

# KEAN | MILLER LLP

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September 28, 2020

**VIA HAND DELIVERY**

Ms. Lora W. Johnson, CMC  
Clerk of Council  
City Hall, Room 1E09  
1300 Perdido Street  
New Orleans, LA 70112

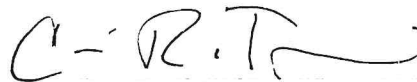
RE: *Resolution and Order Establishing a Docket and Opening a Rulemaking Proceeding to Establish Renewable Portfolio Standards*  
CNO Docket UD-19-01  
Our File No.: 7717-47

Dear Ms. Johnson:

Please find enclosed on behalf of Air Products and Chemicals, Inc. the original and three copies of its Comments on Advisors' Proposed RCPS Regulations in the referenced docket. Please file an original and two copies into the record and return a date-stamped copy to my office in accordance with normal procedures.

Should you have any questions regarding the above, please do not hesitate to contact me. Thank you for your assistance with this matter.

Very truly yours,



Carrie R. Tournillon

CRT/tp  
Enclosure

cc: Official Service List UD-19-01 (via electronic mail)

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BY: ndee

**BEFORE THE**

**NEW ORLEANS CITY COUNCIL**

**IN RE: RESOLUTION AND ORDER  
ESTABLISHING A DOCKET AND  
OPENING A RULEMAKING  
PROCEEDING TO ESTABLISH  
RENEWABLE PORTFOLIO  
STANDARDS.**

**DOCKET NO. UD-19-01  
September 28, 2020**

**AIR PRODUCTS AND CHEMICALS, INC.  
COMMENTS ON ADVISORS' PROPOSED RCPS REGULATIONS**

Air Products and Chemicals, Inc. (“Air Products”) respectfully submits the following Comments on the Proposed Regulations for a Renewable Clean Portfolio Standard (“RCPS Regulations”) of the Utility Advisors (“Advisors”) to the Council of the City of New Orleans (“Council”). Air Products has actively participated in this proceeding from its inception, having filed initial and reply comments on questions posed and alternatives proposed for a renewable portfolio standard for New Orleans, having filed initial and reply comments on the Advisors’ proposed draft set of regulations for an RCPS, having participated in both technical conferences held regarding the proposed draft regulations, and now submitting these comments on the RCPS Regulations proposed by the Advisors for the Council’s consideration. Pursuant to Council Resolution No. R-20-104, issued on April 16, 2020, Air Products Reply Comments are timely filed.

## Summary of Air Products Comments

Air Product appreciates the work of the Advisors in this proceeding that has spanned approximately a year-and-a-half. Over that time, the Advisors have taken three potential paths for an energy standard for New Orleans and with input of stakeholders and the Council put forth regulations for an RCPS that will result in decarbonization of the city while being mindful of the economic impact such change would have on ratepayers of Entergy New Orleans (“ENO”) if not approached in a practical way. In developing and revising the draft regulations to produce the proposed RCPS Regulations, the Advisors have made changes that recognize the necessity for flexibility in an RCPS to allow ENO to make economic decisions on how to best achieve RCPS compliance while adhering to its obligation to provide reliable service at the lowest reasonable cost to ratepayers. Overall, Air Products supports the proposed RCPS Regulations and the work of the Advisors and stakeholders in getting to this point.

Air Products submits limited comments to respectfully request, as follows: (1) opportunity for stakeholders to review and comment on the triennial RCPS Compliance Plan and annual Compliance Demonstration Report of ENO prior to Council approval and/or acceptance; (2) an addition to the language in Section 6b)3, relating to cost recovery caps; and (3) a determination in this proceeding that the CleanNOLA Fund shall only be used towards meeting the RCPS.

## **Air Products Comments and Proposed Revisions to the Proposed RCPS Regulations**

As set forth below, Air Products requests limited changes to the proposed RCPS Regulations.

### **Section 4, Compliance and Reporting**

Air Products supports the changes that have been incorporated into Section 4 of the RCPS Regulations. These changes have clarified and improved upon how Retail Compliance Load, Percentage of Retail Compliance Load, RCPS Compliance Credits and RCPS Compliance Costs shall be calculated. Further, the changes to Section 4 now allow the work and time of stakeholders in the Integrated Resource Planning (“IRP”) proceeding to inform the calculation of incremental costs of achieving RCPS compliance.

Air Products expects that many details of what will be included in ENO’s three-year prospective RCPS Compliance Plan will be discussed during the IRP proceeding. However, the actual RCPS Compliance Plan and the Compliance Demonstration Report submitted by ENO to the Council should be filed at the Council and provided to stakeholders with an opportunity for stakeholders to comment. Further, following stakeholder comment on the Compliance Demonstration Report, the Council should issue a resolution either finding that ENO complied with the RCPS for the given year (or block of years) or failed to comply. Any finding of compliance should not be a finding that ENO prudently incurred costs with respect to an addition of a resource, as such a review and determination should be made in separate proceeding(s).

Air Products respectfully requests that the following language be added to Sections 4e) and 4f). At this time, Air Products is not requesting a discovery period on the Compliance Plan and Compliance Demonstration Report, as (i) Air Products expects that much information included in the Compliance Plan will be vetted in the IRP proceeding, and (ii) the RCPS Regulations outlines several requirements for what should be in the Compliance Demonstration Report. Further, as indicated in Section 1 of the RCPS Regulations, the Council retains the authority to require additional measures, should discovery become necessary.

- 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 filed atsubmitted to the Council and served on parties to Docket No. 19-01, with opportunity for stakeholder comment prior to for the Council's review and approval. Within 90 days of the adoption of this RCPS, the Utility shall file atsubmit to the Council and serve on parties to Docket No. 19-01, with opportunity for stakeholder comment, 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 shall be served on parties to Docket No. 19-01, with an opportunity for comment prior to the Council's issuing a determination as to whether the Utility has achieved its RCPS goal for the prior calendar year. With the exception of RECs and ACPs, the Council's review of the report and any finding of RCPS compliance for the prior year shall not

consider or determine whether costs were prudently incurred in acquiring or constructing a resource for RCPS compliance; such resource certification and prudence evaluation shall occur in separately docketed proceeding(s) following the resource being put in service.

The report should include the following clear and concise information that:

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### Section 6, Cost Recovery and Customer Protection Cap

Air Products supports the changes made to Section 6 of the RCPS Regulations. Air Products only requests an additional provision be included in Section 6b)3, in the event that the Utility's decoupling mechanism, which is tied to the Utility's 3-year Formula Rate Plan, is no longer in effect.

3. For rate classes with fewer than 3 customers, the Council will review and adjust rates through the Utility's decoupling mechanism, or by other means, 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, Clean NOLA Fund

Air Products appreciates and supports the Clean NOLA Fund ("Fund") being administered in accordance with the Council's directives. However, Air Products believes that the Council should establish in this proceeding parameters for how the Fund can be used; otherwise, given that the Fund will be funded with prudently incurred ACP payments recoverable from the Utility's ratepayers, the costs for Fund projects would be paid by ratepayers of the Utility, through their electric rates, even though the projects are

not tied to Utility customers' electric service and ENO's cost of service for setting their rates. Further, the Utility's ratepayers would then still have the obligation to pay for prudently incurred costs of the Utility for complying with the RCPS.

Air Products respectfully requests that the Council determine in this proceeding that the Fund be used only for purposes of achieving RCPS Compliance. Air Products request Section 7 of the RCPS Regulations be revised, as follows:

The Council shall establish a CleanNOLA Fund ("Fund") for the purposes of fostering the reduction of carbon emissions in Orleans Parish. The Fund shall only be used towards achieving the RCPS~~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.

RESPECTFULLY SUBMITTED:



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Katherine W. King (#7396)

Randy Young (#21958)

Carrie R. Tournillon (#30093)

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Baton Rouge, LA 70821

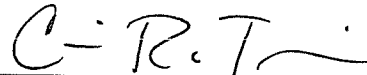
(225) 387-0999

*Attorneys for Air Products and Chemicals, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served by hand delivery to the Clerk of Council with a copy to the Director, Council Utilities Regulatory Office, and upon the Official Service List via electronic mail.

New Orleans, Louisiana this 28<sup>th</sup> day of September, 2020.



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Carrie R. Tournillon