Advisors argue that a clean energy standard, however, would not permit such backsliding, because it would require ENO to increase its percentage of clean energy every year.²²⁷ The Advisors argue that the EFNO position that only renewables should count does support a public policy purpose of providing economic stimulus to and development of the local renewables industry, but it does not support deep decarbonization as well as a clean energy standard would unless it can be guaranteed that the new renewable resources will only replace resources that emit carbon until such resources are fully replaced.²²⁸

GSREIA opposes a clean energy standard but supports the inclusion of energy efficiency and DSM in an RPS target.²²⁹

²²³ SREA Comments at 5-7.

²²⁴ Advisors' Report at 19.

²²⁵ Advisors' Report at 19.

²²⁶ Advisors' Report at 19.

²²⁷ Advisors' Report at 19.

²²⁸ Advisors' Report at 19-20.

²²⁹ GSREIA Reply Comments at 1-2.

PosiGen's comments highlight the need for programs that address ending energy poverty, benefits of solar carve-out programs, and comparing the full cost of resources on an even playing field in the RPS.²³⁰ PosiGen recommends a vision statement for the Council to adopt to guide the Advisors and the RPS development process.²³¹

PosiGen's comments discuss the energy burden in New Orleans. PosiGen argues that Washington, DC and other jurisdictions have proven that carve-out solar programs in RPS policies significantly lower energy costs for low-income customers, and that it is much less expensive for rate-payers when these investments are made by a third party, free market provider rather than a monopoly utility, but the Advisors point out that it offers no indication of the magnitude of savings occurring for both the low-income customer and the rate-payer or any empirical evidence to support the claim.²³² PosiGen provides a table of the cost difference between ENO's 100-home low-income solar program and PosiGen's solar + energy efficiency program, but, the Advisors argue, it provides no information regarding where the data in the table came from and states that it is using an assumed cost for ENO's program rather than the actual figures.²³³

The Advisors argue that PosiGen makes several other unsupported claims throughout its Comments without providing adequate support for its conclusions.²³⁴

PosiGen argues that ENO's proposal benefits shareholders and not vulnerable New Orleans residents by trying to earn a healthy profit at captive ratepayers' expense.²³⁵ PosiGen urges the Council to reject ENO's focus on centralized resources that it owns and to include components focused on benefiting residents dealing with high energy burdens and poor service reliability, such

²³⁰ PosiGen Comments on Advisors' Report at 3.

²³¹ PosiGen Comments on Advisors' Report at 3.

²³² PosiGen Comments on Advisors' Report at 4. Advisors Reply Comments at 22-23.

²³³ PosiGen Comments on Advisors' Report at 4-5. Advisors' Reply Comments at 23.

²³⁴ Advisors' Reply Comments at 23-24.

²³⁵ PosiGen Reply Comments on Advisors' Report at 9.

as by establishing a low-income home solar and solar-plus-storage program similar to the Energy Smart program.²³⁶

PosiGen argues that a CES would undermine affordability goals because in the past utilities have foolhardily pursued construction boondoggles related to nuclear power and CCS.²³⁷ PosiGen also argues that ENO's reliability concerns under an RPS are unpersuasive because under the RPS, ENO would not have to run its fleet entirely on clean or renewable resources, rather it could offset 100% of its annual jurisdictional sales through the use of RECs.²³⁸

PosiGen also asserts that DERs could address ENO's reliability problems.²³⁹

350 NO argues that "[i]t could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing a more economical, and strategically deployed renewable energy infrastructure."²⁴⁰ However, as the Advisors note, no party in the case has suggested that the Council officially mandate a CCUS. The Advisors' position is that an RPS should leave room for effective and economical CCUS technology that might develop in the future, not that the Council should require ENO to acquire CCUS instead of investing in renewables.²⁴¹

ENO states that it disagrees that subsidizing a small segment of the local economy at the expense of combatting climate change, keeping rates low, and preserving reliability is a legitimate public policy goal.²⁴² ENO argues that the only legitimate public policy purpose the Council can pursue in this proceeding is deep decarbonization in a manner that keeps electric rates low and preserves reliability.²⁴³

²³⁶ PosiGen Reply Comments on Advisors' Report at 9.

²³⁷ PosiGen Reply Comments on Advisors' Report at 15.

²³⁸ PosiGen Reply Comments on Advisors' Report at 16.

²³⁹ PosiGen Reply Comments on Advisors' Report at 17.

²⁴⁰ 350 New Orleans Comments on Advisors' Report at 5.

²⁴¹ Advisors' Reply Comments at 28.

²⁴² ENO Comments on Advisors' Report at 4.

²⁴³ ENO Comments on Advisors' Report at 4-5.

PosiGen argues that local economic development provides large benefits under an RPS and that the Council has the opportunity to remedy that harm inflicted upon the local rooftop solar industry by the state’s decision to terminate the state solar tax credit.²⁴⁴

PosiGen disputes ENO’s characterizations of PosiGen.²⁴⁵

The Advisors argue that whether the Council chooses a clean energy standard or a renewable energy standard should be determined by which public policy goal the Council wishes to prioritize.²⁴⁶ The Advisors state that rapid and deep decarbonization and the growth of the renewables industry can complement each other; however, after review of the parties’ comments and recent studies, such as the Green Real Deal and the Energy Futures Initiative analysis of the California market, the Advisors remain concerned that prioritizing the growth of the renewables industry over all other carbon dioxide emissions-free resources and rejecting the “all of the tools in the toolbox” method will slow down decarbonization and make it more expensive for ratepayers by narrowing unnecessarily the range of options available to decarbonize.²⁴⁷ Thus, the Advisors state that to the extent that the Council’s preferred public policy goal is to pursue rapid, deep decarbonization, they recommend a Clean Energy Standard.²⁴⁸ The Advisors clarify, however, that to the extent that the Council would prefer to prioritize economic development, and particularly the development of the local renewables industry in New Orleans (and the Advisors consider local economic development to be a legitimate public policy purpose), then the appropriate goal would be a renewables-only RPS.²⁴⁹

²⁴⁴ PosiGen Reply Comments on Advisors’ Report at 18-19.

²⁴⁵ PosiGen Reply Comments on Advisors’ Report at 19-20.

²⁴⁶ Advisors’ Report at 14.

²⁴⁷ Advisors’ Report at 14-15.

²⁴⁸ Advisors’ Report at 15.

²⁴⁹ Advisors’ Report at 15.

Air Products objects to the cost of Beneficial Electrification of S&WB facilities being passed through to ratepayers, arguing that the costs should be addressed under ENO’s Schedule EOES-3.²⁵⁰

AAE and 350 NO argue that the “all zero emissions technology” approach including costly nuclear is less about its merits as a decarbonization strategy, and more about its merits for the vertically integrated utility business model.²⁵¹ They argue that the recommendations of the EFNO Coalition “hedge against the increasing costs of power from Entergy New Orleans”.²⁵² They also express concern that a CES, as proposed by ENO, undermines cost-effective decarbonization and climate adaptation by propping up nuclear power at the expense of newer, cheaper options.²⁵³

The Advisors note that there seems to be some consensus that it is appropriate to include energy efficiency, distributed generation, and DSM resources within the RPS, and even a level of consensus that to the extent the Council decides to prioritize certain types of resources over others, that these types of resources should be included among high priority resources.²⁵⁴

²⁵⁰ Air Products Reply Comments at 6.

²⁵¹ AAE + 350 NO Reply Comments on Advisors’ Report at 3.

²⁵² AAE + 350 NO Reply Comments on Advisors’ Report at 4.

²⁵³ AAE + 350 NO Reply Comments on Advisors’ Report at 7.

²⁵⁴ Advisors’ Reply Comments at 2. At page 12 of its comments, ENO concurs with the Advisors’ definitions of Demand-Side Management, Energy Efficiency Programs, Beneficial Electrification, and Net Energy Metering, and with their inclusion in an RPS and classification as “Tier 1 Resources” that would receive some kind of multiplier credit. Entergy New Orleans, LLC’s Comments in Response to the Advisors’ Report and Proposed Alternative Frameworks Concerning Renewable Portfolio Standards (“ENO Comments on Advisors’ Report”) at 12, UD-19-01, Oct. 15, 2019. The Intervenor Group Comments state at page 4 that they continue to urge the Council to adopt a Resilient and Renewable Portfolio Standard (“R-RPS) for New Orleans that would require 55% of ENO’s retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040, and then go on to state at page 6 that the Energy Future New Orleans (“EFNO”) parties had offered the R-RPS proposal as an integrated whole, not as a menu from which portions of the proposal would be selected, or deselected, without an opportunity to consider the implications of such decisions. This leads the reader to conclude that these six parties still support the EFNO R-RPS proposal, which included energy efficiency and at least some net energy metering resources as Tier 2 resources and would require that at least 30% of the compliance portfolio requirements be met with a combination of Tier 1 and Tier 2 resources. Joint Reply of 350 New Orleans, Alliance for Affordable Energy, National Audubon Society, Deep South Center for Environmental Justice, PosiGen Solar, Sierra Club, Southern Renewable Energy Association, and Vote Solar (Collectively the “Energy Future New Orleans” Coalition of “EFNO”) Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans (“EFNO Proposal”) at Appendix A at 9-10). Air Products supports the Advisors’ Report Alternative 2 (with unrelated modifications), which includes energy efficiency, distributed generation and DSM in Tier 2. Air Products and Chemicals, Inc. Comments on Advisors’ Report (“Air

The Advisors also recommend that the standard ultimately adopted by the Council allow considerable flexibility regarding which resources are permitted to be utilized to comply with the standard.²⁵⁵ The Advisors argue that providing as much flexibility as possible increases the likelihood that ENO would be able to achieve compliance with the standard while preserving reliability and keeping electricity rates reasonable.²⁵⁶ The Advisors state that getting as much clean power into ENO’s energy mix at the lowest reasonable cost is the best path forward.²⁵⁷ The Advisors also support the apparent consensus of the parties that energy efficiency, distributed generation, and DSM resources, many of which would be expected to benefit low income customers, should be included in an RPS standard for New Orleans and classified as high priority resources.²⁵⁸

The Advisors take issue with the manner in which the Intervenor Group and Audubon Society misrepresent the Advisors’ positions.²⁵⁹ The Advisors clarify that they recommend that all available resources for eliminating emissions be utilized, rather than limiting an RPS to only renewable power sources.²⁶⁰ However, they argue, at no point anywhere in the Advisors’ Report is there even a suggestion that nuclear and fossil fuel resources should be prioritized over any other resource, only that they be allowed to count.²⁶¹ The Advisors point out that none of the three

Products’ Comments on Advisors’ Report”) at 2, UD-19-01, Oct. 15, 2019, and Advisors’ Report at Appendix A p. 11. The Southern Renewable Energy Association (“SREA”) supports the Advisors’ Report Alternative 1 (with modifications) which includes energy efficiency, distributed generation and demand-side resources in Tier 1. Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard (“SREA Comments on Advisors’ Report”) at 4, UD-19-01, Oct. 15, 2019, and Advisors’ Report at Appendix A 5. SREA proposes modifications to the Tier structure, but does not appear to be proposing that energy efficiency and demand-side management be excluded. SREA Comments on Advisors’ Report at 4, PosiGen Reply Comments at 1.

²⁵⁵ Advisors’ Reply Comments at 8.

²⁵⁶ Advisors’ Reply Comments at 8.

²⁵⁷ Advisors’ Reply Comments at 10.

²⁵⁸ Advisors’ Reply Comments at 10.

²⁵⁹ Advisors’ Reply Comments at 15.

²⁶⁰ Advisors’ Reply Comments at 18.

²⁶¹ Advisors’ Reply Comments at 18.

sample RPS standards set forth would even put nuclear or fossil fuel generating resources in the top Tier of compliance resources (the RCPS standard would allow carbon capture technology, but only to the extent it would be utilized to reduce emissions from an already-existing source of emissions in Orleans Parish, it would not include the addition of new fossil fuel generation with CCUS technology in Tier 1).²⁶²

ENO opposes the EFNO Coalition’s proposed R-RPS Alternative on several grounds. ENO argues that the R-RPS abandons basic principles of resource planning in favor of an unsubstantiated “Resilience” concept.²⁶³ ENO argues it limits the available resources to only five and emphasizes localized requirements for siting a large portion of the renewable generation, both of which undermine reliability.²⁶⁴ ENO argues that intermittent renewables resources tied to small residential battery storage systems do not provide added resilience.²⁶⁵

c. Should there be a requirement that some portion of the RPS must be met through specific types of renewables (or RECs), such as solar or distributed generation?

ENO opposes any type of “carve-out” that mandates a specific amount in MW or percentage of a single resource type or technology because it would hamper flexibility and increase costs.²⁶⁶

AAE supports creating set-asides and carve-outs as a great way to ensure that an RPS meets all the legislative objectives set forth in the RPS in an intentional and explicit way, and notes that carve-outs can be set up in several different ways and can include geographic, vintage, and

²⁶² Advisors’ Report at Appendix A.

²⁶³ ENO Comments on Advisors’ Report at 15-16.

²⁶⁴ ENO Comments on Advisors’ Report at 15-16.

²⁶⁵ ENO Comments on Advisors’ Report at 16.

²⁶⁶ ENO Comments at 20.

technology limitations.²⁶⁷ AAE emphasizes that creating requirements and limits through carve-outs helps ensure the development of new renewables and the associated benefits such as economic development and pollution reduction.²⁶⁸

AAE recommends the rules propose a 10% carve-out for low- and moderate-income households.²⁶⁹ AAE also proposes that, in order to assure that the RPS ensures that new renewable resources are being encouraged and built, the Council may choose to make all REC eligible resources, even existing resources, located within the City or state as being eligible while resources outside of the state may only be eligible if the project did not start generating electricity prior to the confirmation of an RPS.²⁷⁰ AAE notes that carve-outs can drive up costs, but do not always do so²⁷¹ and warns against multipliers as usually being arbitrarily derived and diluting the RPS goal and/or cause ENO to over or under procure a renewable of a certain type, possibly at an inflated cost.²⁷²

PosiGen supports a rooftop solar carve-out for low-income residents based upon Washington, D.C.'s program.²⁷³

Audubon argues the Council should consider a tier structure that builds toward increasing reliance of local, distributed, and resilient renewable energy resources.²⁷⁴

Vote Solar + 350 NO recommend that “renewable resilience projects,” including renewable microgrids, solar + storage on individual residences and businesses, be given top preference,

²⁶⁷ AAE Comments at 12.

²⁶⁸ AAE Comments at 12.

²⁶⁹ AAE Comments at 13.

²⁷⁰ AAE Comments at 13.

²⁷¹ AAE Comments at 15.

²⁷² AAE Comments at 16.

²⁷³ PosiGen Comments at 6; PosiGen Letter at 1; PosiGen Reply Comments at 4-5.

²⁷⁴ Audubon Comments at 8.

explaining that those resources should be in Tier 1 because they would be used and dispatchable by ENO to enhance its operation of the distribution system.²⁷⁵

SREA recognizes there are benefits to creating “carve-outs” for RPS goals; however, utility-scale solar energy and wind energy resources are significantly lower-cost compared to localized or distributed generation requirements, and importing renewable energy resources from outside the city will likely keep overall ratepayer costs low, and overall RPS programmatic costs in check.²⁷⁶

SREA supports some small level of localized solar power generation as a carve-out, but notes that larger-scale renewable energy projects outside of the City are significantly lower cost, and that localized distributed generation renewable energy resources alone do not inherently guarantee a more resilient local grid system against things like weather and flooding.²⁷⁷

SREA states that while several commenters rightfully state that micro-grid and energy storage devices would improve resiliency during dangerous storm conditions, those technologies are typically outside the scope of an RPS, given that batteries can be charged with non-renewable resources, and micro-grids can operate on natural gas or other fossil fuels.²⁷⁸ SREA recommends that micro-grid and energy storage policies and incentives be developed outside this RPS.²⁷⁹

After 2025, EFNO would require that at least 10% of ENO’s load be met through resilient energy resources connected to ENO’s distribution grid and at least 30% with a combination of resilient resources and renewable resources connected to ENO’s distribution grid.²⁸⁰ EFNO would also require that after 2025 at least 10% of ENO’s retail sales be met through resilient resources

²⁷⁵ Vote Solar + 350 NO Comments at 8.

²⁷⁶ SREA Comments at 11-12.

²⁷⁷ SREA Reply Comments at 4.

²⁷⁸ SREA Reply Comments at 4.

²⁷⁹ SREA Reply Comments at 4.

²⁸⁰ EFNO Reply Comments at 8-9.

and renewable resources connected to ENO’s distribution grid that are operated for the benefit of low-income customers.²⁸¹

GSREIA also supports carve-outs for specific renewables, including locally sited renewables, arguing that the RPS policy is an opportunity not only to transition New Orleans to cleaner renewable resources, but also to incentivize job opportunity, workforce training, and innovation throughout the region.²⁸² They support separating resources out by the categories of distribution level, state boundaries, and all remaining deliverable resources.²⁸³

ENO opposes the use of multipliers for RECs because it could create unintended consequences and lead to distorted or increased REC prices for customers.²⁸⁴ ENO recommends that REC purchases should be treated as a fuel cost and recovered through the fuel adjustment clause.²⁸⁵ The Advisors note, however, that to the extent that the Council wishes to prioritize certain resources under the RPS without creating a mandatory carve-out, providing a multiplier would give such resources an economic advantage in RPS compliance, meaning that ENO could satisfy the RPS requirement with fewer kWh of a more desirable resource at a lower cost, which should result in ENO choosing the preferred Tier 1 resource without increased costs to customers.²⁸⁶ The Advisors argue that while some parties might perceive this as an economic distortion, what it allows the Council to do is to give a high-priority resource an economic advantage that would ensure that if it gets “close enough” to being competitive it can be included without negative bill impacts to customers.²⁸⁷ The Advisors note, that if extensively utilized, such multipliers could reduce the overall number of kWhs from renewable resources, but it should result

²⁸¹ EFNO Reply Comments at 9.

²⁸² GSREIA Reply Comments at 3.

²⁸³ GSREIA Reply Comments at 3.

²⁸⁴ ENO Reply Comments at 15.

²⁸⁵ ENO Reply Comments at 15.

²⁸⁶ Advisors Report at 21.

²⁸⁷ Advisors Report at 21.

in the more desirable resources being chosen, so the resources put into tiers with multipliers should be carefully selected to ensure that the overall value of prioritizing those resources offsets the slightly lower number of carbon emitting kWhs offset.²⁸⁸ The Advisors explain that this type of adjustment would allow the Council to take into consideration the value of local jobs created, or local benefits from the reduction of emissions within Orleans Parish.²⁸⁹

The Advisors generally prefer to prioritize resources for compliance purposes through the use of multipliers rather than the use of carve-outs because a carve-out that requires that a specific amount of a certain type of resource be added to the portfolio without regard to the cost of that resource could increase rates.²⁹⁰ The Advisors argue that successful use of a multiplier would allow high value resources to be added when they are acceptably close to lower value resources in cost, but would not cause them to be added “at any cost.”²⁹¹ They also argue that use of a multiplier rather than a carve-out would, as some parties note, potentially reduce the overall amount of resources acquired, but cause the resulting portfolio to have a higher percentage of the high value resources.²⁹²

- d. Should the Council consider adopting a method of encouraging local renewable resources, such as by providing ENO with greater credit toward meeting the RPS requirement for local resources than for remote resources?*

²⁸⁸ Advisors Report at 21-22.

²⁸⁹ Advisors Report at 22.

²⁹⁰ Advisors Reply Comments at 10.

²⁹¹ Advisors Reply Comments at 10.

²⁹² Advisors Reply Comments at 10.

SREA states that creating additional requirements beyond a competitive bidding process will increase costs, however, such costs may be justifiable based on externalized non-energy benefits, such as local economic growth or resiliency.²⁹³

C2ES notes that New Orleans may wish to use its RPS mandate to help develop in-state renewable resources and recommends that an economic study be conducted to determine realistic targets for development of wind and solar for consumption in New Orleans using a geographic information system filter to inform the suitability of any specific RPS carve-outs (such as 10% solar PV).²⁹⁴ C2ES also recommends that to “lock in higher levels of clean energy earlier, the city should consider expanding the RPS to a CES.”²⁹⁵

AAE suggests that the Council consider at least three geographic delineations, the first is within the city limits (on the distribution level), the second is within state boundaries, and the third is “all remaining deliverable resource.”²⁹⁶

PosiGen supports adopting Washington, D.C.’s tiered compliance system, with Tier 1 being locally sited generation, certified solar thermal, energy efficiency, demand response, and low-income programs; Tier 2 being renewable resources located in Louisiana; and Tier 3 being renewable resources outside Louisiana.²⁹⁷ PosiGen proposes that Tier 1 be 50% of the target and that Tier 2 be 25%.²⁹⁸ PosiGen proposes that Tier 1 be given a multiplier of 2, Tier 2 be given a multiplier of 1.5 and that Tier 3 should receive a multiplier of 1.25.²⁹⁹

SREA discourages the creation of multiple Tiers based “in Louisiana” or “in MISO” because excluding or disincentivizing non-Louisiana and non-MISO resources may increase costs

²⁹³ SREA Comments at 12.

²⁹⁴ C2ES Comments at 4.

²⁹⁵ C2ES Comments at 4.

²⁹⁶ AAE Comments at 12-13.

²⁹⁷ PosiGen Comments at 4-6.

²⁹⁸ PosiGen Comments at 5.

²⁹⁹ PosiGen Comments at 8.

to New Orleans, therefore, SREA recommends that all renewable energy resources not fulfilling the local (in New Orleans) carve-out be allowed to bid into a competitive solicitation.³⁰⁰ Then, they argue, the City Council would be allowed to evaluate all potential projects based on cost and potentially other metrics developed in the future.³⁰¹ SREA argues that geographic and technological diversity of renewable energy resources helps balance power production and larger solar facilities outside of the City are able to optimize power production and include “tracking” systems to reduce cost and boost power production.³⁰² SREA explains that during large storm events, solar power resources tend to reduce power output due to clouds, while wind energy facilities tend to have higher levels of power production due to higher wind speeds, while solar power resources generally generate higher levels of power during the summertime and afternoons, whereas wind power resources generally are at peak performance during wintertime and night.³⁰³

The Advisors support consideration of a competitive process for RPS fulfillment and note that the Council is currently considering rules for ENO RFPs in Docket No. UD-18-05.³⁰⁴

3. How should the RPS standard be enforced, should the Council consider a penalty or Alternative Compliance Payment structure?

ENO proposes a voluntary standard with no enforcement provision or penalty mechanism.³⁰⁵ ENO opposes an alternative compliance payment (“ACP”) as unnecessary where, as in New Orleans, the regulator has authority over the utility’s resource planning process.³⁰⁶ Air Products argues that to the extent the Council adopts an RPS with a required target, the Council should review compliance on an annual basis, and if ENO is found to be out of compliance, the

³⁰⁰ SREA Reply Comments at 5, SREA Comments on Advisors’ Report at 3.

³⁰¹ SREA Comments on Advisors’ Report at 3.

³⁰² SREA Reply Comments at 5.

³⁰³ SREA Reply Comments at 5.

³⁰⁴ Advisors’ Reply Comments at 31.

³⁰⁵ ENO Comments at 2.

³⁰⁶ ENO Comments at 14.

Council should initiate a docket with an opportunity for intervention and discovery to evaluate the non-compliance and determine whether it was the result of reasonable and prudent decision-making, and if it was reasonable and prudent, a penalty should not be imposed.³⁰⁷

Air Products also argues that the Council cannot determine the prudence of any compliance plan or approve changes to a plan without a litigated proceeding with the opportunity for discovery, testimony and a hearing.³⁰⁸

Air Products requests that ENO be required to make two separate filings -- one, a report filed by April 1 of each year on its achievement of its RCPS goal for the prior calendar year and two, a plan filed by June 1 of each year for how ENO will achieve RPS compliance for the next calendar year. Both the report and the plan should be filed in a docketed proceeding, and there should be opportunity for intervention and discovery on each filing. For the report, there should also be a process for addressing any potential disputed issues through a hearing procedure.³⁰⁹ The Advisors agree as to the annual report on the achievement of the goal for the prior calendar year and a plan for the next calendar year, but as is discussed above, suggest that the forward-looking RCPS compliance plan could be filed every three years and be informed by the analyses conducted in the IRP process.³¹⁰

Air Products makes several suggestions regarding RPS compliance payments and costs for purposes of observing the cost cap.³¹¹ The Advisors indicated in our Reply Comments that several of Air Products' comments were worthy of further discussion in a subsequent phase of this proceeding once the Council has issued its guidance on which RPS alternative it intends to

³⁰⁷ Air Products Comments at 3.

³⁰⁸ Air Products Reply Comments at 10.

³⁰⁹ Air Products Comments at 5-6.

³¹⁰ Advisors Reply Comments at 32.

³¹¹ Air Products comments at 6 and 8.

adopt.³¹² Subsequent to these filed Comments, in Resolution R-20-104, the Council provided guidance in selecting an RCPS alternative with direction regarding specific issues to be explored by the parties in the docket and many of Air Products' comments were discussed and given further consideration.

PosiGen supports an annual compliance report requirement such as that filed under Washington, D.C.'s RPS rules.³¹³

PosiGen also supports the use of an ACP paid into a public purpose fund for investment into locally sited renewables.³¹⁴ PosiGen strongly urges that the ACP not be recoverable in rates, otherwise it will not be an actual financial non-compliance penalty for the utility.³¹⁵

Audubon recommends that the Council install performance-based regulation measures such as increases or reductions in return on equity, regulatory flexibility and others to enforce the RPS.³¹⁶ Audubon states it agrees that an ACP mechanism may not be ideal for a city-based RPS and urges the Council to also evaluate and consider the adoption of penalties to ENO's return on equity.³¹⁷

AAE states that an ACP can help keep the costs of compliance to a manageable level by effectively becoming the ceiling for the REC price, and by extension, the ceiling for compliance costs -- if REC prices are too high, utilities can simply pay the ACP.³¹⁸ AAE recommends separate ACPs be set for each tier of resources.³¹⁹

³¹² Advisors Reply Comments at 32.

³¹³ PosiGen Comments at 8.

³¹⁴ PosiGen Comments at 9.

³¹⁵ PosiGen Reply Comments at 2.

³¹⁶ Audubon Comments at 9.

³¹⁷ Audubon Reply Comments at 8.

³¹⁸ AAE Comments at 16-17.

³¹⁹ AAE Comments at 17-18.

Vote Solar and 350 NO recommend that any Renewable Energy Credit-based accounting system for an R-RPS include an ACP as a backstop, that it differentiate the level of ACP by class of resource to account for the difference in cost of procuring different resources, that it be set high enough to incent the appropriate amount of investment in technology, that it represent a foregone investment in renewable energy and therefore un-fulfilled economic, resilience, and health benefits for ratepayers, and that it not be mutually exclusive with other compliance and enforcement mechanisms.³²⁰

AAE and 350 NO argue that the creation of a public benefits charge should be put in place to benefit local businesses and residents to reduce energy burdens and that the goal of a Public Benefit Fund should not just be to increase market share for local companies, but to also increase prosperity for the City of New Orleans and the availability of true opportunities for residents to become not merely employees of local companies, but entrepreneurs in a home-grown economy that provides consumer options and competition.³²¹

C2ES supports the use of an ACP to enforce the RPS as a common option in use in many states with an RPS, noting that in some states it is recoverable in rates and that some states use it to support future renewable energy deployments and energy efficiency programs.³²²

SREA argues that penalties levied on ENO regarding RPS non-compliance may increase costs to local ratepayers, unless fines are levied against shareholders, and suggests that one option may be a stock option where the City of New Orleans becomes a shareholder and fines are paid to the City in shares of company stock.³²³

³²⁰ Vote Solar + 350 NO Comments at 12-13.

³²¹ AAE + 350 NO Reply Comments on Advisors' Report at 8-9.

³²² C2ES Comments at 4.

³²³ SREA Comments at 12.

The Advisors recommend an annual reporting requirement where ENO reports on its attainment of the target in the prior year and provides its plan for meeting the compliance requirement in the coming year.³²⁴ The Advisors note that they are recommending a cap on expenditures (see more detail below), and the Advisors would recommend that when ENO's compliance report indicates that ENO has not met the target, ENO would be required to demonstrate why its failure to meet the target was prudent, just and reasonable.³²⁵ The Advisors state that if ENO can demonstrate to the Council's satisfaction that it could not meet the target without exceeding the cap or that the resources needed to meet the target could not be procured in a prudent and reasonable manner, ENO would be excused from meeting the target in that compliance year.³²⁶ However, the Advisors recommend, subsequent targets would not be changed, and ENO would have the obligation to "catch up" when it is able to do so without exceeding the cap.³²⁷

The Advisors support a mandatory, enforceable RPS standard.³²⁸ The Advisors generally support a model requiring annual compliance reporting and an opportunity for ENO to demonstrate why any failure to meet the target without exceeding the expenditure cap set by the Council was the result of prudent decision making.³²⁹ The Advisors recognize, however, that it would be unfair to penalize the utility for failing to meet an impossible goal, given proposed constraints; thus, the Advisors recommend that the Council include mechanisms for the Council to provide due process and render a determination that a failure to comply with the RPS standard was imprudent prior to penalizing the utility or disallowing recovery of costs.³³⁰ In addition, the Advisors state, to the

³²⁴ Advisors' Report at 23.

³²⁵ Advisors' Report at 23.

³²⁶ Advisors' Report at 23.

³²⁷ Advisors' Report at 23.

³²⁸ Advisors' Reply Comments at 6.

³²⁹ Advisors Report at 23.

³³⁰ Advisors' Reply Comments at 6.

extent that the Council adopts a standard that must be met through some measure of third party compliance (such as mandating a carve-out for rooftop solar installed on customer rooftops or that resilient microgrids be built on customer property), any enforcement mechanism would need to take into account that the utility cannot actually compel customers to participate in such programs.³³¹ Similarly, the Advisors note that any enforcement mechanism would need to recognize any rate impact cap set by the Council, the Council could not require ENO to spend beyond the cap to comply with the RPS and then prohibit ENO from recovering such costs from ratepayers.³³²

The Advisors state that to the extent that ENO can demonstrate that making the ACP is the least-cost method of complying with the RPS target, ENO should be permitted to recover the payment from ratepayers.³³³ The Advisors state that cost recovery of the ACP should only be denied to ENO where it has been demonstrated that ENO's failure to meet the RPS goal was imprudent - such as where compliance was possible at a lower cost than the ACP.³³⁴ The Advisors explain the Council could then direct that any payments be made to a fund to be used for purposes to further the goal of the RPS target ultimately chosen - whether that be to reduce local carbon emissions to the greatest extent possible or to provide funding to local renewable and energy efficiency projects.³³⁵ The Advisors explain that this structure should also have the result that if the ACP is cheaper than any other method of compliance, ENO would choose to make the payment

³³¹ Advisors' Reply Comments at 6.

³³² As applied in Louisiana, to both the Council and the LPSC, the *Hope-Bluefield* Doctrine means that base rates should allow the utility to recover prudently incurred O&M expenses, taxes, and a fair return on investment that is used and useful in providing utility services. *Gordon v. Council of the City of New Orleans*, 9 So. 3d 63, 73 (La. 2009), (citing *Cent. Louisiana Elec. Co. v. Louisiana Pub. Serv. Comm'n*, 508 So. 2d 1361, 1364-1371 (La. 1987)). See also, *Entergy Gulf States, Inc. v. Louisiana Pub. Serv. Comm'n*, 730 So. 2d 890, 894-895 (La. 1999) (also citing *Central Louisiana Elec. Co. v. Louisiana Public Service Comm'n*, 508 So. 2d at 1365).

³³³ Advisors' Report at 23.

³³⁴ Advisors Report at 24.

³³⁵ Advisors Report at 24.

which could then be used to further the purposes of the RPS, rather than pursuing other options.³³⁶ The Advisors explain it would also have the effect of ensuring that whenever the RPS target is not met, that full amount of expenditures up to the cap are made in that year.³³⁷ The Advisors note that where a standard allowing a broad array of resources to count towards meeting the targets is employed, the ACP is less likely to be invoked than a standard that relies on a limited selection of resources.³³⁸

The Advisors state that alternatively, should the Council determine that it would prefer a penalty mechanism to an ACP, the Council could establish a mechanism whereby if ENO fails to meet a target for a given year, it must appear before the Council and demonstrate why its failure was the product of prudent, just and reasonable decision-making.³³⁹ The Advisors state that to the extent that the Council finds ENO's failure to meet the target to not be prudent, just and reasonable, the Council would then be able to impose a reasonable penalty.³⁴⁰

ENO recommends more simple compliance mechanisms, like those for Energy Smart or those applied in R-18-221.³⁴¹

ENO argues it is inconsistent with Louisiana law for ENO to affirmatively prove the reasonableness and/or prudence of the decisions it makes and the costs it incurs to comply with the Council's mandate, absent any demonstration of imprudence by the Council or anyone else.³⁴²

ENO argues that requiring ENO's compliance with the Council's mandate while prohibiting ENO

³³⁶ Advisors Report at 24.

³³⁷ Advisors Report at 24.

³³⁸ Advisors Report at 24.

³³⁹ Advisors Report at 24.

³⁴⁰ Advisors Report at 24.

³⁴¹ ENO Comments on Advisors' Report at 3.

³⁴² ENO Comments on Advisors' Report at 30.

from recovering the associated costs of complying with the mandate would be arbitrary, unreasonable, and improper under the prudent investment rule.³⁴³

ENO argues the penalty mechanisms also cannot set forth standards that are inconsistent with prior Council decisions, such as the approval of Union Power Block 1 and other fossil resources (i.e., because Council approved UPB1, it cannot require 100% zero emissions by 2050 with zero RECs).³⁴⁴ The Advisors note that 2050 is well beyond the anticipated deactivation of UPB1 that ENO has publicly discussed. Given the anticipated deactivation dates of the various ENO facilities, the Advisors believe there is at least a reasonable chance that ENO will be able to comply with the RPS without having to retire any of its existing fleet early.³⁴⁵

ENO argues the establishment of a fund like a CleanNOLA fund would constitute the imposition of an impermissible tax intended to raise revenue for the subsidization of unspecified projects, as opposed to fees designed to implement a specific utility regulatory program.³⁴⁶ The Advisors are willing to consider specifying that any such fund can only be used for compliance with the RPS standard ultimately adopted by the Council.³⁴⁷

4. What protections should be put in place to protect ratepayers from unreasonable increases in rates due to the RPS?

ENO argues that arbitrary cost caps may not provide sufficient flexibility for meeting Council mandates and that ENO should not be penalized for failing to adhere to cost caps absent a finding of imprudence.³⁴⁸

³⁴³ ENO Comments on Advisors' Report at 30.

³⁴⁴ ENO Comments on Advisors' Report at 31.

³⁴⁵ Advisors' Reply Comments at 36.

³⁴⁶ ENO Comments at 31-32.

³⁴⁷ Advisors' Reply Comments at 36.

³⁴⁸ ENO Reply Comments at 17.

SREA argues that in order to keep RPS costs low, the RPS should be implemented quickly to take advantage of federal tax credits, competitive procurements need to be prioritized, and ENO needs to stop relying on capacity-only resource planning and instead focus on energy-based planning.³⁴⁹

Audubon recommends a comprehensive local integrated resource planning process guided by the 100% RPS goal in order to control costs, as well as a wide range of other tools such as monitoring and reporting, regulatory and public dashboards communicating progress toward goals, customer education, and stimulation of competitive market development opportunities.³⁵⁰

a. What would be an unacceptable level of rate impact resulting from compliance with an RPS?

Air Products argues that to the extent an RPS target is adopted by the Council, it should be subject to a 1% rate cap, such that if acquiring or contracting for the resource being added to satisfy the RPS target would cause rates to serve ENO to increase by 1% or more compared to either not adding the resource or adding another resource that would otherwise be available, the RPS-compliant resource would not be added.³⁵¹

AAE recommends that the Council focus on bill impact rather than on rate impact, and that the Council limit bill impacts related to the RPS by implementing a rate cap, increasing funding to energy efficiency, having a carve-out for low-to-moderate-income (“LMI”) resources, weaning ENO off of market purchases and above market-price contracts with its affiliates in favor of local sources or buying competitively procured renewables.³⁵²

³⁴⁹ SREA Comments at 12-15.

³⁵⁰ Audubon Comments at 10.

³⁵¹ Air Products Comments at 4.

³⁵² AAE Comments at 22-23.

AAE states that RPS compliance costs have typically been between 1 and 3% with only two states seeing bill impacts above 5% and some being below 1%.³⁵³

Sierra Club is open to mechanisms for cost containment, provided they are appropriately crafted.³⁵⁴

Audubon argues that the costs of global warming and climate change adaptation dwarf any reasonably expected costs associated with a carefully crafted and well-managed decarbonization strategy.³⁵⁵

PosiGen would support a maximum bill charge of \$2 per month for residential customers not to exceed 5% of the total bill, \$20 per month for small commercial customers not to exceed 2% of the total bill and \$200 per month for large commercial and industrial customers not to exceed 1% of the total bill.³⁵⁶

PosiGen also suggests the Council consider waiving the recovery from low-income households and capping administrative costs in the 5-8% range.³⁵⁷

PosiGen argues that in the consideration of costs, the total cost of each resource, including spillover costs, costs like climate impacts, air pollution, water use and others should be considered.³⁵⁸

PosiGen supports the creation of a Public Purpose Charge based on kWh-retail sales and allowing organizations that work with low-income households to broker the funds for qualifying participants.³⁵⁹

³⁵³ AAE Comments at 23-24.

³⁵⁴ Sierra Club Intervention at 7.

³⁵⁵ Audubon Comments at 10.

³⁵⁶ PosiGen Comments at 10.

³⁵⁷ PosiGen Comments at 10.

³⁵⁸ PosiGen Letter at 1-2.

³⁵⁹ PosiGen Comments at 10.

Vote Solar and 350 NO recommend a rate cap of \$1 per month for residential customers and \$10/month for all non-residential customers.³⁶⁰ They also recommend that not more than 7.5% of all individual program costs should be related to administration.³⁶¹

The EFNO Coalition propose that low income customers should be exempt from paying any costs associated with RPS compliance.³⁶² ENO points out that, depending upon the definition of “low income” employed, this could result in as much as 30% of residential customers being exempt from paying for the RPS compliance.³⁶³ GSREIA agrees with AAE’s proposal that all low-income customers be exempted from the costs of compliance with an RPS mandate and, like SREA, urges the Council to act quickly to take advantage of federal tax credits.³⁶⁴ GSREIA also supports the recommendation for a cap on administrative costs for administering the RPS of 5-8%.³⁶⁵

The Advisors recommend a cap on ENO incremental expenditures to comply with the RPS of 1% of total retail revenues.³⁶⁶ Based on the Advisors’ estimate of ENO’s current total retail revenues of approximately \$609.7 million, the Advisors anticipate this would allow incremental expenditures by ENO of approximately \$6.1 million per year, which would increase as ENO’s total retail revenues increase over time.³⁶⁷ While the specific impact on particular rate classes of an increase of 1% of ENO’s total retail revenues would vary depending on the cost allocation mechanisms approved by the Council in the rate case, the Advisors estimate that the customer bill impact would vary between 1.05% for the class with the greatest impact and 0.86% for the rate

³⁶⁰ Vote Solar + 350 NO Comments at 14.

³⁶¹ Vote Solar + 350 NO Comments at 15.

³⁶² AAE Comments at 20.

³⁶³ ENO Reply Comments at 17.

³⁶⁴ GSREIA Reply Comments at 5.

³⁶⁵ GSREIA Reply Comments at 5.

³⁶⁶ Advisors’ Report at 27.

³⁶⁷ Advisors’ Report at 27.

class with the lowest impact, except for the Lighting rate class, which would only experience a 0.28% increase.³⁶⁸ The cap would apply to incremental expenditures -- meaning the difference between what ENO would have otherwise spent to meet the requirements of its load and what it spent to meet the requirements of its load in a manner that complies with the RPS.³⁶⁹

The Advisors would not envision that any of ENO's currently existing or already approved resources would count toward this limit, since they were in place prior to the establishment of the RPS and although they may be counted toward compliance, they are not true "incremental" costs because they will go forward even if the Council decides not to adopt an RPS at all.³⁷⁰ The Advisors explain this would also include the Energy Smart program budgets in pursuit of the Council's pre-existing 2% goal.³⁷¹ To the extent that ENO determined in any given year that the most cost-effective way to comply with the RPS would be to invest in the Energy Smart program beyond the Council-approved budget to make the 2% DSM goal, then ENO's Energy Smart costs above the approved budget would count toward the RPS expenditure cap, but the Council-approved Energy Smart budget would not.³⁷² If the Council decides to implement such a cap, more input will be needed from the parties regarding how best to accurately count "incremental" costs for various types of resources for the purposes of compliance with the expenditure cap.³⁷³

The Advisors support a firm cap on the ratepayer impact, whether it be in the form of a net bill impact limit or a net expenditure limit.³⁷⁴ The Advisors state that if there is no limit on the amount of costs ENO must incur to comply with the RPS standard adopted by the Council, there

³⁶⁸ Advisors' Report at 27.

³⁶⁹ Advisors' Report at 27.

³⁷⁰ Advisors' Report at 27.

³⁷¹ Advisors' Report at 27.

³⁷² Advisors' Report at 27.

³⁷³ Advisors' Report at 27.

³⁷⁴ Advisors' Reply Comments at 8.

is a possibility that compliance would cause rates to increase to an unacceptable level.³⁷⁵ The Advisors recommend that such a limit be constructed to apply to net ratepayer impact, meaning that the cap applies only to costs that ENO incurs solely to comply with the RPS.³⁷⁶ This would mean, for example, that if ENO has a need to add capacity or energy to serve its customers, and it chooses to add a more expensive resource rather than a less expensive resource because the more expensive resource would allow it to comply with the RPS standard, then the portion of the costs subject to the cap is the difference between the more expensive resource chosen and the less expensive resource that could have been used to meet the capacity need if the RPS standard were not in place.³⁷⁷

b. If a limit on rate impact is established, how should it be structured -- as a flat cap, as an Alternative Compliance Payment structure, or through some other structure?

AAE states that there are four common types of cost containment, (i) a renewable energy fund cap which sets a pre-determined limit to the amount of money available to fund renewable energy projects; (ii) a renewable energy contract price cap that limits the price of contracts; (iii) an ACP, which is the most common form and allow a utility to make a payment rather than retiring RECs which effectively sets a REC price ceiling; and (iv) a rate/bill impact or revenue requirement cap, the second most common form which is often complex and ambiguously defined.³⁷⁸ AAE also argues that income qualified customers should be exempt from an RPS rider.³⁷⁹

³⁷⁵ Advisors' Reply Comments at 8.

³⁷⁶ Advisors' Reply Comments at 8.

³⁷⁷ Advisors' Reply Comments at 8.

³⁷⁸ AAE Comments at 25-26.

³⁷⁹ AAE Comments at 27.

C2ES notes that cost containment mechanisms like cost caps can be explicitly stated in RPS legislation and can state an amount (typically a percentage) by which customer bills may not increase due to the RPS, thereby limiting a utility's expenditures.³⁸⁰

GSREIA supports either a penalty or an ACP with funds from such measures going into a "green fund" to be used to finance renewable energy projects.³⁸¹

The EFNO Coalition also proposes an elaborate "cost cap" mechanism in their proposed R-RPS that does not actually cap the utility's expenditures.³⁸² Rather than a mechanism where a cost cap is established and expenditures beyond the cap are presumed imprudent, and not eligible for recovery from customers, it sets forth a limit on what can be collected from customers in the year the costs are incurred and allows ENO to amortize the remaining costs it incurs over a twenty-year period.³⁸³ The Advisors argue this would allow R-RPS compliance at any cost, which, given ENO's analysis that compliance with a 55% RPS by 2033 could raise its rates by as much as 30% is a significant concern.³⁸⁴ The Advisors state that the overall package of the R-RPS proposed by EFNO ensures that ENO must choose from a limited number of relatively high cost resources for compliance, in a manner that would require ENO to replace some of its existing zero-carbon resources with these high-cost resources (ENO cannot reach 55% renewables by 2033 without deactivating at least some portion of its nuclear fleet, which currently provides 56.9% of its energy) and puts no limit on the level of costs ENO would be required to incur in order to comply.³⁸⁵ The Advisors state they are deeply concerned that this would result in significant rate increases with no mechanism in place by which the Council can oversee the level of expenditures.³⁸⁶

³⁸⁰ C2ES Comments at 5.

³⁸¹ GSREIA Reply Comments at 4.

³⁸² EFNO Reply Comments Appendix A at Sec. 14.

³⁸³ EFNO Reply Comments Appendix A at Sec. 14.

³⁸⁴ Advisors' Report at 26.

³⁸⁵ Advisors' Report at 26.

³⁸⁶ Advisors' Report at 26.

The Advisors also recognize ENO's concerns that an annual cost cap would limit its flexibility in acquiring resources, and that it may be prudent for ENO to make a large expenditure in a single year that meets the RPS requirements for several years.³⁸⁷ To that end, the Advisors would recommend that the Council's rule retain the flexibility for ENO to propose and the Council to approve a compliance plan that meets the target for a block of years that observes the cost cap and the targets for the total block of years without being required to comply with the particular target and cost cap for any specific year within that block of years.³⁸⁸ Thus, if an attractive opportunity arises for an investment in a larger project, ENO should be able to propose it and the Council to consider it and render a decision as to whether it is a prudent, just and reasonable method of compliance with the Council's RPS targets.³⁸⁹

The Advisors are concerned about the impacts of an RPS on low income customers, but rather than creating an elaborate program to provide incentives for low income customers to put rooftop solar on their homes in the hope that the bills of the participating low income families would be reduced and those families could have the benefits of renewable power, the Advisors generally prefer a model that prevents electricity rates from skyrocketing due to an RPS and increases the percentage of renewable power in ENO's portfolio that all customers, including all low income customers (not just those low income customers participating in a rooftop solar program), receive.³⁹⁰

Other Comments

In Resolution R-19-109, the Council also invited the parties to comment upon any other topic they deemed to be relevant to the Council's consideration of an RPS.

³⁸⁷ Advisors' Report at 28.

³⁸⁸ Advisors' Report at 28.

³⁸⁹ Advisors' Report at 28.

³⁹⁰ Advisors' Reply Comments at 9-10.

Many parties filed comments regarding the danger of, and New Orleans' particular vulnerability to, climate change, further emphasizing the need identified by the Council for the City to respond to the climate change crisis.³⁹¹

The Advisors state that there seems to be general consensus that it would be appropriate to incorporate the RPS into the IRP process to some extent. While parties disagree on precisely how the IRP and RPS should be integrated and whether or not the IRP process should be modified, it does appear that there is a degree of general agreement that some level of integration of the RPS into the IRP is desired.³⁹² The Advisors agree that greater consideration should be given to the interaction between the IRP process and RPS regulations.³⁹³

ENO proposes that the Council use the IRP to evaluate the path to long-term decarbonization goals.³⁹⁴ ENO argues that the Council should use IRP to evaluate long-term goals and the means for achieving them.³⁹⁵ ENO also recommends more simple compliance mechanisms, more like Energy Smart or R-18-221.³⁹⁶ While the Advisors disagree that the long-term RPS goals should be set through the IRP, the Advisors do believe that the analyses performed in the IRP could inform ENO's RPS compliance plan, and therefore, rather than filing an annual plan for complying with the IRP, the Advisors are now suggesting that, as is done with the Energy Smart program, once the IRP analyses have been completed, ENO develop and file with the Council an RPS implementation plan covering at least the next three-year period that is informed by the IRP analyses.

³⁹¹ See, e.g., AAE Comments at 2-3, 350 NO Comments on Advisors' Report at 1-3, 350 NO Reply Comments at 1-4; Audubon Comments at 2-3.

³⁹² Advisors' Reply Comments at 2-3. See generally, ENO Comments on Advisors' Report at p. 3 and Intervenor Group Comments on Advisors' Report at 6.

³⁹³ Advisors' Reply Comments at 3.

³⁹⁴ ENO Comments on Advisors' Report at 11.

³⁹⁵ ENO Comments on Advisors' Report at 3.

³⁹⁶ ENO Comments on Advisors' Report at 3 and 20.

PosiGen states that ENO should be barred from adding any new fossil-fired generation units after 2022 and not model such units in the IRP process, that only resources permitted in the RPS should be allowed to be modeled in the IRP process.³⁹⁷

The EFNO Coalition, some of whose members participated in the recent rulemaking to change the Council IRP Rules would now change those IRP Rules through this RPS proceeding without notice or opportunity for other parties interested in the IRP Rules to object or comment, which would lack transparency and would not afford sufficient process to parties with an interest in the IRP Rules.³⁹⁸ Similarly, SREA, who did not participate in the recent IRP Rules rulemaking docket, advocates for changes to the IRP Rules.³⁹⁹ The Advisors do not believe it is necessary or appropriate to modify the Council's IRP Rules through this RPS rulemaking docket,⁴⁰⁰ because the IRP rules currently require ENO to develop at least one Planning Strategy that reflects known regulatory policy goals of the Council, which would include whatever RPS is adopted by the Council.⁴⁰¹ Thus, modification of the IRP Rules to accommodate the output of the RPS rulemaking is not necessary.⁴⁰²

The Advisors recommend that the Council consider the possibility of using a structure for the RPS that is similar to the Energy Smart program, where, once the IRP modeling (which is required to produce at least some resource portfolios that accomplish the Council's regulatory goals as IRP planning strategies) is complete, ENO files an Implementation Plan for the next three program years of Energy Smart which details the program design, budgets, and kWh savings goals.⁴⁰³ ENO then files annual compliance reports indicating its progress toward achieving the

³⁹⁷ PosiGen Comments at 10.

³⁹⁸ EFNO Reply Comments, Appendix A at Sec. 3.

³⁹⁹ SREA Comments at 14-15.

⁴⁰⁰ Advisors' Report at 28.

⁴⁰¹ Electric Utility Integrated Resource Plan Rules of the Council of the City of New Orleans, Section 7.D.3

⁴⁰² Advisors' Report at 29.

⁴⁰³ Advisors Reply Comments at 7.

Council's goals, the utilization of the authorized budgets and general performance of the plan.⁴⁰⁴ While that particular structure would likely need to be adjusted to accommodate the specific RPS standard ultimately adopted by the Council, the Advisors suggest that the basic model of requiring ENO to periodically file an RPS implementation plan for a multi-year, near-term period informed by the outcome of the IRP modeling, and then to file annual compliance reports detailing progress toward the Council-set goals, is a workable structure that could be adapted and employed for RPS purposes.⁴⁰⁵ To be clear, however, unlike the Energy Smart program, the Advisors did recommend that the long-term goals of the RPS program be set forth by the Council in adopting its RPS standard, rather than developed through IRP modeling, which is generally designed to consider several different planning strategies such as those that would prioritize least cost options over emissions-free options.⁴⁰⁶

A significant number of the states that have adopted an RPS have also modified that RPS over the years to change the targets or to adjust the resources that are permitted for compliance.⁴⁰⁷ While the Advisors would recommend that the basic structure of the RPS be generally stable enough to allow for prudent long-term planning, the Advisors also recommend that the Council consider adding a provision to any RPS that requires periodic reassessment of the targets as informed by the progress made toward existing targets, rate and customer impact, and any market or industry developments that might indicate it would be prudent to make adjustments to the RPS.⁴⁰⁸

⁴⁰⁴ Advisors Reply Comments at 7.

⁴⁰⁵ Advisors Reply Comments at 7.

⁴⁰⁶ Advisors Reply Comments at 7.

⁴⁰⁷ Advisors' Reply Comments at 6.

⁴⁰⁸ Advisors' Reply Comments at 6-7.

Finally, while the Advisors would recommend that the Council adopt a rule that is flexible enough to continue to function properly through various market conditions and technological developments, the Advisors nevertheless recommend that the Council periodically review the RPS policy and evaluate whether any adjustments need to be made.⁴⁰⁹ The EFNO Coalition also attempted to modify the Council's NEM Rules through this RPS rulemaking docket by adding new rights for NEM customers, including a provision that would grant NEM customers the right to continue receiving service under the net metering tariff and NEM Rules in effect at the time they apply for net energy metering service for a period of at least twenty years.⁴¹⁰ However, making such a change to the Council's existing NEM Rules without notice or opportunity for affected parties to comment lacks transparency and fails to offer said parties sufficient due process.⁴¹¹ In addition, the proposal that customer-generator facilities not be required to pay additional or separate charges for electric service that would not apply if they were not a customer-generator is made without reference to any information regarding whether such customers require additional services and impose additional costs on the system that would be imposed on non-participating customers if not paid by the customer-generator.⁴¹²

The EFNO Coalition also advocates for the creation of an R-RPS community advisory group with expansive powers that would be funded up to \$50,000 to cover the group's administrative expenses.⁴¹³ The budget for the group would be paid by ratepayers as an incremental cost of RPS compliance.⁴¹⁴ The Council would be required to consult with this group and receive a recommendation from them prior to utilizing revenues from the EFNO's proposed Public

⁴⁰⁹ Advisors' Report at 31.

⁴¹⁰ EFNO Reply Comments, Appendix A at Sec. 8.

⁴¹¹ Advisors' Report at 29.

⁴¹² Advisors' Report at 29.

⁴¹³ EFNO Reply Comments, Appendix A at Sec. 15.

⁴¹⁴ EFNO Reply Comments, Appendix A at Sec. 15.

Purpose Fund to establish a Green Bank.⁴¹⁵ If the EFNO's proposed R-RPS community advisory group recommended it, the Council would be required to consider whether it is necessary to waive the recovery of incremental R-RPS costs from low-income households.⁴¹⁶ The R-RPS community advisory group would also be required to present recommendations to the Council for changes to the recently adopted Community Solar Rules.⁴¹⁷ In addition, the EFNO's R-RPS community advisory group would work with the Office of Supplier Diversity to develop a certification for vendors of renewable energy resources and related services that would qualify as Tier 1 and Tier 2 resources under the EFNO's proposed rule.⁴¹⁸ The R-RPS community advisory group would also consult with ENO on the development of additional financial incentives, grants, and rebates, assignable to a third-party provider (such as a rooftop solar company) to support and develop the utilization of resilient energy resources for certain types of customers and the R-RPS community advisory group would identify geographic zones for which ENO would be required to provide for the equitable distribution of total publicly-funded financial supports or incentives for resilient resources.⁴¹⁹

The EFNO Coalition's proposal is a blatant attempt to re-open several other Council rulemakings (NEM, IRP and Community Solar, in particular) and to revise those rules outside of the normal rulemaking process and without notice to potentially affected parties, and it would delegate an extensive amount of the Council's regulatory authority to an unelected community advisory group with no accountability to the public and give that community advisory group an unprecedented level of control over the Council's Agenda.⁴²⁰ Such a delegation of this level of

⁴¹⁵ EFNO Reply Comments, Appendix A at Sec. 15.

⁴¹⁶ EFNO Reply Comments, Appendix A at Sec. 15.

⁴¹⁷ EFNO Reply Comments, Appendix A at Sec. 12.

⁴¹⁸ EFNO Reply Comments, Appendix A at Sec. 12.

⁴¹⁹ EFNO Reply Comments, Appendix A at Sec. 12.

⁴²⁰ Advisors' Report at 30.

authority to an advisory committee of the Council would be contrary to City Code Section 3-127 regarding the creation of Advisory Committees, which provides:

The Council may appoint advisory committees which shall exist for not more than one year from the date of appointment, but which may be reappointed from year to year. The members of advisory committees shall not be paid; their function shall be limited to counsel and advice, and their expenses, if any, shall be paid from appropriations to the Council. Advisory committees shall have no employees, but the Council may cause its employees to furnish such service as may be needed by said committees.

The Advisors argue that Section 3-127 simply does not allow for the structure proposed by EFNO for its R-RPS Advisory Committee.⁴²¹ The committee could not be proposed for a three-year period, as proposed,⁴²² its role would have to be limited to providing counsel and advice to the Council, meaning that it could not mandate which issues the Council must consider, and its proposed \$50,000 budget could not be paid by ratepayers as an incremental RPS compliance cost.⁴²³ The proposed R-RPS Advisory Group should be rejected.⁴²⁴

PosiGen supports including a “local and diversity” hiring requirement to resources added as a result of the RPS, which could mean a minimum percentage of employees or contract staff that work to construct or maintain a utility-owned Tier 1 resource must reside in Orleans Parish, and that companies that are a Minority Business Enterprise, work with low to moderate income communities and families, or are public benefit non-profits should be given hiring priority.⁴²⁵

The Intervenor Group Comments acknowledge that the R-RPS is not consistent with the Council’s current procedures and rules.⁴²⁶ However, rather than attempt to construct a proposal that fits within the current regulatory structure, they argue that the Council’s currently regulatory

⁴²¹ Advisors’ Report at 31.

⁴²² EFNO Reply Comments, Appendix A at Sec. 15.

⁴²³ EFNO Reply Comments, Appendix A at Sec. 15.

⁴²⁴ Advisors’ Report at 31.

⁴²⁵ PosiGen Comments at 9.

⁴²⁶ Intervenor Group Comments at 4.

structure should be adjusted to fit their model writing, “Implementing the R-RPS means that some procedures must be changed, and rules that might limit the R-RPS might need amendment.”⁴²⁷

The Intervenor Group Comments state that “[t]he Advisors appear to assume that the status quo for utility regulation is the structure in which any RPS must be implemented.”⁴²⁸ The Advisors agree that the Advisors’ Report did assume that the existing Council procedures and City Code would generally continue to apply to utility regulation in New Orleans and would govern the implementation of an RPS standard.⁴²⁹ While the regulatory structure has evolved over time, and it can be expected to continue to evolve to meet new developments in the utility industry, a significant rewrite of the underlying structure of utility regulation was not contemplated in the scope of the rulemaking set forth by the Council in this proceeding.⁴³⁰

Further, to the extent that a proposed RPS standard would violate existing procedures and rules, it is the role of the Advisors to highlight such conflict to the Council such that the Council is made aware of the conflict and can adjust either the proposed RPS standard or the underlying regulations accordingly to resolve the conflict.⁴³¹

AAE goes even further in its final round of comments, arguing that the R-RPS rules should replace cost-of-service regulation with an open-access distribution network incorporating (1) unbundled interconnection and distribution costs; (2) equal access to the distribution network; and (3) open markets mechanisms for competitive clean energy supply and grid services.⁴³² The Advisors argue that such a complete upheaval of the utility regulatory structure in New Orleans goes well beyond the scope of what the Council set forth for consideration in this docket and has

⁴²⁷ Intervenor Group Comments at 4.

⁴²⁸ Intervenor Group Comments at 5.

⁴²⁹ Advisors’ Reply Comments on Advisors’ Report at 13.

⁴³⁰ Advisors’ Reply Comments on Advisors’ Report at 13.

⁴³¹ Advisors’ Reply Comments on Advisors’ Report at 13.

⁴³² Comments of the Alliance for Affordable Energy (“AAE Comments on Advisors’ Report”) at 29, UD-19-01, Oct. 15, 2019.

implications well beyond the adoption of an RPS.⁴³³ The Advisors do not recommend that such a drastic change be made as an action incidental to the adoption of an RPS.⁴³⁴

AAE offers four overarching comments for the RPS rules: (1) resource investment strategies should leverage private capital investments of customers and communities; (2) renewable energy procurement should rely on competitive mechanisms and access to open markets; (3) the RPS should prioritize capital investments that enhance grid resilience and integration of distributed energy resources; and (4) a resilient grid strategy will mitigate ratepayer exposure to investment risk.⁴³⁵ As the Advisors point out, in order to achieve these objectives, however, AAE argues the entire regulatory structure within New Orleans should be overturned.⁴³⁶

AAE argues that the way to leverage private and community investments is to require the distribution system to adhere to open access principles and promote grid services⁴³⁷ and to ensure that competitive market mechanisms be established so that energy customers, DER providers, and community resources can develop and deliver grid service for fair value, including voltage support, load balancing, and enhanced utilization of clean energy resources.⁴³⁸ The Advisors argue that undertaking such an effort would require the Council to establish a comprehensive set of regulations over such sellers of grid services to ensure the stability and reliability of the grid.

The Advisors state that the parties pointing out that the Advisors' Report was premised largely on the assumption that the existing regulatory model will continue in place in New Orleans⁴³⁹ are correct.⁴⁴⁰ As legal and technical Advisors to the Council, advising the Council on

⁴³³ Advisors Reply Comments at 4.

⁴³⁴ Advisors Reply Comments at 4.

⁴³⁵ AAE Comments on Advisors' Report at 9.

⁴³⁶ Advisors' Reply Comments at 21.

⁴³⁷ AAE Comments on Advisors' Report at 10.

⁴³⁸ AAE Comments on Advisors' Report at 12.

⁴³⁹ Intervenor Group Comments on Advisors' Report at 5.

⁴⁴⁰ Advisors Reply Comments at 5.

the legal and technical feasibility and viability of various proposals before it is an inherent part of the Advisors' role.⁴⁴¹ The Advisors have had no indication to date from the Council that a complete overhaul of the Council's regulatory structure is desired, and so have focused on RPS designs that could be implemented and would function within the existing regulatory and legal constructs.⁴⁴²

The Intervenor Group claims that the Advisors' Report does not fully appreciate, and reflect "the value and character of clean, community energy development."⁴⁴³ They go on to write that "CCED resources are an option that provides superior energy economics and economic development."⁴⁴⁴ However, the Intervenor Group has never provided a definition of the term "clean, community energy development" or "CCED" or any sort of analysis or research regarding the energy economics of such resources.⁴⁴⁵

Significantly more information would be needed to make any sort of determination that the energy economics of "CCED" resources are "superior" to any other particular energy resource or whether or not they provide the other local job creation, economic development benefits and energy security claimed in the Intervenor Group Comments.⁴⁴⁶

To exclude any zero-emissions resource now as too uneconomic to be considered at any time over the next 30 years would be premature.⁴⁴⁷ ENO should be encouraged to pursue a least-cost planning method of complying with the RPS adopted by the Council.⁴⁴⁸ To the extent that there is a credible analysis that supports that "CCED" resources do truly offer superior energy

⁴⁴¹ Advisors Reply Comments at 5.

⁴⁴² Advisors Reply Comments at 5.

⁴⁴³ Intervenor Group Comments on Advisors' Report at 5.

⁴⁴⁴ Intervenor Group Comments on Advisors' Report at 5.

⁴⁴⁵ Advisors' Reply Comments at 14.

⁴⁴⁶ Advisors' Reply Comments at 14.

⁴⁴⁷ Advisors' Reply Comments at 15.

⁴⁴⁸ Advisors' Reply Comments at 15.

economics, they should prevail in such a process without the need for a carve-out or multipliers.⁴⁴⁹ The Advisors are not recommending the exclusion of the resources the EFNO Coalition proposed utilizing for their R-RPS proposal, only that other zero-emission resources be included as well.⁴⁵⁰

Audubon takes the position that the existing supply arrangements and pricing for ENO affiliate generation must be fully reevaluated to eliminate any above-market pricing that may currently exist, especially for nuclear generation.⁴⁵¹

PosiGen recommends designing a low-income solar program modeled after the Energy Smart program, which incentivizes upgrades by paying a small percentage of the total cost, arguing that by using ratepayer dollars to incentivize private spending on low-income solar programs instead of ENO-funded programs, then the total cost of the program will be reduced while maximizing the number of families who would directly benefit.⁴⁵² PosiGen supports the creation of an RPS program that would provide an upfront incentive to residential customers who install a new solar system in exchange for crediting ENO the equivalent amount of RECs that the system would be expected to generate over its life.⁴⁵³ PosiGen suggests targeting income-qualified households for a solar incentive program and providing them with larger payments.⁴⁵⁴

PosiGen also encourages the Council to look for other ways to leverage private capital by using innovative financing mechanisms like green bonds, property assessed clean financing, partnering with local financing institutions, and the creation of a local Green Bank with potential funding from the Finance Authority of New Orleans as well as philanthropic and social impact investors.⁴⁵⁵ PosiGen provides examples of rooftop solar incentive programs created in

⁴⁴⁹ Advisors' Reply Comments at 15.

⁴⁵⁰ Advisors' Reply Comments at 15.

⁴⁵¹ Audubon Reply Comments at 3.

⁴⁵² PosiGen Comments on Advisors' Report at 5; PosiGen Reply Comments on Advisors' Report at 3.

⁴⁵³ PosiGen Reply Comments on Advisors' Report at 6.

⁴⁵⁴ PosiGen Reply Comments on Advisors' Report at 6 and 7-8.

⁴⁵⁵ PosiGen Comments on Advisors' Report at 5, PosiGen Reply Comments on Advisors' Report at 9.

Connecticut, New York, Minnesota and California.⁴⁵⁶ PosiGen also suggests that the Council consider partnering with local community development financial institutions which are “100% dedicated to delivering responsible, affordable lending to help low-income, low-wealth, and other disadvantaged people and communities join the economic mainstream.”⁴⁵⁷ PosiGen offers no details, however, on what any partnership or other financing method might look like, whether the Council would be expected provide any funding to such sources as part of such a partnership or where such funds would come from.

PosiGen disputes the characterization of PosiGen and other EFNO members as rent-seeking actors looking for hand-outs from the Council at the expense of New Orleans residents.⁴⁵⁸ PosiGen argues that any incentives created by the Council to foster a robust local renewable energy and energy efficiency market would pass through to PosiGen’s customers via lower monthly lease payments and greater monthly bill savings, not to PosiGen.⁴⁵⁹ PosiGen argues that the Council must recognize and work to address existing social injustices that result in high energy burdens and localized pollution.⁴⁶⁰

PosiGen argues that it is more appropriate to focus on reducing overall bills than on reducing rates, which includes deployment of energy efficiency and rooftop solar.⁴⁶¹

PosiGen argues that the EFNO Coalition R-RPS proposal maximizes local clean energy solutions in the New Orleans Community.⁴⁶²

Comments and Reply Comments on the Advisors’ Report

⁴⁵⁶ PosiGen Reply Comments on Advisors’ Report at 5-6.

⁴⁵⁷ PosiGen Comments on Advisors’ Report at 5.

⁴⁵⁸ PosiGen Reply Comments on Advisors’ Report at 12.

⁴⁵⁹ PosiGen Reply Comments on Advisors’ Report at 12.

⁴⁶⁰ PosiGen Reply Comments on Advisors’ Report at 12-13.

⁴⁶¹ PosiGen Reply Comments on Advisors’ Report at 13-14.

⁴⁶² PosiGen Reply Comments on Advisors’ Report at 21.

Several of the parties responded to the Advisors' Report with comments regarding the merits of the various proposals and options set forth in the report.⁴⁶³ Six of the eight members of the EFNO Coalition, however, continue to maintain that the EFNO Coalition's R-RPS proposal should be adopted as it was proposed by them, and acknowledge that implementing the R-RPS would mean that some Council procedures must be changed, and that certain rules that might limit the R-RPS might need amendment.⁴⁶⁴

ENO argued that the three alternatives set forth in the Advisors' Report would, as proposed, result in higher customer rates than ENO's proposed CES Target with Alternatives 1 and 2 having notably lower cost impacts than Alternative 3.⁴⁶⁵ ENO's analysis shows that the total system average rate impact from 2021-2040 of Alternative 1 would be in the 1%-7% range, of Alternative 2 would be in the 1%-6% range and Alternative 3 in the 4%-16% range.⁴⁶⁶

Six of the eight original EFNO Coalition parties joined to file a set of comments, though it is unclear whether all parties support all comments made in that filing.⁴⁶⁷ The comments from page 10 to page 14 of that pleading appear to be attributed only to Audubon raising doubts as to whether they are supported by the other parties to the pleading.⁴⁶⁸ In addition, comments were filed separately by PosiGen, who clarified that any comments in their separate pleading that are inconsistent with the Intervenor Group Pleading should be considered to prevail over the position taken in the Intervenor Group Pleading.⁴⁶⁹ 350 NO and the AAE also each filed stand-alone

⁴⁶³ Advisors' Reply Comments at 4.

⁴⁶⁴ Intervenor Group Comments on Advisors' Report at 4 and 6.

⁴⁶⁵ ENO Comments on Advisors' Report at 18-19.

⁴⁶⁶ ENO Comments on Advisors' Report at 19 and Appendix C.

⁴⁶⁷ Advisors Reply Comments at 11.

⁴⁶⁸ Advisors Reply Comments at 11.

⁴⁶⁹ Reply Comments of PosiGen Solar ("PosiGen Comments on Advisors' Report") at 1, UD-19-01, Oct. 15, 2019.

comments in addition to participating in the Intervenor Group Pleading, but did not specify which set of comments should prevail in the event of any conflict between them.⁴⁷⁰

EFNO Coalition member DSCEJ neither joined the Joint Intervenor Comments nor filed separate comments.⁴⁷¹

PosiGen previously filed an additional letter on September 23, clarifying its position in its initial reply comments, and yet another grouping of parties - both Intervenor and parties who have not intervened in the case, Audubon, AAE, VoteSolar, 350 NO, The Justice Alliance, Greater New Orleans Housing Alliance, Center for Sustainable Engagement & Development, and Sierra Club (five of whom were part of the EFNO Coalition) filed a letter in support of the two specific issues raised in PosiGen's September 23 letter, (i) consideration of a rooftop solar carve-out for low-income residents; and (ii) evaluation of generation resources using a full analysis and accounting of the total cost of each resource, including spillover costs like climate impacts, air pollution, water use, and others.⁴⁷²

The overall position of the Intervenor Group itself is somewhat unclear. On the one hand, the group continues to urge the adoption of an R-RPS for New Orleans that would require 55% of ENO's retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040⁴⁷³ and argues that the EFNO parties offered their R-RPS proposal as an integrated whole, not as a menu from which portions of the proposal would be selected, or deselected, without an opportunity to consider the implications of such decisions.⁴⁷⁴ On the other hand, the Intervenor Group argues that "[t]he Advisors' proposal of three alternative RPS structures is helpful, but is not at all ready

⁴⁷⁰ 350 New Orleans Reply Comments ("350 NO Comments on Advisors' Report"), UD-19-01, Oct. 14, 2019; and AAE Comments.

⁴⁷¹ Advisors Reply Comments at 11.

⁴⁷² Comments Supporting Consideration of Issues Raised by PosiGen, UD-19-01, Oct. 15, 2019.

⁴⁷³ Intervenor Group Comments on Advisors' Report at 4.

⁴⁷⁴ Intervenor Group Comments on Advisors' Report at 6.

to constitute the sum and substance of choices before the Council. More modeling, analysis, and vetting is absolutely necessary for something as big and important as the RPS for New Orleans. For this reason, we do not offer detailed critiques of the optional RPS approaches offered by the Advisors.⁴⁷⁵ Thus, despite urging that the Council adopt the EFNO Coalition’s proposed R-RPS, which was presented to the Council without any modeling or analysis supporting the proposed standard, the Intervenor Group finds that the options the Advisors present for discussion are too premature to even be commented upon because such unspecified modeling and analysis has not yet been performed.⁴⁷⁶

SREA, having previously participated in the EFNO Coalition, now states that it would prefer a version of Alternative 1 presented in the Advisors’ Report, modified to be more aggressive and to simplify the Tier system to a two-tier system, with Tier 1 resources being inside New Orleans and Tier 2 being resources located outside the City.⁴⁷⁷ SREA recommends that the Council establish a 20%+ by 2023 RPS, ramping up to 60% by 2030 for renewable energy only, and a longer-term goal of 100% clean (zero carbon) energy, create a competitive bidding process for fulfilling the RPS, allow for modest carve-outs for local generation, and require ENO to move beyond capacity-only planning.⁴⁷⁸

Air Products supports a standard that allows ENO to pursue generation resources (via acquisition or contract) that use clean energy (including renewables and other clean energy resources) when there is a need for additional generation and the proposed resource is the lowest reasonable cost resource to meet the need and provide reliability of service.⁴⁷⁹ Based on the

⁴⁷⁵ Intervenor Group Comments on Advisors’ Report at 15.

⁴⁷⁶ Advisors Reply Comments at 12.

⁴⁷⁷ SREA Comments on Advisors’ Report at 4.

⁴⁷⁸ SREA Comments on Advisors’ Report at 2.

⁴⁷⁹ Air Products Comments on Advisors’ Report at 1-2.

alternatives provided in the Advisors' Report, Air Products recommends that if the Council decides to adopt an energy standard for New Orleans, that it adopt Alternative 2, RCPS, with the following modifications: (1) include the Alternative 1 cap for large customers; (2) state the multiplier for Tier 3 resources as 1; (3) separate the compliance and procurement plan annual reports, provide intervention and comment for each; (4) clarify how compliance costs are to be estimated relative to the cap similar to Alternative 1, Section 5.b; (5) clarify ACP language (specific language proposed); (6) clarify how cost recovery and bill impact cap carries forward (language proposed); and (7) add stronger language that the CleanEnergy fund can only be used for RCPS compliance.⁴⁸⁰ While ENO argues that the proposed large customer cap would harm the vast majority of ENO's customers for the exclusive benefit of two customers by shifting a portion of the costs above the cap to other customers,⁴⁸¹ the Advisors stated in our Reply Comments that Air Products' proposal to add a large customer cap to Alternative 2 could be reasonable.⁴⁸² The Advisors also agreed that under Alternative 2, the multiplier for Tier 3 Resources can be stated as 1.⁴⁸³ These issues were further discussed in the technical conferences.

As was noted by several of the parties, the three alternatives included in the Advisors' Report were meant as samples of the potential different forms an RPS could take in order to assist the Council in its consideration of what policy direction it wants to take the RPS, rather than as specific options for the Council to adopt at this time.⁴⁸⁴

The Advisors agree with the general sentiment expressed by the parties that once the Council has chosen a policy direction, and given the parties guidance as to the purpose and goals

⁴⁸⁰ Air Products Comments on Advisors' Report at 2-9.

⁴⁸¹ ENO Comments on Advisors' Report at 26.

⁴⁸² Advisors Reply Comments at 32.

⁴⁸³ Advisors Reply Comments at 32.

⁴⁸⁴ Advisors' Reply Comments at 3.

the RPS should meet, further work will be needed to develop a comprehensive set of regulations to implement the Council's chosen RPS model.⁴⁸⁵ Subsequent to these filed Comments, in Resolution No. R-20-104, the Council did provide guidance by selecting an RCPS based on Alternative 2 in Appendix A of the Advisors' Report, with direction of specific issues to be explored by the parties in the docket.

Comments Submitted after the Adoption of Resolution No. R-20-104

After the Council adopted Resolution No. R-20-104, the EFNO Coalition filed two sets of further comments. The first was the May 11, 2020 EFNO Letter, submitted prior to the first technical conference required by Resolution No. R-20-104, and the second was the June 22, 2020 EFNO Comments filed subsequent to that technical conference.

In the May 11, 2020 EFNO Letter, the EFNO Coalition advocated for a different procedure and set of principles than was set forth in Resolution No. 20-104. In Resolution No. 20-104, the Council directed the Advisors to further develop proposals for a RCPS based on Alternative 2 in Appendix A of the Advisors' Report with (1) a mandatory requirement that ENO achieve 100% net zero emissions by 2040; (2) reliance on RECs purchased without the associated energy for compliance with the standard being phased out over the ten-year period from 2040 to 2050; (3) ENO has no carbon-emitting resources in the portfolio of resources it uses to serve New Orleans by 2050; and (4) a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues. The intentions set forth in the original Alternative 2 draft were:

1. Aggressively pursue reductions to carbon emissions to improve the health and quality of life of the citizens of New Orleans and to reduce the City's impact on climate change, which is an existential threat to the City's security.

⁴⁸⁵ Advisors' Reply Comments at 3.

2. Ensure that the City has a safe and reliable power supply at a reasonable cost and retain as much flexibility as possible to employ a wide range of currently known and yet to be developed zero-emissions energy technologies.

In the May 11, 2020 Letter, the EFNO Coalition requested that the Council adopt the following principles for the UD-19-01 proceeding:

- Mitigate climate change by reducing emissions of carbon dioxide, methane, nitrogen oxide, and flourinated gases.
- Improve air quality by reducing co-pollutants that include particulate matter (PM10 and PM2.5), ammonia, sulfur dioxide, carbon monoxide, volatile organic compounds.
- Lower energy cost burdens to no more than 10% of total household annual income in New Orleans.
- Provide protections, as well as economic and local health benefits, for low-income customers & disadvantages businesses in New Orleans.
- Increase sustainable energy business activity in New Orleans.
- Increase efficiency in New Orleans.
- Increase renewable energy in New Orleans.
- Increase preparedness and improve responsiveness to the impacts of climate change.
- Commit to equity and transparency in process and outcomes.
- Align parallel proceedings (e.g., rate cases, power plant proposals, IRP).⁴⁸⁶

While each of the EFNO Coalition proposed principles is a good objective in the abstract, the more different principles a particular set of regulations seeks to achieve, the more complex it is to design and implement, and the greater the chances that the attempt to implement one principle might conflict with another. Setting forth principles or intent for a particular regulation should attempt to convey priorities that assist in interpretation and implementation of the regulations. The

⁴⁸⁶ May 11, 2020 EFNO Letter at p. 1.

list set forth by the EFNO Coalition would attempt to have the RCPS take on nearly every problem the EFNO Coalition perceives with the Council's current utility regulation, and would create a scattered focus rather than a disciplined effort to achieve a goal. The draft regulations do serve many, if not all of the principles set forth by the EFNO Coalition, but are governed by the specific priorities set forth by the Council in Resolution No. R-20-104 - to aggressively pursue carbon emissions while ensuring safe, reliable, affordable power.

The May 11, 2020 EFNO Letter further requests an entirely different procedure than that set forth in Resolution No. R-20-104. In R-20-104, the Council instructed the Advisors to convene a technical conference to discuss with the parties what modifications might be needed to the Alternative 2 model in order to implement the Council's goals, circulate a revised draft to the parties, convene a second technical conference to discuss the draft and then submit revised draft regulations to the Council for the Council's consideration. The May 11, 2020 EFNO Letter appears to contemplate a very different process and seeks the addition of discovery rights, the creation of a data room (they did not specify who should create such data room) for stakeholders and participants to share documents related to the development of the portfolio goals, a plan for dispute resolution among the parties (including memorialization of dissenting opinions), a comprehensive plan for public engagement, and adoption of a statement of objectives for the rulemaking proceeding agreed to and adopted by the parties.⁴⁸⁷

The Advisors note that there is no requirement for any party to agree to the Advisors' proposed regulations, thus there is no need for dispute resolution among the parties. Further, there is no need for dissenting opinions expressed in the technical conference to be memorialized, because under the procedural schedule, two opportunities exist for the parties to make their own

⁴⁸⁷ May 11, 2020 EFNO Letter at pp. 2-3.

opinions regarding the draft regulations proposed by the Advisors known directly to the Council in writing by filing comments and reply comments regarding the draft. Further, the Council's process is open to any member of the public wishing to participate. This proceeding has been ongoing since March of 2019, the opportunity to intervene and file comments was open to all interested persons, and the Council has received numerous comments and will receive two more rounds of comments as well as the opportunity for the public to appear before the Council and make comments at the Utility, Cable, Telecommunications and Technology Committee and Council meetings where a Resolution considering the RCPS proposal would be considered. Both of the technical conferences held pursuant to Resolution No. R-20-104 were open to the public and conducted via on line videoconference so that all interested parties could participate while remaining safely socially distant during the COVID-19 pandemic. The EFNO Coalition did not provide any detail as to what additional public engagement process they are seeking.

The May 11, 2020 EFNO Letter also requests a transparent process for measuring and reporting benchmarks and progress. Specifically, the EFNO Coalition requests the creation of a Data Platform, such as that operated by Austin Energy to allow the public to view the utility's progress.⁴⁸⁸ The EFNO Coalition reiterated this request in its June 22, 2020 EFNO Comments, arguing that without such a transparent Data Dashboard, the Council and the public are forced to wait until an end of the year report, and potentially until after Entergy complies with data requests in order to unravel details.⁴⁸⁹ The Advisors have reviewed Austin Energy's Data Dashboard.⁴⁹⁰ That dashboard was created pursuant to a city resolution requiring Austin Energy, the municipally-owned utility of Austin, Texas, to publish an annual summary on the performance and costs of its

⁴⁸⁸ May 11, 2020 EFNO Letter at 3.

⁴⁸⁹ June 22, 2020 EFNO Comments at 5-6.

⁴⁹⁰ <https://data.austintexas.gov/stories/s/Austin-Energy-Open-Data-Dashboard/82cz-8hvk>

generation portfolio and planning targets for renewables and energy efficiency.⁴⁹¹ The dashboard provides data reporting in a more consumer-friendly and readily accessible format and is updated as data becomes publicly available.⁴⁹² The data reported is on a calendar year or fiscal year basis. The Advisors believe that it is reasonable to require that the utility maintain an easy to find webpage with a user-friendly interface where it makes available the public versions of all reports and documents related to RCPS and the utility’s carbon emissions that it submits to the Council or any other relevant government agency or public body, and have included such a recommendation in the proposed RCPS.

In the May 11, 2020 EFNO Letter, the EFNO Coalition stated that “[t]here are many existing rules and regulations in New Orleans that also include lists of definitions, including the rules associated with Integrated Resource Planning, Community Solar, etc. The Council’s rules associated with a new energy standard should include standardized definitions that agree with those existing regulations.”⁴⁹³ In response to this comment, the Advisors created a table comparing definitions in the draft RCPS Alternative 2 to definitions in the IRP Rules, Community Solar Rules and NEM Rules so that parties could see the definitions side-by-side and address any inconsistencies. In some cases, one or other of the existing sets of rules incorporated a definition not in the RCPS Alternative 2 draft that the Advisors considered adding to the draft proposed RCPS regulations. However, after the parties reviewed the chart of definitions in the first technical conference, the EFNO parties reversed their position that the “new energy standard should include standardized definitions that agree with those existing regulations” and instead claimed that “Advisors took the position that pre-existing definitions could not be reconsidered, expanded, or

⁴⁹¹ <https://data.austintexas.gov/stories/s/Austin-Energy-Open-Data-Dashboard/82cz-8hvk>

⁴⁹² <https://data.austintexas.gov/stories/s/Austin-Energy-Open-Data-Dashboard/82cz-8hvk>

⁴⁹³ May 11, 2020 EFNO Letter at 3.

adjusted to account for RPS goals achievement and structure,”⁴⁹⁴ arguing that “[t]his ‘least common denominator’ approach to certain key definitions will unreasonably constrain the RPS process and frustrate Council goals from the very start.”⁴⁹⁵ This is a gross mischaracterization of the Advisors’ position. The Advisors were responding to the EFNO Coalition’s May 11, 2020 comment that definitions in RCPS should be standardized with those in existing regulations. The position the Advisors took was actually that it is inappropriate, at a late stage of an RCPS rulemaking position, to change definitions contained in the IRP Rules, the NEM Rules, and the Community Solar Rules, when there had been no notice to the public and interested parties that those sets of rules might be amended through the RCPS proceeding and no opportunity for parties impacted by changes to those rules to intervene in this proceeding and make their opinions known. To go so far beyond the issues set forth in the Resolution establishing this rulemaking docket with no public notice and opportunity to comment would be a violation of due process and of the principle of transparency of government that the EFNO Coalition so often claims to support. The June 22, 2020 EFNO Coalition Comments make clear that the intent of the EFNO Coalition in arguing that the definitions of multiple sets of the Council’s rules should be standardized was to “backdoor” changes to several other sets of regulations without proper notice to the public and due process to parties who have an interest in the definitions included in the IRP Rules, the NEM Rules and the Community Solar Rules.

In the June 22, 2020 EFNO Comments filed with the Council, the EFNO Coalition made several comments regarding the Alternative 2 model included in the Advisors’ Report well after the Council’s October 1, 2019 deadline for comments and the Council’s October 15, 2019 deadline

⁴⁹⁴ June 22, 2020 EFNO Comments at 4.

⁴⁹⁵ June 22, 2020 EFNO Comments at 4.

for reply comments on the Advisors' Report.⁴⁹⁶ The EFNO Coalition heavily criticized the Advisors for not including energy storage in the definition of Demand-Side Resources and Distributed Energy Resources in the Alternative 2 model and argued that energy storage resources are "absolutely critical to enabling cost-effective deployment of distributed generation, electric vehicles (which are themselves a kind of energy storage), demand response, load management, and other DERs" and that "energy storage is a fundamental tool for improving reliability, especially on the outage-prone ENO system, and is an essential resource for improving system resilience."⁴⁹⁷ Again, the EFNO Coalition demonstrates that its agenda is to advance goals other than the aggressive carbon emissions reductions that the Council has set forth as its goal for the RCPS.

While energy storage is a highly valuable system resource that can indeed improve reliability and support distributed generation deployment, there is nothing inherent about energy storage resources that reduce carbon emissions. Energy storage resources do not generate clean energy. Rather, they can be charged with electric energy from any resource - clean or not - and be discharged when needed. There are methods and strategies of using energy storage resources that have the potential to reduce carbon emissions - for example, using them to store excess energy generated by a renewable resource in order to deploy it at a later time to avoid deploying a carbon-emitting resource. However, there are also uses of energy storage resources that do not reduce carbon emissions, such as when homeowners put a home battery on their house charged with electricity from the utility and use it to power their house during blackouts. Under the proposed RCPS, all resources included in the definition of Distributed Energy Resource would automatically be given Tier 2 credit. However, whether or not energy storage actually reduces carbon emissions

⁴⁹⁶ Resolution No. R-19-109.

⁴⁹⁷ June 22, 2020 EFNO Coalition Comments at 4.

and thus, deserved RCPS credit depends upon the manner in which the energy storage resource is deployed, providing it with an automatic Tier 2 credit would be inappropriate. After extensive discussion with the parties regarding energy storage in the technical conferences, the Advisors recommend that the Council allow energy storage to be used for RCPS compliance where the Utility can make a showing to the Council that the energy storage resource is, in fact, being used to reduce carbon emissions, rather than having energy storage automatically included in one of the compliance tiers.

The June 22, 2020 EFNO Coalition comments also criticized the Alternative 2 draft for failing to include a definition of “Net Zero.”⁴⁹⁸ The Advisors have included a definition of Net Zero in the proposed RCPS regulations.

In the June 22, 2020 EFNO Coalition Comments, the EFNO Coalition opposes both banking of RECs and averaging of renewable energy achievements and emissions reductions as being antithetical to long term climate action goals and discouraging over-achieving on the goals.⁴⁹⁹ The EFNO Coalition argues that “[b]anking epitomizes the Advisors’ structural approach to incentivizing the minimal level of performance.”⁵⁰⁰ The EFNO Coalition, however, prefers to ignore that the Council has set forth a goal that is among the most ambitious in the nation for clean energy achievement, and that the monetary impact of the regulations on customers must be taken into account. While the Advisors would be pleased if the utility is able to “over comply” with the Council’s RCPS without exceeding the budget cap, regulations should be drafted to indicate to the utility the Council’s desired level of performance in the first instance and designed in a manner that the utility can comply with the Council’s regulations through reasonable means. Rather than

⁴⁹⁸ June 22, 2020 EFNO Coalition Comments at 5-6.

⁴⁹⁹ June 22, 2020 EFNO Coalition Comments at 6.

⁵⁰⁰ June 22, 2020 EFNO Coalition Comments at 6.

designing regulations to require minimal compliance but encourage “over-compliance” as suggested by the EFNO Coalition’s comments, it is more effective to design the regulations to require the level of compliance that is desired, as the Advisors have done in the proposed RCPS.

The EFNO Coalition also argue that the Advisors should clarify that unbundled RECs from outside MISO may not be used for compliance purposes.⁵⁰¹ To the contrary, comments received by the Advisors from Air Products at the second technical conference and by email on August 20, 2020, specifically sought clarification that RECs created in the Electric Reliability Council of Texas (“ERCOT”) could qualify under the RCPS. The Advisors believe that in order to best pursue the Council’s goal of reducing carbon emissions associated with ENO’s portfolio of resources used to serve New Orleans as rapidly as possible while keeping electric bills affordable, it would be reasonable to permit certified RECs produced by any generating resource whose electricity would actually be deliverable to New Orleans and be tracked by M-RETS or equivalent to be used for compliance purposes. According to the Advisors’ research, resources in ERCOT could be deliverable into MISO, and thus into New Orleans, and ERCOT RECs could be tracked in MISO, and therefore, should be eligible for RCPS compliance. The Advisors have made this clarification in the proposed RCPS.

In the June 22, 2020 EFNO Coalition Comments, the EFNO Coalition also argues that the use of multipliers sets up “cliffs” along the way when extra credit goes away, particularly in 2040 when both the use of RECs without the associated kWhs also begins phasing out in the original Alternative 2 draft.⁵⁰² Several other parties voiced similar concerns in the technical conferences, and in order to smooth out the “cliff,” the draft RCPS being submitted to the Council now begins earlier the phase out of reliance upon RECs without the associated kWhs and is accomplished

⁵⁰¹ June 22, 2020 EFNO Comments at 7.

⁵⁰² June 22, 2020 EFNO Comments at 7.

through smaller increments. The Advisors continue to believe that it is appropriate to allow the use of multipliers while the goal is to reach “net zero” by 2040, but once net zero has been reached in 2040 and the RCPS progresses toward the goal of achieving true zero in 2050, the focus of the RCPS turns more heavily to eliminating carbon-emitting resources from ENO’s portfolio rather than merely offsetting them, and thus, reliance upon multipliers becomes counter-productive at that point in time and should be eliminated.

The EFNO Coalition also argues that the Alternative 2 model should be clarified so that there is no opportunity to “double count” multipliers for a single measure.⁵⁰³ The revised RCPS includes a provision that clarifies that where a measure might qualify for more than one compliance Tier, it should receive the multiplier for the highest Tier for which it is eligible.

The EFNO Coalition also argues that more attention should be given to LMI customers and on the high energy cost burdens on households that could be alleviated with modifications to Alternative 2.⁵⁰⁴ Specifically, the EFNO Coalition requests that (i) Tier 1 credits be assigned to resources that benefit LMI customers; (ii) waiving RCPS compliance costs for LMI customers; (iii) a requirement that the utility’s spending on and beneficial impacts to LMI customers shall not be less than 100% of the share of the LMI customers as a percentage of the total population in Orleans Parish; and (iv) that the Council consider instituting a simultaneous and parallel development of policy that targets energy burdens in New Orleans including the establishment of a working group during the process to develop recommendations to support New Orleans Low-Income households.⁵⁰⁵ The Advisors note that, as the EFNO Coalition acknowledges, some of these proposals would require significantly more study, including a determination of how to define

⁵⁰³ June 22, 2020 EFNO Comments at 8.

⁵⁰⁴ June 22, 2020 EFNO Comments at 8.

⁵⁰⁵ June 22, 2020, EFNO Comments at 8-9.

LMI customers and how to identify and correctly categorize ENO customers falling into this category.⁵⁰⁶ ENO does not currently have a separate rate class for LMI customers that could, for example, be excluded from paying RCPS compliance costs or used to calculate what percentage of ENO customer base is LMI. Rather, ENO is dependent upon such customers seeking bill assistance or other LMI programming from ENO to identify such customers. Further, while the exact percentage of ENO's customer base that would fall into the as-yet undefined LMI category suggested by the EFNO Coalition is not known, the U.S. Census Bureau reports that approximately 24.6% of New Orleans citizens are living in poverty,⁵⁰⁷ indicating that under the EFNO Coalition's proposal most likely at least a quarter of ENO's residential customers would be exempted from paying for RCPS compliance, which would most likely result in either substantial cost-shifting or a reduction to the RCPS compliance budget. Further, providing subsidies or a higher Tier credit to projects serving LMI customers still only benefits those LMI customers who are able to participate in various programs - for example, LMI customers who do not own their home might be excluded from a rooftop solar program (the Advisors note that LMI customers do already receive preferential treatment for community solar projects under the Community Solar Rules). The Advisors continue to believe that the best way to bring the benefits of clean energy to LMI customers in New Orleans is to aggressively pursue carbon emissions reductions, prioritizing reductions of emissions in Orleans Parish, at the lowest reasonable cost, with a Customer Protection Cost Cap to ensure that the RCPS does not create a significant increase in electricity rates. Being able to provide 100% clean power to all utility customers at the lowest rates reasonably possible should create substantial benefits for LMI customers, whether or not they are able to participate in any particular RCPS project.

⁵⁰⁶ June 22, 2020, EFNO Comments at 9.

⁵⁰⁷ <https://www.census.gov/quickfacts/neworleanscitylouisiana>

The EFNO Coalition also argues that the CleanNOLA Fund is poorly defined and that “alternative compliance payments” into such a fund should not be viewed as an alternative to compliance, but rather a failure to comply with the RCPS.⁵⁰⁸ The EFNO Coalition argues that the fund should not be an incentive to underperform, and that it would be best utilized to provide opportunities for the LMI community to have greater access to resources that lower carbon emissions in Orleans Parish while additionally providing opportunities for workforce development in clean energy sectors.⁵⁰⁹ Meanwhile, Air Products has taken the position in communications with the Advisors that the CleanNOLA Fund should only be used towards meeting the utility’s RCPS compliance requirements.⁵¹⁰ The Advisors agree that further instruction from the Council will be needed as to the administration of the CleanNOLA Fund. The proposed regulations state that the Council will establish the fund for the purposes of fostering the reduction of carbon emissions in Orleans Parish, that it should prioritize projects designed to reduce carbon emissions in Orleans Parish (consistent with the intent of the RCPS) and that it should be administered in accordance with the Council’s directives. Thus, after adoption of the RCPS, the Council would still have flexibility to further consider how the CleanNOLA Fund should function. However, contrary to the arguments of the EFNO Coalition, ACPs to the CleanNOLA Fund should not be viewed as a penalty for non-compliance. Under the proposed RCPS, the Council retains its full authority to penalize the utility for noncompliance with the Council’s regulations regardless of the application of the ACP. The purpose of an ACP is to ensure that where the utility has good reason for its failure to comply, such as the unavailability of resources that can be procured through reasonable and prudent efforts, some progress can still be made toward the goal of reducing carbon

⁵⁰⁸ June 22, 2020 EFNO Comments at 9.

⁵⁰⁹ June 22, 2020 EFNO Comments at 9.

⁵¹⁰ Air Products redline sent to Advisors by email on 8/20/22.

emissions in Orleans Parish. If, after providing all parties appropriate due process, the Council were to find that the utility failed to make reasonable and prudent efforts to comply with the RCPS, the Council's regular penalty authority could still be exercised against the utility.

The EFNO Coalition also argues that the Alternative 2 provisions regarding Beneficial Electrification are confusing and troubling and that NEM raises several issues that remain overlooked in the Alternative 2 draft.⁵¹¹ The Advisors note that many of these issues were discussed by the parties in the technical meetings and that the draft RCPS now submitted to the Council includes significant clarification as to these issues.

On July 29, 2020, the Sierra Club communicated by way of email to the Service List in UD-19-01 that it will oppose any use of RECs or similar instruments for RCPS compliance.⁵¹² The Advisors continue to believe that in the early years of the RCPS, and particularly in years where the utility has no need to add capacity in order to serve its customers, the use of RECs purchased without the associated energy could be one method of keeping the costs of RCPS compliance within the customer protection cost cap required by the Council.

With respect to Beneficial Electrification, 350 NO suggested in the second technical conference that a minimum threshold of carbon emissions reductions be established for a measure to qualify as a Beneficial Electrification measure eligible for the Tier 1 multiplier. In an email to the Advisors on August 17, 2020, 350 NO specifically proposed that a minimum per year of 5,000 tons of CO₂ reduction be required and that such measures should meet the standard of reducing 0.56 tons of CO₂/MWh based on information in the Power Master Plan for Sewerage and Water Board. ENO and Air Products opposed this proposal in a filing submitted to the Council on August 21, 2020, arguing that the criteria proposed have no basis in fact or sound carbon emissions

⁵¹¹ June 22, 2020 EFNO Comments at 9.

⁵¹² July 29, 2020 email submitted in Docket No. UD-19-01 by Sierra Club.

reduction policy, and would all but eliminate the ability to use Beneficial Electrification to reduce carbon emissions.⁵¹³

As ENO and Air Products note, setting the minimum at 5,000 tons of CO₂ emissions would eliminate many smaller beneficial electrification projects that would be expected to bring benefits to New Orleans.⁵¹⁴ Although the minimum proposed by 350 NO is too high and would be too much of a deterrent to Beneficial Electrification projects, the Advisors do support including a minimum threshold for Beneficial Electrification in order to avoid a situation where the utility receives a very large compliance credit for only a minimal or nominal reduction in net carbon emissions from a Beneficial Electrification project.

The average MISO marginal emissions rate is approximately 1,200 pounds of CO₂ per MWh.⁵¹⁵ Beneficial Electrification projects replace the existing CO₂ emissions from the project with the utility's MWh at the average MISO marginal emissions rate, and the **net** reduction in CO₂ emissions per MWh results in the clean energy credits earned with the project. To establish a minimum CO₂ emissions threshold for Beneficial Electrification, the existing project CO₂ emissions per MWh less the emissions at the average MISO marginal emissions rate per MWh must result in a **net** emissions rate per MWh that would ensure that the project results in a sufficient net decrease in carbon emissions to be worthy of a Tier 1 multiplier. Since each MWh consumed or produced by a Beneficial Electrification measure results in a CEC earned, a **net** reduction minimum threshold of 1,500 pounds of CO₂ per CEC is required by the proposed RCPS Rules in

⁵¹³ Entergy New Orleans Letter, submitted in Docket UD-19-01 on August 21, 2020 (August 21, 2020 ENO Letter) at 1.

⁵¹⁴ *Id.* at 2-3.

⁵¹⁵ *Marginal Emission Factors Considering Renewables: A Case Study of the U.S. Midcontinent Independent System Operator (MISO) System*, Mo Li, Timothy M. Smith, Yi Yang, and Elizabeth J. Wilson, Environmental Science & Technology 2017. (Expanded Marginal Emissions Factors (the change in emissions (CO₂, SO₂, and NO_x) as a function of change in system generation from emitting and non-emitting sources) For MISO and its subregions (North, Central and South MISO) were presented).

order for a Beneficial Electrification project to receive the Tier 1 multiplier of 1.5. This is based upon applying a 1.25 multiplier to the average MISO marginal emissions rate of 1,200 pounds of CO₂ per MWh to produce a minimum threshold of 1,500 pounds of CO₂ per MWh, which the Advisors find to be appropriate given the significant Tier 1 multiplier applied to Beneficial Electrification projects. Using a minimum **net** reduction of emissions threshold rather than an absolute (fixed value) threshold should serve as less of a disincentive for smaller projects with lower MWhs to be undertaken, and allows the magnitude of the threshold to move with the magnitude of the RCPS Compliance Credits to be earned.

As a notable exception, the proposed RCPS Rules provide that electric vehicle charging equipment is exempt from compliance with the minimum net reduction of emissions threshold. This exemption reflects the difficulty in producing an accurate estimate of pounds of CO₂ per MWh saved from sources of emissions in New Orleans for EV charging stations while acknowledging the probability that the majority of kWhs of electricity used to charge EVs in Orleans Parish will be used to offset vehicle emissions in Orleans Parish, which is a substantial benefit to the Parish.

ENO and Air Products also oppose a proposal made during the technical conference to account for line losses on the transmission and distribution system.⁵¹⁶ The Advisors agree with the arguments made by ENO and Air Products that fully accounting for line losses is not done in the majority of states that measure compliance against retail load, and would significantly complicate compliance calculations and require that the targets also be reconfigured.⁵¹⁷ The Advisors do not recommend that line losses be considered in the RCPS.

⁵¹⁶ Entergy New Orleans Letter, submitted in Docket UD-19-01 on August 21, 2020 (“August 21, 2020 ENO Letter”) at 3-4.

⁵¹⁷ August 21, 2020 ENO Letter at 3-4.

Finally, on August 27, 2020, just one day before the Advisors’ deadline to submit this proposed RCPS to the Council, the EFNO Coalition in yet another configuration filed another set of comments, ensuring that the Advisors would have virtually no time to consider or respond to any of their requests prior to submitting this pleading. This time the EFNO Coalition pleading was signed by only four parties to this proceeding, 350 NO, the AAE, Audubon, and Vote Solar, but added two new signatories who are not, to the best of the Advisors’ knowledge, parties to this proceeding, the Greater New Orleans Housing Alliance and the Union of Concerned Scientists.⁵¹⁸

The EFNO Coalition in its latest configuration heavily criticizes what it believes the Advisors will propose in the instant pleading as providing “off-ramps and extra credit against performance obligations that are unnecessary and/or unfounded,” referring to the use of multipliers to incentivize investment in high-priority resources and to the banking provision designed to allow ENO to hedge against unforeseen cost impacts of the RCPS on ratepayers.⁵¹⁹ Without any foundation in fact, the EFNO Coalition argues that “[m]ore attention has been paid in this process to these standard-weakening mechanisms than on tracking, reporting, and achieving emissions reductions.”⁵²⁰ The EFNO Coalition completely ignores that the Advisors have significantly rewritten and clarified the mechanisms for tracking compliance to ensure that the mechanism is clear and verifiable, clarified that the Tier 1 multiplier will only be granted for a proven net reduction of carbon emissions from an existing source of emissions inside Orleans Parish, added a process for the utility to file a compliance plan with the Council for pre-approval, added a provision requiring ENO to maintain all public information regarding its RCPS compliance and carbon emissions on a user-friendly website, and clarified how the Customer Protection Cost Cap

⁵¹⁸ August 27, 2020 EFNO Letter at 4.

⁵¹⁹ August 27, 2020 EFNO Letter at 3

⁵²⁰ August 27, 2020 EFNO Letter at 3.

functions, among other changes made, and would falsely lead the Council to believe that the only discussions that occurred in the technical conferences were around making the multipliers more expansive (which has not been done - the discussions in the technical conferences actually led to tightening up and clarifying how the multipliers function). The EFNO Coalition writes that “After a great deal of discussion and not without a strong measure of internal compromise, EFNO has identified a potential Council action that could resolve many of the concerns raise in this docket.”⁵²¹ It goes on to propose that rather than adopt comprehensive RCPS regulations, “the Council vote on a resolution that confirms the performance objectives and guidelines of the Council’s mandate and allow a robust IRP analytical and engagement process to guide and inform implementation.”⁵²² In other words - throw the whole development of an RCPS out and let it be decided by the IRP analysis.

The Advisors’ proposed RCPS regulations do require the utility to file a three-year RCPS compliance plan at the end of each triennial IRP cycle so that the RCPS compliance plan can be informed by the least-cost planning analysis and sets of optimized resource portfolios produced in the IRP. If there was no distinct planning strategy in the IRP to meet the Council’s stated performance targets of a net zero carbon emissions portfolio by 2040 and a zero carbon emissions goal by 2050, then the IRP might not inform any progress toward an RCPS goal until new capacity is required to be added on the system. The most recent IRP analysis, the 2018 Triennial IRP, demonstrated that ENO will not need to add any new capacity to serve its peak load until approximately 2032.⁵²³ Thus, quite likely, an RCPS compliance plan based on the 2018 IRP, which shows no requirement for interim year resources, would not indicate that any new clean

⁵²¹ August 27, 2020 EFNO Letter at 2.

⁵²² August 27, 2020 EFNO Letter at 2.

⁵²³ *Entergy New Orleans 2018 Integrated Resource Plan*, filed July 19, 2019 in Docket No. UD-17-03 at 20.

resources need be added to ENO's system until at least 2032. Further, with no interim targets there would be no need to purchase clean energy or acquire RECs or further invest in local DERs or in any energy efficiency beyond the Council's 2% goal. Also, generally speaking, an IRP least-cost planning strategy including the RCPS with no Tier multipliers is likely to rely heavily upon solar and wind resources outside of New Orleans which are generally more cost-effective than urban DERs and rooftop solar would be. Use of a Tier multiplier would allow resources located inside Orleans Parish to be more competitive against lower cost utility-scale renewable resources in a cost-benefit analysis.

The EFNO Coalition also undermines its own argument by attacking the addition of the REC banking provision as not considering the impacts on market development and stability, arguing that it will not lead to the market transformation necessary to transition our energy system.⁵²⁴ However, the IRP planning model takes even less account of market development and stability - it would merely produce the least cost portfolio of clean energy resources without regard to whether incentives are needed to create a market for particular renewable resources, so an RCPS Compliance plan derived from an IRP process is equally unlikely to create market development and stability. The Advisors also note, however, that "market development and stability" was not one of the four primary mandates set forth by the Council in Resolution No. R-20-104.

Further, by only asking for the Council to confirm its performance objectives and guidelines in a resolution, the EFNO Coalition omits any mention of the Council's Customer Protection Cost Cap that limits expenditures for RCPS compliance to 1% of plan year total utility retail sales revenues, and does not provide any insight into how an IRP-designed RCPS Compliance plan would be kept within the cap.

⁵²⁴ August 27, 2020 EFNO Letter at 3.

The EFNO Coalition argues that the Council should require transparent disclosure of emissions data and RPS performance metrics.⁵²⁵ The Advisors agree, and is discussed more fully in the proposed RCPS filing, have included a requirement that the utility maintain a user friendly web page where the public can easily gain access to all of ENO's public filings regarding its RCPS compliance and its carbon emissions, whether filed at the Council or with another governmental agency or entity. In a complete non-sequitur, the EFNO Coalition then argues incorrectly that the "Advisors have proposed revisit their RCPS once a decade--an irresponsible level of oversight given that Grand Gulf remains currently at a full outage."⁵²⁶ First, it was the Advisors who took the initiative to add a periodic review provision to the RCPS - no party to the proceeding suggested such a provision. Second, the Advisors discussed with the parties at the technical conference that a draft provision with a ten-year review term was included in an attempt to balance periodic review and keep the RCPS current with sufficient stability to allow investors in clean energy resources to feel confident making long-term investments. The Advisors specifically sought feedback from the parties as to the appropriate length of the review period and what the right balance between keeping the regulations current and providing stability would be. Based on feedback at the technical conferences, the Advisors have actually proposed herein a five-year periodic review with a grandfathering provision such that projects undertaken under a particular set of RCPS regulations would continue to receive the same credit, and that any regulatory changes would only apply to new projects going forward. To lambaste the Advisors for seeking feedback from parties regarding a concept in a technical conference in this manner demonstrates remarkable bad faith on the part of the EFNO Coalition and the individual signatories to its pleading, 350 NO, AAE, Audubon, Greater New Orleans Housing Alliance, Union of Concerned Scientists, and Vote Solar.

⁵²⁵ August 27, 2020 EFNO Letter at 3.

⁵²⁶ August 27, 2020 EFNO Letter at 3.