

October 13, 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 No. UD-19-01

Dear Ms. Johnson:

Enclosed please find the *Advisors' Reply Comments* in the above referenced docket, which we are requesting be filed into the record along with this letter. As a result of the remote operations of the Clerk of 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**

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

**ADVISORS' REPLY COMMENTS  
REGARDING 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”) this reply to comments made by parties to the proceeding regarding the proposed regulations implementing a Renewable and Clean Portfolio Standard (“RCPS”). The regulations for an RCPS proposed by the Advisors in this proceeding reflect one of the most aggressive clean energy targets in the country and is consistent with the revisions being made to existing Renewable Portfolio Standards by leading states, as well as standards being considered at the national level. The Advisors have endeavored to balance this aggressive clean energy standard with (i) rate protections for electricity customers, (ii) the flexibility to use any zero-carbon resource to accomplish the goal, and (iii) certain incentives to prioritize investment in measures that reduce carbon emissions inside Orleans Parish and renewable resources, zero carbon resources, distributed energy resources and demand-side management resources located in Orleans Parish. This combination of rate protection and flexibility will help achieve the goal by the least expensive means to ENO ratepayers while the incentives would prioritize measures that clean the air in New Orleans and stimulate the local clean energy economy without significantly driving up costs of RCPS compliance.

As a result of the Council’s regulation of Entergy New Orleans, LLC (“ENO”) and the programs already put in place by the Council, ENO’s emissions are nearly 50% below the national

average<sup>1</sup> with coal-fired generation currently only approximately 2% of ENO's portfolio<sup>2</sup> and its electricity rates have also stayed more than 20% below the national average rate.<sup>3</sup> This RPS rulemaking builds on over a decade of prior initiatives by the Council, which include the adoption of Net Energy Metering ("NEM") Rules for rooftop solar in 2007,<sup>4</sup> the establishment of the award winning Energy Smart energy efficiency and conservation program in 2009,<sup>5</sup> the issuance of guidance on the creation of a decoupling rate structure in 2016,<sup>6</sup> the revision of the Council's Integrated Resource Plan ("IRP") rules in 2017 to expressly require the consideration of renewable resources, demand-side resources and distribution resources in the IRP,<sup>7</sup> the approval of full implementation of Advanced Metering Infrastructure ("AMI") across the ENO service territory in 2018,<sup>8</sup> the approval of ENO's project to build 5 MW of distributed-generation scale solar within New Orleans in 2018,<sup>9</sup> the modification of the Council's Customer Service Regulations to allow the release of aggregated whole building energy use data to building owners for benchmarking and energy efficiency purposes in 2018,<sup>10</sup> the adoption of Community Solar Rules<sup>11</sup> and the approval of ENO's 90 MW portfolio of renewable resources.<sup>12</sup> Indeed, the *Climate Action for a Resilient New Orleans* issued by New Orleans Mayor Mitchell J. Landrieu in July 2017 noted that the per

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<sup>1</sup> Entergy New Orleans, LLC's Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards, June 3, 2019, Docket No. UD-19-10, at 4

<sup>2</sup> Entergy New Orleans, LLC, 2018 Integrated Resource Plan, July 19, 2019, Docket No. UD-17-03, at 11.

<sup>3</sup> [https://www.eia.gov/electricity/sales\\_revenue\\_price/](https://www.eia.gov/electricity/sales_revenue_price/);  
[https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table5\\_a.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf);  
[https://www.eia.gov/electricity/sales\\_revenue\\_price/pdf/table6.pdf](https://www.eia.gov/electricity/sales_revenue_price/pdf/table6.pdf)

<sup>4</sup> See Resolution No. R-07-132.

<sup>5</sup> See, Resolution No. R-09-136.

<sup>6</sup> See, Resolution No. R-16-103.

<sup>7</sup> See, Resolution Nos. R-17-332 and R-17-429.

<sup>8</sup> See, Resolution No. R-18-37.

<sup>9</sup> See, Resolution No. R-18-222.

<sup>10</sup> See, Resolution No. R-18-539.

<sup>11</sup> See, Resolution No. R-19-111.

<sup>12</sup> See, Resolution No. R-19-293.

capita pollution rate for Orleans Parish is relatively low compared to other U.S. cities “largely due to the high amount of low-carbon energy already in our electricity mix compared to other cities.”<sup>13</sup>

As it seeks to further this progress through the adoption of a renewable and clean portfolio standard, the Advisors recommend that the Council take a technology-neutral approach that will allow any resource that can reduce carbon emissions or provide zero-carbon emission electricity to qualify for inclusion in the utility’s portfolio, including the increasingly important resources of energy efficiency, conservation, and demand-side management. Under the Advisors’ Proposed RCPS, a wide range of technologies, whether owned by the Utility, by a utility customer, or by a third party, may be used to get to a carbon emissions-free energy portfolio, including renewable energy, energy efficiency and conservation, demand-side management, distributed energy resources, nuclear energy, energy storage resources, beneficial electrification, and carbon capture, utilization and storage (“CCUS”) as well as any other carbon emissions-free technology that may emerge as a commercially viable and cost-effective resource between now and 2050.

This technology-neutral approach will allow ENO to pursue the broadest range of technologies as in pursuit of the Council’s goal to achieve deep decarbonization as quickly as reasonably possible without jeopardizing the provision of safe, affordable, and reliable electricity to New Orleans. The Advisors have proposed regulations for the Council’s consideration that offer the greatest likelihood of success in achieving a net zero carbon emissions portfolio by 2040 and a truly zero carbon emissions portfolio by 2050 while protecting ratepayers against unreasonable increases in rates and preserving reliability.

As of September 2020, five states have adopted Clean Energy Standards and five have Clean Energy Goals,<sup>14</sup> a notable increase in the adoption of Clean Energy Standards and Goals in

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<sup>13</sup> City of New Orleans, Climate Action for a Resilient New Orleans, July 2019 (“Climate Action Plan”) at 18.

<sup>14</sup> See, e.g. <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>

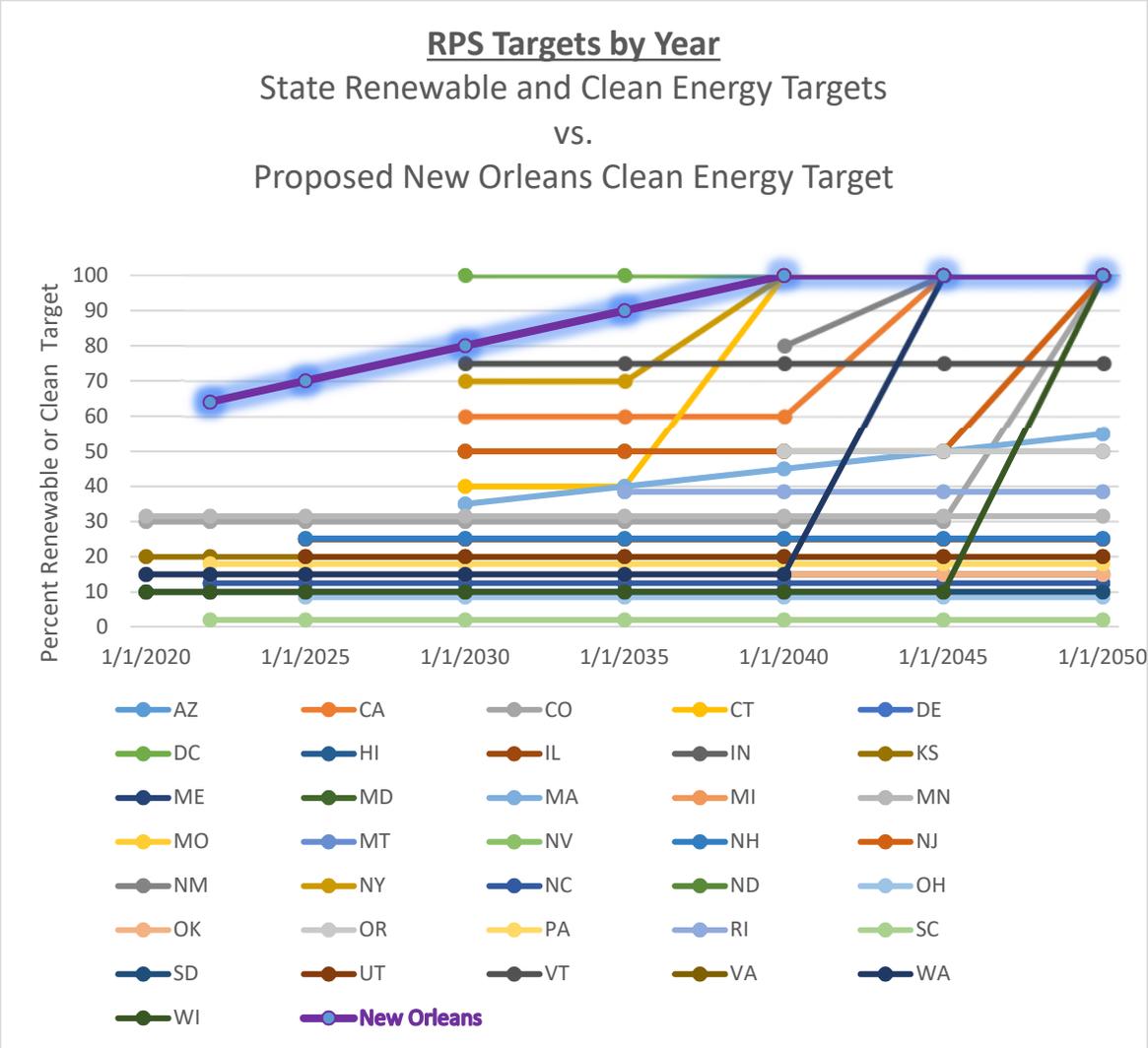
a little more than over a year - in June 2019, only three states had Clean Energy Standards and two had Clean Energy Goals.<sup>15</sup> Since June 2019, Connecticut, Massachusetts, New York, New Jersey and Wisconsin have joined California, Colorado, Nevada, New Mexico, and Washington State in the adoption of Clean Energy Standards or Goals.<sup>16</sup> Each of those states has set a goal of reaching 100% clean energy in either 2040, 2045 or 2050, with the exception of Massachusetts, which has a goal of reaching 80% by 2050.<sup>17</sup> As is illustrated by the chart below, which presents data compiled by N.C. State University Clean Energy Technology Center's Database of State Incentives for Renewables & Efficiency® (DSIRE insight), the proposed RCPS goal for New Orleans of achieving net zero carbon emissions by 2040 and a 100% carbon-free portfolio by 2050 is among the most aggressive clean energy standards in the country.

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<sup>15</sup> Advisors RPS Report, Sept. 3, 2019 at 4, citing <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2021/07/RPS-CES-June-2019.pdf>

<sup>16</sup> See, e.g. <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>

<sup>17</sup> See, <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>



Data source: <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf><sup>18</sup>

As the Advisors have discussed extensively in this proceeding, the trend toward clean energy portfolio standards has been driven primarily by recent studies indicating that relying on renewable resources alone to reduce carbon emissions will not allow the U.S. to meet mid-century emissions reductions goals, and a broader approach that uses all available zero-carbon technology to reduce carbon emissions is needed.<sup>19</sup> Further, national leaders have begun seriously discussing

<sup>18</sup> The Advisors note that most states with RPS targets that do not have a clean energy target coupled with their RPS have no requirement that the non-renewable portion of the utility’s portfolio be carbon-free. Therefore, while any given state may have a more aggressive renewables component to its standard than the proposed New Orleans standard, its total portfolio will not be as clean and sustainable as New Orleans’ portfolio if it does not require either 100% zero-carbon or 100% renewable power.

<sup>19</sup> Advisors RPS Report, Sept. 3, 2019 at 5-9.

the adoption of federal, technology-neutral clean energy standards. Proposed U.S. Senate Bill 1359 would impose a national Clean Energy Standard,<sup>20</sup> as would H.R. 7516 in the House<sup>21</sup> and the discussion draft of a bill published by the House Energy and Commerce Committee Democrats.<sup>22</sup> Finally, the Biden-Sanders Unity Task Force has committed to eliminating carbon pollution from power plants by 2035 through technology-neutral standards for clean energy and energy efficiency.<sup>23</sup> The Council would be in good company in adopting a technology-neutral renewable and clean energy portfolio standard (“RCPS”), such as the one proposed by the Advisors.

Attached as Appendix A to this filing is the Advisors’ final proposed RCPS regulations, with Appendix B being a redline demonstrating the further changes made by the Advisors to the August 28, 2020 proposed RCPS Regulations based upon the comments filed by the parties on September 28, 2020.

### **Background**

These Reply Comments constitute the Advisors’ final set of comments in an extensive public rulemaking process conducted by the Council to develop an RCPS for New Orleans. After carefully considering the comments of the parties submitted in the earlier phase of this proceeding, on April 16, 2020, the Council issued Resolution No. R-20-104 providing its guidance as to the further development of an RCPS for New Orleans.

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

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<sup>20</sup> <https://www.congress.gov/bill/116th-congress/senate-bill/1359/text>

<sup>21</sup> <https://www.congress.gov/bill/116th-congress/house-bill/7516/text>

<sup>22</sup> *See,*

<https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/0128%20CLEAN%20Future%20Discussion%20Draft.pdf>

<sup>23</sup> <https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf> at 2.

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.<sup>24</sup> The Council further set forth a procedural schedule for interested parties to work with the Advisors in developing detailed regulations that, if approved, would implement an RCPS consistent with the Council’s guidance. 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. On August 28, 2020, the Advisors then filed for the Council’s review and consideration proposed regulations to implement an RCPS consistent with the Council’s guidance.<sup>25</sup> The Advisors’ Proposal provided an extensive background of procedural steps taken to date in the docket and a summary of all comments submitted to the Council prior to the submission of the Advisors’ Proposal,<sup>26</sup> and there is no need to repeat the recitation of that background in this filing.

Comments on the Advisors’ August 28, 2020 Proposal were submitted on September 28, 2020 by Entergy New Orleans, LLC (“ENO”),<sup>27</sup> Air Products and Chemicals, Inc. (“Air

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<sup>24</sup> Resolution No. R-20-104 at 13-14.

<sup>25</sup> *Advisors’ Proposed RCPS Regulations*, Aug. 28, 2020, Docket No. UD-19-01 (“Advisors’ Proposal”).

<sup>26</sup> Advisors’ Proposal at 1-5 and Appendix D.

<sup>27</sup> *Entergy New Orleans, LLC’s Reply Comments Concerning the Advisors’ Proposed RCPS Regulations*, Docket No. UD-19-01, Sept. 28, 2020 (“ENO Comments”).

Products”),<sup>28</sup> and the Energy Future New Orleans Coalition (“EFNO”),<sup>29</sup> which in that filing consists of 350 New Orleans (“350NO”), Audubon Louisiana (“Audubon”), Alliance for Affordable Energy (“AAE”), and the Greater New Orleans Housing Alliance (“GNOHA”).<sup>30</sup> This filing responds to those Comments.

### ENO Comments

ENO’s Comments largely focus on achieving additional clarity around certain elements of the Proposed RCPS Regulations, including but not limited to, beneficial electrification, distributed energy resources (“DERs”), interaction with the IRP, cost recovery, and the reporting and monitoring of compliance with interim targets.<sup>31</sup> ENO also included a limited number of proposed redline edits to the Proposed Rules within their Comments, the majority of which seek to clarify what ENO believes to be the intent of the Advisors and the Council concerning key provisions of the Proposed RCPS Regulations.<sup>32</sup>

ENO’s Comments regarding Beneficial Electrification focused on the minimum level of net emissions reduction for a Beneficial Electrification project to qualify for a Tier 1 multiplier in the RCPS compliance calculations.<sup>33</sup> Specifically, ENO’s concern is that the draft RCPS Regulations preclude electrification projects producing net emissions reductions of less than 1,500 pounds (“lbs.”) of CO<sub>2</sub> per MWh from qualifying as a Beneficial Electrification measure, with two consequences (i) precluding these projects from earning Clean Energy Credits (“CECs”), and (ii)

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<sup>28</sup> *Air Products and Chemicals, Inc. Comments on Advisors’ Proposed RCPS Regulations*, Docket No. UD-19-01, Sept. 28, 2020 (“Air Products Comments”).

<sup>29</sup> *Energy Future New Orleans’s (EFNO) Reply Comments and Redline of the Advisors Comments*, Docket No. UD-19-01, Sept. 28, 2020 (“EFNO Comments”).

<sup>30</sup> EFNO Comments at 6.

<sup>31</sup> ENO Comments at 2.

<sup>32</sup> ENO Comments at 2.

<sup>33</sup> “The language at issue is as follows: ‘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 CO<sub>2</sub> per Clean Energy Credit earned.’ ” Entergy New Orleans, LLC’s (“ENO”) September 28, 2020 Reply Comments Concerning the Advisors’ Proposed Renewable and Clean Portfolio Standard Regulations, page 4.

eliminating the deduction of their associated sales from Retail Compliance Load.<sup>34</sup> ENO commented that Beneficial Electrification projects that did not meet that minimum criteria of net emissions reductions would increase ENO's compliance obligations and the costs ENO incurs to meet the Council's targets. ENO maintains that setting a minimum threshold that precludes such measures from qualifying as a Beneficial Electrification project under the Proposed Rules will operate as a disincentive for ENO to pursue emissions-reducing electrification measures.<sup>35</sup> To illustrate its concern, ENO provides an example of shore power electrification of cruise ships at port facilities which would have an estimated net reduction of 321 lbs. of CO<sub>2</sub> per MWh<sup>36</sup> but would not be eligible as a Beneficial Electrification project absent ENO making a filing before the Council requesting an exception to the RCPS Rules. ENO further comments that electrification of City buses would also be disincentivized as a result of the net reduction of 1,500 lbs. of CO<sub>2</sub> per MWh minimum threshold.

To address its concern with respect to Beneficial Electrification, ENO proposes the following modification for the definition of Beneficial Electrification in the Proposed Rules:

To qualify as a Beneficial Electrification resource eligible for a multiplier under this RCPS, the measure must reduce net carbon emissions by no less than 1,500 pounds of CO<sub>2</sub> per Clean Energy Credit earned.<sup>37</sup>

While ENO's proposed language would ensure that Beneficial Electrification projects that did not meet the net emissions reduction of 1,500 lbs. of CO<sub>2</sub> per MWh minimum threshold would not be credited with a 1.5 Tier 1 multiplier, it would result in an effective multiplier of 1.0 for all Beneficial Electrification projects that did not meet the Tier 1 minimum threshold regardless of their net CO<sub>2</sub> emission reductions. That is, under ENO's proposed language, a Beneficial

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<sup>34</sup> ENO Comments at 4.

<sup>35</sup> ENO Comments at 3.

<sup>36</sup> ENO Comments at 4.

<sup>37</sup> ENO Comments at 7

Electrification project that has a net emissions reduction of 1,499 lbs. of CO<sub>2</sub> per MWh would be credited at the same level as a Beneficial Electrification project that only has a net emissions reduction of 7 lbs. of CO<sub>2</sub> per MWh. Accordingly, ENO's proposal would not address the Advisors' intent to avoid a situation where the utility receives a large compliance credit for only a minimal or nominal reduction in net carbon emissions from a Beneficial Electrification project.<sup>38</sup>

To address the concern expressed by ENO regarding the recognition of potential Beneficial Electrification projects that do not meet the minimum threshold of emission reductions in coordination with the Advisors concern that ENO not receive a large compliance credit for only a minimal or nominal reduction in net carbon emissions from a Beneficial Electrification project, the Advisors now propose that Beneficial Electrification projects that do not meet the minimum net reduction of 1,500 lbs. of CO<sub>2</sub> per MWh threshold be: (i) incorporated in the RCPS Regulations as a Tier 2 resource and, (ii) be credited CEC's per MWh in proportion to the project's net CO<sub>2</sub> emission reductions per MWh divided by 1,500 lbs. of CO<sub>2</sub> per MWh, the minimum threshold for Beneficial Electrification projects in Tier 1.

As an example, using ENO's illustration of emissions benefits in their Reply Comments<sup>39</sup>, a shore power electrification of a diesel powered cruise vessel with an emissions rate of 1,521 lbs. of CO<sub>2</sub> per MWh would provide a net reduction of 321 lbs. of CO<sub>2</sub> per MWh with electrification. In calculating RCPS compliance, this project could be considered Beneficial Electrification as a Tier 2 Resource, and ENO would receive 0.214 CEC's (321/1500) and a Tier 2 multiplier of 1.25, resulting in 0.27 RCPS Compliance Credits per MWh. To further expand on this example, consider two similarly sized Beneficial Electrification projects, each with 1,000 MWh of associated annual energy, and that one project reduces net carbon emissions by 1,500 lbs. of CO<sub>2</sub>

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<sup>38</sup> Advisors' Proposal at 14.

<sup>39</sup> ENO Comments at 4, Table 1

per MWh and the other project reduces net carbon emissions by 321 lbs. of CO<sub>2</sub> per MWh. Net annual emission reductions from the first project would be 1,500,000 lbs. of CO<sub>2</sub> while net annual emission reductions from the second project would be 321,000 lbs. of CO<sub>2</sub>. For the project that resulted in the higher net annual emission reductions, ENO would be credited with 1,500 RCPS Compliance Credits. For the second project, ENO would be credited with 270 RCPS Compliance Credits recognizing its smaller contribution to net emissions reductions. The Proposed RCPS Regulations in the Appendices reflect the changes necessary to implement this proposal for Beneficial Electrification.

Finally, with respect to Beneficial Electrification, the Advisors disagree with ENO's contention that the draft RCPS Regulations disincentivizes the pursuit of electrification of buses in New Orleans, since electric vehicle charging stations located in Orleans Parish are exempt from the minimum criteria required for the Tier 1 multiplier, in recognition of the critical role that build-out of charging station infrastructure throughout a City plays in encouraging large-scale adoption of EVs by residents and businesses. As a Tier 1 resource, EV charging stations both receive the compliance credit and the load of the EV charging stations should be deducted from Retail Compliance Load, which should mean that if ENO installs EV charging infrastructure for a bus fleet, the kWhs consumed by the buses at the EV chargers should not result in an increase in ENO's Retail Compliance Load. Therefore, ENO should have no disincentive to participate in a bus electrification project.

Further, to the extent that ENO proposes a Beneficial Electrification project for buses in New Orleans that it does not believe would qualify for the Tier 1 electric vehicle charging station exemption, the Advisors' revised proposal, discussed herein, with respect to Beneficial Electrification should appropriately credit the project as a Tier 2 Beneficial Electrification Project.

Lastly, if ENO believes that the credits that would be provided for a particular bus electrification project under the Proposed RCPS Regulations would not properly reflect the benefits to ratepayers that would result from the project, ENO would have the ability to propose an exception to the rules in accordance with Section 1(a)(2) to the Council for its consideration, and if the Council is satisfied that the proposed project would create sufficient benefits to warrant a higher level of credit, it may grant such an exception.

In summary, the Advisors propose that (i) the minimum criteria required for a Beneficial Electrification to receive the Tier 1 multiplier should be retained; (ii) Beneficial Electrification projects in Orleans Parish which are not eligible for Tier 1 be included in Tier 2 with CECs being awarded in proportion to their per MWh net emissions reductions relative to the minimum per MWh emissions threshold for Tier 1 and (iii) the definitions of Beneficial Electrification, Tier 1 Resource, Tier 2 Resource and Clean Energy Credits in Section 2 of the Proposed RCPS Regulations be revised to reflect the above.

ENO argues that the Proposed Rules contain a new definition of DERs that could be interpreted to exclude certain configurations of DERs from being qualified as such under the Proposed Rules.<sup>40</sup> ENO argues that solar photovoltaic (“PV”) systems, battery and other forms of energy storage, electric vehicle charging infrastructure, and other DERs can be interconnected directly to the distribution grid, including at substations, provide energy and other grid services to all customers, and provide the benefits associated with DERs to the distribution grid and that prevailing definitions of DERs recognize this.<sup>41</sup> In order to recognize a broader definition of DERs, ENO proposes the following change to the definition of DERs in Section 1 of the Proposed Rules:

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<sup>40</sup> ENO Comments at 7.

<sup>41</sup> ENO Comments at 7-8.

**“Distributed Energy Resource” or “DER”** means a resource sited close to customers that:

(i) is interconnected to or on the distribution system, or

(ii) can provide all or some of ~~their~~ the immediate electric and power needs of retail customers and/or 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.

ENO argues that this clarification will help ensure that development of all DERs, not just those interconnected behind a customer’s electric meter, can be a part of the portfolio of resources serving New Orleans in compliance with the RCPS policy.<sup>42</sup> The Advisors believe that ENO’s proposed change to this definition is reasonable and consistent with the intent of the Advisors in the Proposed Rules to include all DER resources, and recommend that ENO’s proposed change be adopted.

With respect to IRP Interactions with the RCPS, ENO supports the proposed language in Section 4(d)(2) of the Draft RCPS Regulations, but requests clarification regarding the use of the term “cost of service” and if it is, as ENO believes, analogous to the term “revenue requirement.”<sup>43</sup> The Advisors agree that in the context of the Draft RCPS Regulations, the terms are indeed analogous, and further agree that that the term “revenue requirements” could be used in Section 4(d) instead of “cost of service” to provide clarity.

In considering ENO’s request for clarity on the terms, the Advisors have also reviewed ENO’s illustrative examples on compliance.<sup>44</sup> In ENO’s hypothetical demonstration calculations included in Tables 3 and 4, ENO includes in calculating the cost of compliance a \$3.0 million

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<sup>42</sup> ENO Comments at 8.

<sup>43</sup> ENO Comments at 8-9

<sup>44</sup> ENO Comments at 11-16

annual revenue requirement in the compliance year associated with the hypothetical Beneficial Electrification of an Industrial customer. While the Advisors believe that this \$3.0 million annual revenue requirement is not tied to any specific plans by ENO for any identified Industrial customer and, therefore, may not be relevant other than to facilitate understanding of the compliance calculations, the Advisors are concerned that the magnitude of this number may represent a misunderstanding with respect to the calculation of compliance costs that could be clarified in an additional modification to Section 4(d) of the Draft RCPS Regulations. For reference, Section 4(d) of the Draft RCPS Regulations reads:

*“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.”*

In Section 4(d)(1), the Draft RCPS Regulations specify that with respect to Beneficial Electrification, the RCPS Cost of Compliance included the “Utility’s net fixed costs related to Beneficial Electrification.” The term “net” is used here to exclude from the Cost of Compliance certain costs due to the Beneficial Electrification project that are directly allocated or assigned to and collected from the Beneficial Electrification customer. If costs related to a Beneficial Electrification project are collected from the Beneficial Electrification customer, they would not increase the Cost of Compliance. It is difficult to conceptualize a Beneficial Electrification project for an Industrial customer where the portion of the costs borne by the Utility (and ultimately

ratepayers) would approach the magnitude of the \$3.0 million annual revenue requirement ENO presented in its hypothetical compliance calculations. Accordingly, the Advisors believe that additional clarification to Section 4(d) of the Draft RCPS Regulations is warranted. The Advisors recommend the following clarifying language to Section 4(d) of the Draft RCPS Regulations to accommodate our concern regarding the net costs associated with Beneficial Electrification projects and ENO's request for clarification on the use of the term "revenue requirements" in lieu of "cost of service".

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 revenue requirements associated with~~ the Utility's operations in compliance with the RCPS, net of costs due to any Beneficial Electrification project that are directly allocated or assigned to and collected from the Beneficial Electrification customer, less the total electric utility revenue requirements associated ~~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.

Turning back to ENO's illustrative examples on compliance, the Advisors have reviewed ENO's illustrative examples on compliance and the examples appear, absent actual information that could reveal an issue with the calculation, to be generally consistent with the calculation methodology required by the Draft RCPS Regulations.

However, in addition to the Advisors' concern regarding the magnitude of the example offered by ENO of a \$3.0 million annual revenue requirement associated with a Beneficial Electrification Project, the Advisors wish to memorialize our understanding of one other item. In

ENO's illustrative examples on compliance, there is a line item titled "EnergySmart Reductions, 2021-22".<sup>45</sup> With respect to this line item, the Advisors understand it to be the cumulative MWh savings of DSM programs installed after January 1, 2021 and not simply the first-year impact of measures installed in the compliance year. As the language in Section 4(a)(1) of the Draft RCPS Regulations is clear on this matter, there is no need to propose any revisions to the Draft RCPS Regulations. However, due to the brevity of the line item title, the Advisors are commenting on this issue to ensure that all parties understand the expectations regarding the calculations, now, to prevent any future disagreement on this item.

ENO also suggests a minor modification to Section 6(a)(2), which ENO argues would be consistent with the Prudent Investment Rule that governs utilities under Louisiana Law.<sup>46</sup>

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~~ imprudent, in which case, ENO shall not recover the cost of the ACP from Customers.

The Advisors have no objection to this proposed change, and find it is consistent with the intent of the Advisors in drafting the Proposed Rules.

ENO also seeks a change to Section 6(b) to clarify that the costs of RECs purchased and banked for subsequent use will be recovered and count against the cost cap in the compliance year in which they are retired and that the acquisition costs of purchased RECs that are banked for subsequent use be treated as part of working capital for ratemaking purposes.<sup>47</sup> ENO argues that to apply the costs of purchasing RECs to the compliance cost cap in the year that the banked RECs are acquired could inhibit ENO's ability to develop its compliance bank.<sup>48</sup> The Advisors believe

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<sup>45</sup> ENO Comments at 11-16

<sup>46</sup> ENO Comments at 9, citing *Gulf States Utils. Co. v. La. Pub. Serv. Comm'n*, 578 So. 2d 71, (La. 1991); *So. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm'n*, 594 So. 2d 357, (La. 1992); *Central Louisiana Electric Co. v. LPSC*, 508 So. 2d 1361 (La. 1987).

<sup>47</sup> ENO Comments at 10.

<sup>48</sup> ENO Comments at 10.

that this proposal is reasonable. Further, because ENO must submit its three-year Banking and Compliance Reserve provision for Council review and approval as part of its three-year compliance plan under Section 4(e), the Council will have an opportunity to review and approve these costs as part of the Compliance Plan prior to ENO incurring such costs and can ensure that they remain prudent. The Advisors believe, however, that the requested clarification is best added to Sections 4(d) and 4(h) and have included proposed changes to that Section to reflect ENO's requested clarification in the Appendices.

#### Air Products Comments

Air Products submitted limited comments to make three requests: (1) an 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 6(b)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.<sup>49</sup>

Air Products argues that while many details of what will be included in ENO's three-year compliance plan will be discussed during IRP proceedings, actual RCPS Compliance Plans and the Compliance Demonstration Reports submitted by ENO to the Council should be filed at the Council and provided to stakeholders with an opportunity for stakeholders to comment.<sup>50</sup> Air Products proposes the following language change with respect to the RCPS Compliance Plan:

- 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 at submitted 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 at submit to the Council and serve on parties to Docket No. 19-01, with opportunity for stakeholder

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<sup>49</sup> Air Products Comments at 2.

<sup>50</sup> Air Products Comments at 3.

comment, a proposed Initial RCPS Compliance Plan for the interim prior to the conclusion of the next triennial IRP cycle.<sup>51</sup>

This proposed change is generally consistent with the Advisors' intent in the proposed RCPS regulations and the proposed language generally would clarify this intent. The Advisors recommend a couple of small changes to Air Products' proposed language to state the docket number correctly and to make clear that both the parties to the IRP proceeding and the parties to Docket No. UD-19-01 should be served with a copy of the RCPS Compliance Plan. Further, in order to ensure that parties also have the opportunity to review and comment on any potential deviations from the RCPS Compliance Plans, the Advisors suggest that the following language be added to Section 4(e), "Once the Council has approved an RCPS Compliance Plan for a particular time period, if the Utility wishes to add any resources for compliance that are not contemplated in the RCPS Compliance Plan, the Utility should file at the Council and serve upon the parties to the relevant IRP Docket and Docket No. UD-19-01, with opportunity for stakeholder comment, a request to include such resource for RCPS Compliance prior to executing plans to implement such resource." While an RCPS Compliance Plan may need to include some level of flexibility to adapt to changing circumstances, it should be described in sufficient detail for the Council to understand the likely range of resources and costs the utility intends to utilize for compliance. The Advisors' proposed changes are marked in redline format in Appendix B.

With respect to the RCPS Compliance filing, Air Products also proposes that following stakeholder comment on the RCPS Compliance Plan, 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, and that 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

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<sup>51</sup> Air Products Comments at 4.

in a separate proceeding(s).<sup>52</sup> Air Products requests the following language change in the Proposed RCPS Regulations Section 4(f) with respect to the Compliance Demonstration Report:

- 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: . . .

This proposed change is also generally consistent with the Advisors' intent in the proposed RCPS regulations insofar as it speaks to providing for stakeholder comment. The Advisors agree that the prudence of the total costs of any given investment to acquire or construct any resource on the ENO system should be considered in a separate proceeding to evaluate that resource in accordance with the Council's regulations, and a determination on RCPS Compliance does not eliminate the potential need for such proceeding. However, the Advisors do not believe that limiting the scope of the Council's review of costs in the annual RCPS Compliance Demonstration Report filings to only the costs of the RECs and ACP is appropriate. The Council's review of the RCPS Compliance filing should include a review of the total costs of RCPS Compliance for the relevant year and whether the Utility remained within the Customer Protection Cost Cap. The Advisors note, however, that since the review of the RCPS Compliance Costs only includes a review of the incremental costs incurred by the Utility in complying with the RCPS, that review would not result in any finding regarding any resource costs beyond the incremental costs. In the

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<sup>52</sup> Air Products Comments at 3-4.

Appendices, the Advisors have proposed a slightly different edit to the language of Proposed RCPS Regulations Section 4(f) to reflect this.

Air Products states that it supports the Advisors' proposed Section 6 of the RCPS Regulations and requests only one additional provision to be included in section 6(b)3, in the event that the Utility's decoupling mechanism is no longer in effect:<sup>53</sup>

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%.

The Advisors believe this is a reasonable proposal consistent with the intention of the Advisors in the proposed RCPS regulations and have incorporated it in the Appendices.

Air Products requests that the Council establish in this proceeding parameters for how the Clean NOLA Fund can be used, and specifically that it determine that the Fund be used only for purposes of achieving RCPS Compliance.<sup>54</sup> Air Products argues that this is appropriate because the CleanNOLA Fund will be funded with prudently incurred ACP payments recoverable from the utility's ratepayers, the cost for CleanNOLA 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.<sup>55</sup> Further, Air Products argues that the Utility's ratepayers would then still have the obligation to pay for prudently incurred costs of the Utility for complying with the RCPS.<sup>56</sup> Air Products is correct that as a general matter, ratepayer money should be used to benefit ratepayers and not to fund private projects. The Advisors do not, however, believe it is helpful to limit the use of the CleanNOLA Fund to ENO-owned projects.

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<sup>53</sup> Air Products Comments at 5.

<sup>54</sup> Air Products Comments at 5-6.

<sup>55</sup> Air Products Comments at 5-6.

<sup>56</sup> Air Products Comments at 6.

There is also a possibility that once the CleanNOLA Fund is established, it may receive funding from additional sources, such as grants, the use of which should not be unnecessarily restricted. The Advisors believe that a reasonable compromise that would ensure that ratepayer funding is used to benefit ratepayers would be for the Council to specify that a condition of project funding made from any portion of the CleanNOLA Fund funding received from ratepayers is that such funding be limited to projects that would meet the definition of one of the resources eligible for inclusion in the RCPS and that all environmental attributes (RECs or CECs) generated by the project must be transferred to ENO and used by ENO for RCPS Compliance. This would be functionally equivalent to using ratepayer funds to purchase RECs for RCPS compliance, and therefore would appropriately limit the use of ratepayer money to projects that benefit ratepayers while allowing flexibility for projects beyond those undertaken by ENO to be funded by the CleanNOLA Fund. The Advisors have included language to implement this change in the Appendices.

#### EFNO Comments

The EFNO Coalition repeatedly misrepresents arguments made by other parties in the docket, and its proposed approach to RCPS Regulations is impermissibly vague, incomplete, and fails to meet the EFNO Coalition's own criteria for what an RCPS should accomplish.

The EFNO Coalition now urges the Council to throw out over 18 months of work by the other parties to the case in developing the proposal before the Council and instead to adopt a set of regulations that the EFNO Coalition argues "the Council should feel confident in approving to meet their decarbonization goals."<sup>57</sup> Unfortunately, however, the draft regulations proposed by the EFNO Coalition are so ambiguous as to be nearly impossible to enforce and, under some

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<sup>57</sup> EFNO Comments at 1.

interpretations, would pose significant risk of rate shock to ratepayers. Moreover, EFNO's proposed regulation fails to meet a critical criteria the Council set forth in Resolution No. R-20-104 -- that the regulations incorporate 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. It appears that the EFNO Coalition took a carefully crafted set of regulations resulting from months of work by the parties and simply deleted out what they do not like (largely without explanation) and added new terms they wanted without taking into account how the deletions and additions impact and are impacted by the remaining sections of the regulations. It is simply not a coherent set of regulations that the Council could confidently adopt and enforce.

With regard to Net Energy Metering, the EFNO Coalition misrepresents the argument of the Advisors. The Advisors did not argue that the Net Energy Metering proceeding *should* be reopened. The Advisors noted that Net Energy Metering Customers will be able to participate in RCPS Compliance, but several issues with the current Net Energy Metering rules limit the extent to which they can participate, and stated "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."<sup>58</sup> This is clearly not an argument that the Net Energy Metering should be reopened, merely a statement that if the Council wishes to address certain issues related to Net Energy Metering, reopening that docket would be the appropriate course of action.

In the Advisors' Proposal, the Advisors explained the difficulty in confirming that NEM RECs are legitimate because there is evidence that at least some NEM customers do not own the

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<sup>58</sup> Advisors Proposal at 28.

RECs created by their solar panels, and therefore do not have the right to sell or retire them for RCPS Compliance purposes.<sup>59</sup> The EFNO Coalition suggests that this problem could be solved through the creation of a registry for voluntary REC retirement.<sup>60</sup> However, they offer no suggestion as to how such a registry should be staffed or funded in order to carry out the work of reviewing each NEM customer contract with their solar panel provider to ensure that the registrant actually owns the RECs they propose to retire for RCPS Compliance or how the Council could ensure that such RECs are then not subsequently sold for another purpose. Without such verification, there is a risk that a REC could be “voluntarily retired” by the NEM customer and counted for RCPS Compliance through the registry, and then subsequently sold to ENO by the rooftop solar provider or REC aggregator who does own the REC, and counted for RCPS Compliance a second time. The Advisors do not oppose the creation of a local registry, but there are not enough details in the EFNO Coalition’s proposal to include it as part of this proceeding. Such a registry could be created at a future date, and the RCPS Rules modified to permit RECs certified and tracked through the local voluntary registry as well as those that are Green-e certified and tracked through RTO tracking systems.

The EFNO Coalition criticizes the Advisors for creating an approach to energy storage that the EFNO Coalition believes to be “unworkable and incomplete,”<sup>61</sup> but includes no specific treatment of energy storage in their proposed RCPS regulations. By way of contrast, the Advisors’ Proposed RCPS Regulations provide a specific pathway for Energy Storage projects to be used for RCPS Compliance -- a project and its proposed treatment for compliance purposes may be proposed to the Council.

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<sup>59</sup> Advisors’ Proposal at 27.

<sup>60</sup> EFNO Comments at 3.

<sup>61</sup> EFNO Comments at 6.

The EFNO Coalition accuses the Advisors of lacking understanding of how non-utility storage can provide several benefits that could improve the performance of the RCPS.<sup>62</sup> However, rather than proposing an approach for energy storage in the RCPS regulations, the EFNO Coalition argues that these issues can and should be addressed in the IRP proceeding, which proceedings do not address specific projects, only types of resources.<sup>63</sup> The Advisors have never disputed that energy storage resources can benefit RCPS achievement; rather, the Advisors noted that whether or not they do so depends in large part upon how such resources are utilized. The exact language used by the Advisors in the Advisors' Proposal is:

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.<sup>64</sup>

The Advisors agree that there are uses of Energy Storage Resources that can produce carbon emissions reductions - for example, if the Utility were to develop a program where it is able to aggregate (or purchase aggregation services for) and control customer-owned battery storage devices charged exclusively by rooftop solar panels and use them to deploy electricity to the grid as an alternative to dispatching a fossil fuel-fired generator, or where the utility installs a utility-scale battery on its network to store excess renewable power as it is generated and deploy it at a later date to avoid dispatching a fossil fuel-fired generator. Battery storage can be effective

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<sup>62</sup> EFNO Coalition at 6.

<sup>63</sup> EFNO Comments at 6.

<sup>64</sup> Advisors' Proposal at 16.

at reducing local carbon emissions even if it is not necessarily charged by clean energy resources. For example, local battery storage (either in a sizeable single installation or an aggregation of many smaller installations) can reduce the need to run local fossil fueled peaking resources thereby reducing emissions from those local peaking resources.

However, not all uses of energy storage resources do reduce carbon emissions, and as the Advisors discussed in the Advisors' Proposal, discussions with the parties in the technical conferences regarding how crediting energy storage resources under an RCPS might work revealed the difficulty in developing a single crediting mechanism that works appropriately for all energy storage resources. Because we cannot, at this time, predict every use of an energy storage resource that might benefit the accomplishment of an RCPS standard, it was and remains the Advisors' opinion, that the best approach for energy storage, at least in this initial iteration of the Regulations, is that which is incorporated in the Advisors' Proposed RCPS Regulations - to make it clear that energy storage resources are eligible for compliance, but that any particular energy storage resource (or energy storage resource program) would need to be proposed to, and reviewed and approved by the Council to ensure that the energy storage resource will be used in a manner consistent with RCPS compliance and that the Compliance Credits to be applied to the energy storage resources(s) related to the proposal are appropriate.<sup>65</sup>

The EFNO Coalition appears to be focused on non-utility storage resources and may not understand the requirement in Section 3(c) of the Advisors' RCPS proposal that the Utility propose a treatment for any storage resource it intends to use for RCPS Compliance. It is not a requirement that the Energy Storage Resource be owned by the Utility. The Utility certainly may use energy storage resources it does not own for RCPS Compliance, and under the proposed RCPS

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<sup>65</sup> Advisors' Proposal at 16, Advisors Proposed RCPS Regulations at Section 3(c), Appendix A at 8.

Regulations could, for example design a program for customer-owned, behind-the-meter storage that would qualify for RCPS Compliance Credits, or it could enter into an arrangement with a third party aggregator of customer-owned storage resources to purchase Energy Storage Resource services that would qualify. However, since the Utility is the only entity required to comply with the RCPS, it is appropriate that the Utility bear the responsibility of proposing a Compliance Credit treatment for the resources it intends to use for RCPS Compliance, whether the resources are utility-owned, customer-owned, third party-owned, utility-scale, distribution-scale, or in front of or behind the meter.

The set of regulations that the EFNO Coalition proposes and asserts that “the Council should feel confident in approving to meet their decarbonization goals”<sup>66</sup> is impermissibly vague under the United States Constitution. As the United States Supreme Court writes:

A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required. This requirement of clarity in regulation is essential to the protections provided by the Due Process Clause of the Fifth Amendment. It requires the invalidation of laws that are impermissibly vague.<sup>67</sup>

In applying this U.S. Supreme Court precedent, the Louisiana courts have held that “a regulation is not vague because it may at times be difficult to prove, but rather because it is unclear as to what must be proved.”<sup>68</sup> The EFNO Coalition’s proposed regulations are impermissibly vague. For example, in Section 3.a. of their proposed regulation, the EFNO Coalition’s proposed regulations state: “The Utility must meet the specified percentages of total energy generated or procured to serve retail load (“total energy”) with a combination of Tier 1, 2 and 3 resources as follows:” However, nowhere in its proposed regulations does the EFNO Coalition define Tier 1,

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<sup>66</sup> EFNO Comments at 1.

<sup>67</sup> *FCC v. Fox Televisions Stations, Inc.*, 567 U.S. 239, 253 (2012).

<sup>68</sup> *Barber v. Louisiana Workforce Comm’n*, 17-0844 (La. App. 1 Cir. 10/19/18), 266 So.3d 368, 384 (citing *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012))

2 or 3 resources, leaving the reader at a loss as to what resources count toward compliance. There are two places a reader might look to in the Regulations for further guidance when attempting to determine what resources must be used for compliance, but they offer contradictory information, further confusing the issue. The inclusion of various resources in the Definitions section could be interpreted to mean that compliance could be achieved through conservation programs, demand-side management, Distributed Energy Resources (which may or may not be renewable or zero-carbon resources), Energy Storage Resources (which may or may not be charged by renewable or zero-carbon resources), and Renewable Energy Resources. Alternatively, the intent of the EFNO Coalition could, in theory, also be inferred from Section 1.a., which references “the adoption and use of clean, local, renewable energy resources in the City.” However, that provision only causes further confusion as to which resources can be used for compliance because none of the terms “clean,” “local,” or “renewable resource” are defined either separately or as a complete phrase anywhere in the document. There is significant industry dispute about the meaning of the word “clean” as applied to energy resources, and it is unclear whether zero-emissions resources would fall into this definition. Similarly, without a definition for the term “local” the Utility is left to guess how close to the City a resource must be to qualify as “local” for compliance purposes. While “Renewable Energy Resource” is defined, it includes only generating facilities and does not include Conservation Programs, Demand-Side Management, Energy Efficiency Programs or Energy Storage Resources which are separately defined in the EFNO Coalition’s Definitions section but not otherwise referenced anywhere in the EFNO Coalition’s proposed regulations. The phrase “clean, local renewable resources” could reasonably be read to exclude conservation, DSM, energy efficiency, and Energy storage Resources to the extent that none of them create renewable energy. The EFNO Coalition’s proposed regulations provide insufficient guidance as to which

resources the Utility must prove it has used in order to demonstrate compliance with the regulation and are, therefore, impermissibly vague.

Further, to the extent that it is the intention of the EFNO Coalition to exclude zero-carbon resources such as nuclear power from RCPS compliance and rely solely on renewable resources, the targets they propose create significant risk of rate shock. According to information shared by ENO with the parties in the first technical conference, while ENO projects its energy portfolio will be composed of approximately 59.9% clean resources by 2022, making a 64% clean target in 2022 a reasonable goal, ENO anticipates its 2022 energy portfolio including only approximately 4% renewables. This means a target that requires ENO to supply 64% of its energy from renewable resources with only 25% compliance through RECs purchased without associated energy would require ENO to at a minimum replace 44% of the energy in its portfolio between now and the end of 2022, and either purchase RECs or acquire further resources to offset another 16% of its existing portfolio. It is unclear to the Advisors that replacing such a significant amount of ENO's portfolio over two years would even actually be possible, regardless of cost, and if it is possible, it could be astronomically expensive to ratepayers.

It is also unclear that ENO could properly maintain reliability on the system if it has to replace such a significant portion of its capacity over such a short period of time. Recent events in California have highlighted the reliability issues related to rapidly moving to a high-renewables portfolio of resources without properly taking reliability issues into account.<sup>69</sup>

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<sup>69</sup> <https://www.forbes.com/sites/michaelshellenberger/2020/08/15/why-californias-climate-policies-are-causing-electricity-black-outs/#220d841591a8>; <https://www.politico.com/states/california/story/2020/08/18/california-has-first-rolling-blackouts-in-19-years-and-everyone-faces-blame-1309757>.

As ENO correctly notes in its comments, the Council is required under Louisiana Law to allow the Utility to recover its prudently incurred costs from ratepayers.<sup>70</sup> Thus, the full cost of the expedited replacement of these resources (if actually possible) would fall on ratepayers. Moreover, because there is no guarantee that the Federal Energy Regulatory Commission (“FERC”) would release ENO from the payment obligations under the various resource agreements subject to that agency’s jurisdiction, there is a significant risk that ratepayers would continue paying for most, if not all, of ENO’s existing portfolio *in addition to* paying for the resources to replace 44% of that portfolio and either offset or replace another 16%.

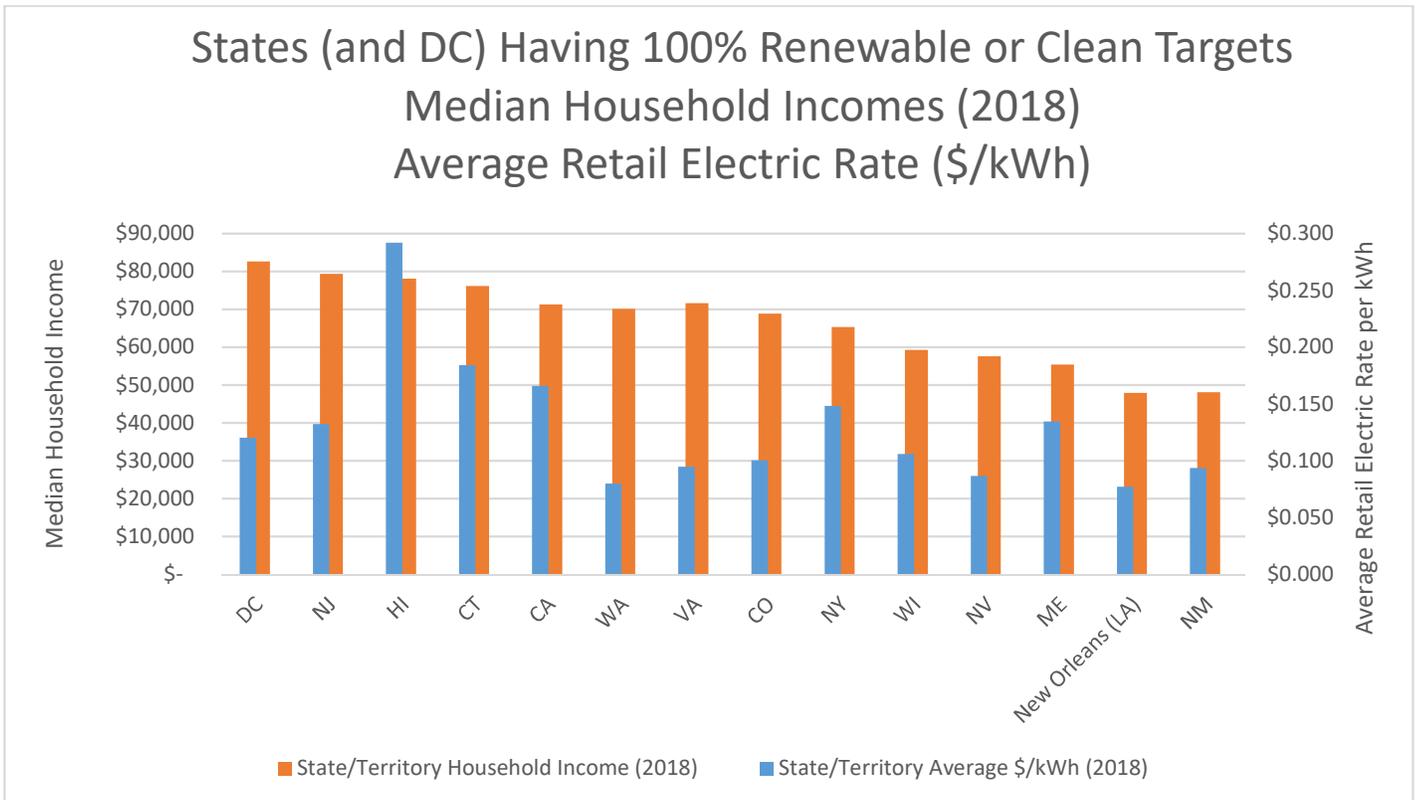
The EFNO Coalition’s changes to the proposed RCPS Regulations impose no limits on costs to comply with their standard. They have removed from Section 1(a)(2) any reference to keeping electricity costs reasonable - one of the fundamental functions of a utility regulator. In addition, the EFNO Coalition deleted from Section 6 of the proposed RCPS regulations the Customer Protection Cost Cap in its entirety, which would leave the Council with no mechanism to protect customers from unreasonable compliance costs, in direct contravention of the Council’s direction in Resolution No. R-20-104 that the proposed regulations limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues.

The Advisors continue to believe that with such an aggressive target, cost protections to New Orleans ratepayers are extremely important. As is illustrated by the chart below, of the states that have adopted 100% renewable or clean energy targets, all but one have higher average household incomes than New Orleans and over half have average household incomes more than 35% greater than New Orleans. In addition, most of them also have higher electric rates, with over

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<sup>70</sup> ENO Comments at 9, citing *Gulf States Utils. Co. v. La. Pub. Serv. Comm’n*, 578 So. 2d 71, (La. 1991); *So. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm’n*, 594 So. 2d 357, (La. 1992); *Central Louisiana Electric Co. v. LPSC*, 508 So. 2d 1361 (La. 1987).

half having electricity rates over 50% higher than New Orleans. With higher electricity rates, higher-priced renewable projects are more competitive with existing resources, and less likely to increase rates than when rates are low. Therefore, New Orleans is at greater risk of seeing rate increases related to an RCPS than jurisdictions that have higher electricity rates.



Data sources: US Census Bureau, American Community Survey ([https://www.census.gov/search-results.html?q=State%2FTerritory+Household+Income+%282018%29&page=1&stateGeo=none&searchtype=web&cssp=SERP&\\_charset=UTF-8](https://www.census.gov/search-results.html?q=State%2FTerritory+Household+Income+%282018%29&page=1&stateGeo=none&searchtype=web&cssp=SERP&_charset=UTF-8)) and US Energy Information Administration, State Electricity Profiles (<https://www.eia.gov/electricity/state/#:~:text=Archived%20State%20Electricity%20Profiles%20%20%20Name,%20%2049%2C602%2C708%20%2039%20more%20rows%20>).

While the Advisors believe, based on prices submitted in the bids for the ENO 90 MW Renewables project in Council Docket NO. UD-18-06, that it is reasonably possible for ENO to achieve the Advisors’ proposed clean energy targets while remaining within the 1% Customer Protection Cost Cap, that outcome is not certain enough at this time to render the cost cap unnecessary. Indeed, in May, 2020, Dominion Virginia Power submitted its first IRP to comply with the Commonwealth of Virginia’s RPS mandate that Dominion achieve 100% renewable power by 2045, and reported

it is anticipating residential rate increases “with a compound annual growth rate of around 3% over the next ten years”<sup>71</sup> which is expected to increase customer bills by nearly \$50 per month.<sup>72</sup> California saw its electricity prices rise six times more than the rest of the United States from 2011 to 2019, due to its huge expansion of renewables.<sup>73</sup> Rate increases related to an RPS are certainly possible, and the Advisors continue to believe that keeping a Customer Protection Cost Cap in place at this time is necessary to protect New Orleans ratepayers from unreasonable rate increases related to the RCPS.

Other, less serious flaws exist in the EFNO Coalition’s proposed regulation. For example, in Section 4(d), the EFNO Coalition has included a requirement that “The Utility shall construct and maintain a publicly-accessible data portal with a user-friendly interface where it makes available to the public a comprehensive set of data relating to the utility and its operations, finances, RCPS actions, and other information.” This requirement is written so broadly that it could be read to include essentially all information the utility has in its possession, much of which would not be relevant to RCPS compliance and some of which should be kept confidential to protect the security of the electric grid or for competitive business reasons.<sup>74</sup> The Advisors have included a requirement in the Advisors’ Proposed RCPS Regulations that the Utility 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 the Utility’s carbon emissions that it submits to the Council or any other relevant government agency or public body. To the extent that the Council

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<sup>71</sup> <https://news.dominionenergy.com/2020-05-01-Dominion-Energy-Virginia-Quadruples-Renewable-Energy-and-Energy-Storage-in-Long-Term-Integrated-Resource-Plan>

<sup>72</sup> <https://www.utilitydive.com/news/dominions-nearly-50-monthly-power-bill-hike-in-virginia-is-a-warning-for/577666/>

<sup>73</sup> <https://www.forbes.com/sites/michaelshellenberger/2020/08/15/why-californias-climate-policies-are-causing-electricity-black-outs/#37151f7d1591>

<sup>74</sup> The U.S. Supreme Court has recognized a right to confidentiality of business records. *FTC v. Am. Tobacco Co.*, 264 U.S. 298, 305-306 (1924).

wants ENO's customers to receive further compliance information, the Advisors also recommend that the Council add a requirement that the Utility's RCPS Compliance Demonstration Report include a draft bill insert to be included annually in customer bills with an easy-to-understand explanation of the Utility's compliance status for Council review and approval.

The EFNO Coalition struck the Alternative Compliance Payment section from the proposed RCPS regulations, but left the Section 7 provision to create a CleanNOLA Fund, without adding any language as to what revenue source would be used to create the fund or what purpose the fund would serve. The creation of the CleanNOLA Fund in the EFNO's proposed regulations appears to be unrelated to RCPS goals, enforcement or compliance.

The EFNO Coalition has also materially altered the Periodic Review provision of Section 1(a). In the Advisors' RCPS Proposal, the Periodic Review is a periodic opportunity for the Council to conduct a comprehensive review of whether the RCPS is functioning as intended and whether any changes with respect to scientific or technological discoveries or breakthroughs, market conditions, or progress that is faster or slower than anticipated warrant any adjustment to the RCPS itself. The EFNO Periodic Review provision would review only "progress and plans for meeting the requirements of this RCPS" -- which is already to be reviewed annually -- every three years as part of the IRP process. It would not prompt any evaluation of whether or not the RCPS remains appropriate for New Orleans and is functioning as the Council intended it to. This dramatic reduction in oversight of the RCPS now advocated for by the EFNO Coalition directly contradicts the EFNO Coalition's August 27, 2020 statement that to revisit the RCPS only once per decade is "an irresponsible level of oversight."<sup>75</sup> The EFNO Coalition's proposal would never revisit the RCPS itself.

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<sup>75</sup> EFNO August 27, 2020 Letter at 3.

The RCPS proposed by the EFNO coalition also does not live up to the EFNO Coalition's own standards. The EFNO Coalition's Comments argue that the Advisors' RCPS Proposal ignores equity, and the Council has an opportunity to advance energy justice and equity by requiring that a renewable portfolio standard provide economic opportunity for low-income households in New Orleans by including programs that (1) clean up energy systems and reduce local climate impacts; (2) produce much needed bill savings; and (3) create new local workforce opportunities in the energy services industry.<sup>76</sup> However, the EFNO Coalition's proposal does less to accomplish these three goals than the Advisors' Proposed RCPS Regulations.

The Advisors' proposed RCPS regulations clean up energy systems and reduce local climate impacts by requiring ENO to get to net-zero carbon emission energy by 2040 and 100% carbon-free generation by 2050. They prioritize measures that reduce local climate impacts by applying a Tier 1 multiplier to any resource that reduces carbon emissions from an existing source of emissions in New Orleans. Not only does the EFNO Coalition's proposal provide no incentive whatsoever for resources that reduce local climate impacts, the EFNO Coalition has deleted from the Advisors' RCPS proposal even the requirement that RECs used for compliance be certified by Green-e or tracked through any RTO tracking system meaning that RECs produced as far away as Hawaii or Alaska or even in foreign countries could in theory be purchased and used to comply with the EFNO Coalition RCPS, which would do far less than the Advisors' proposal to reduce local climate impacts. Eliminating the certification and tracking mechanisms also eliminates the Council's ability to ensure that the RECs used for RCPS Compliance are used only for that purpose and are then retired.

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<sup>76</sup> EFNO Coalition at 4.

With respect to the EFNO Coalition's second equity goal, producing much-needed bill savings, no provision of the EFNO Coalition's RCPS would guarantee bill savings. In fact, as discussed above, the EFNO Coalition has removed the Customer Protection Cost Cap that would at least prevent significant bill increases, while creating a structure that under at least some interpretations, could require ENO to prematurely retire and replace 44% of its existing generation within the next two years. The Advisors' RCPS proposal, developed in coordination with the Parties to this docket, should have a much more predictable and controllable impact on customer bills than the EFNO Coalition's blank check for compliance.

The EFNO Coalition's proposed RCPS also contains no provision that advances their third equity goal, to create new local workforce opportunities in the energy services industry. The Advisors' Proposed RCPS advances this goal by offering a Tier 2 multiplier to any renewable energy resource, zero-carbon energy resource or DER in Orleans Parish, including DSM that goes above and beyond the Council's pre-existing DSM targets, making these resources more desirable to ENO for compliance purposes than comparably priced remote resources outside of New Orleans..

Despite the fact that the EFNO Coalition spends a page and a half criticizing the Advisors for failing to prioritize equity and protect low-income customers,<sup>77</sup> the EFNO Coalition's own proposal contains no mechanisms to advance equity in Orleans Parish. In fact, although they add a definition for Equity to their proposed RCPS regulations, the word never again appears in the document, not even in their Statement of Intent in Section 1. While the Advisors' proposed RCPS focuses on reducing carbon emissions above other priorities, it does, in fact, contain provisions

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<sup>77</sup> EFNO Comments at 4-5.

that do advance the EFNO Coalition’s stated equity goals better than the proposed regulations set forth by the EFNO Coalition.

The EFNO Coalition opposes the blanket exemption in the Section 1 definition of Tier 1 Resource that would allow any EV charging station located in Orleans Parish to qualify as a Tier 1 Resource without having to demonstrate that the charging station would achieve a net reduction of emissions greater than 1,500 pounds CO<sub>2</sub>/MWh.<sup>78</sup> The EFNO Coalition argues that an analysis should be performed to assess impacts in order to optimize a transportation electrification solution because “while transportation electrification is generally a good thing, it can produce peak demand increases and generally builds load, and electrification of buses and service vehicle[sic] can result in targeted emissions reduction[sic] in dense urban and environmentally disadvantaged neighborhoods. . .”<sup>79</sup> The Advisors believe that the installation of EV charging station infrastructure in New Orleans in order to support the adoption of EVs by New Orleans residents and businesses is a significant public policy goal of the Council and that providing the exemption would facilitate the advancement of this goal.

The EFNO Coalition also incorrectly states that the Advisors “claim that economic development was never an issue within the scope of this docket” that there has been “an outright refusal of the economic value of more local resources, and now there is a suggestion from the Advisors that economic development was never an intention behind the resolution.”<sup>80</sup> The EFNO Coalition provides no citation to any statement by the Advisors to support this assertion, nor can they. The Advisors have never dismissed local economic development as being within the scope of this proceeding. In fact, in the Advisors’ Report the Advisors wrote:

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<sup>78</sup> EFNO Comments at 3.

<sup>79</sup> EFNO Comments at 3.

<sup>80</sup> EFNO Comments at 5.

Thus, to the extent that the Council's preferred public policy goal is to pursue rapid, deep decarbonization, the Advisors recommend a Clean Energy Standard. To the extent, however, that the Council would prefer to prioritize economic development, and particularly the development of the local renewables industry in New Orleans -- and to be clear, the Advisors consider local economic development to be a legitimate public policy purpose -- then the appropriate goal would be a renewables-only RPS.<sup>81</sup>

The Advisors also wrote:

As might be expected, a standard meant to pursue deep decarbonization and rapid reduction in emissions will differ somewhat from a standard meant to stimulate the local renewable economy, create new jobs, and provide rate support to low-income residents. Both goals are legitimate public policy purposes, but as proposed by the parties in their comments in this docket, they are not fully consistent with each other.<sup>82</sup>

Further, in the Advisors' Report, the Advisors set forth three different models, for the Council's consideration, one of which, Alternative 3, was expressly designed to prioritize resilience and economic development of the renewables industry in New Orleans.<sup>83</sup> While the Advisors have expressed the opinion that reducing carbon emissions should take priority over local economic development in an RCPS, we have never argued that economic development is outside the scope of the RCPS proceeding. Indeed, one of the reasons the Advisors included the proposed Tier 2 multiplier for local resources -- which the EFNO Coalition eliminated from their proposal -- is because of the value inherent to local economic development. To heighten the irony, while the EFNO Coalition incorrectly criticizes the Advisors for excluding economic development from the RCPS, the EFNO Coalition proposal contains no provision that promotes local economic development, and could, under some interpretations, be satisfied entirely through resources located outside of New Orleans.

The EFNO Coalition goes on to make a somewhat confusing argument about the Dormant Commerce Clause. They argue:

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<sup>81</sup> Advisors Report at 15.

<sup>82</sup> Advisors Report at 32.

<sup>83</sup> Advisors Report at 39.

Additionally, on page 4 of the resolution, while it was noted that some states prioritize economic development in their RPS's, and that there are challenges to the Dormant Commerce Clause, there are RPS regulations that prioritize local economic development. The Advisors did not respond to the allegation that Entergy New Orleans brought that any RPS that prioritizes local economic development is in clear violation of this commerce clause. Instead they chose to forego engagement on this topic.<sup>84</sup>

It is unclear whether the EFNO Coalition takes issue with the Council and ENO's discussion of the Dormant Commerce Clause and disputes the assertion that the Dormant Commerce Clause may prevent states from adopting regulations that prohibit out-of-state resources from participating in an RPS or whether they take issue with the fact that the Advisors did not argue against the Council's statement in the Resolution and ENO's argument, or both. The Advisors will take the EFNO Coalition's criticism as a request that the Advisors opine as to the impact of the Dormant Commerce Clause upon an RPS.

The EFNO Coalition appears to be referring to the passage on page 4 of Resolution No. R-19-109 that states "a straightforward requirement for in-state resources risks running afoul of the dormant Commerce Clause of the United States Constitution by placing a restraint on interstate commerce" but the EFNO Coalition does not cite to the ENO argument that they reference. Having reviewed ENO's pleadings, the Advisors have found only one discussion of the Dormant Commerce Clause, that which appears at pages 15 and 16 of ENO's June 3, 2019 Comments. In that passage, ENO does not argue that "any RPS that prioritizes local economic development is in clear violation of this commerce clause" as alleged by the EFNO Coalition. Rather ENO argued that "if the Council were to enact a policy that restricted qualifying generation resources (renewable or otherwise) to only those located in Louisiana, it would most likely be considered in violation of the Commerce Clause of the United States Constitution as it would be considered

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<sup>84</sup> EFNO Coalition at 5.

‘facially discriminatory’<sup>85</sup> and went on to discuss a line of cases where states attempted to prohibit out-of-state resources from participating in their RPS.

There are many cases applying the Dormant Commerce Clause to the energy industry, and states have been prohibited from interfering with the interstate transmission/transportation of energy since well before the enactment of the Federal Power Act.<sup>86</sup> The Advisors are familiar with the effect of the Dormant Commerce Clause and its impact on utility regulation, as well as various cases overturning state attempts to restrict the movement of energy across state borders, and do generally agree with the assessment of the Council and of ENO that an RPS that prohibits out-of-state energy resources from participating in the RPS runs the risk of being found in violation of the Dormant Commerce Clause.<sup>87</sup>

The EFNO Coalition attempts to argue that the Advisors are misinterpreting the Council’s intention to pursue an RCPS that includes both renewable and zero-carbon resources. The EFNO Coalition writes:

EFNO’s efforts to engage in the most recent procedural schedule for a Renewable Portfolio Standard were stymied by the Advisors’ and Entergy’s insistence on advancing an agenda for technologies such as carbon capture, sequestration, and utilization, and nuclear power, which are either (or both) unlikely or unnecessarily

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<sup>85</sup> ENO June 3, 2019 Comments at 15.

<sup>86</sup> See *Commonwealth of Pennsylvania v. West Virginia*, 262 U.S. 553, 596-597 (1923) (“Natural gas is a lawful article of commerce, and its transmission from one state to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs or burdens such transmission is a regulation of interstate commerce—a prohibited interference.”) The courts have struck down laws forbidding utilities from selling low-cost power out-of-state or seeking to protect ratepayers in one state at the expense of ratepayers in another state. See, *Commonwealth of Pennsylvania v. West Virginia*, 262 U.S. 553, 597-598 (1923); See, e.g., *New England Power Co. v. New Hampshire*, 455 U.S. at 335-336 (1982) (The Court found that New Hampshire’s commission could not prohibit a New Hampshire utility from selling low-cost hydropower out of state.); *Kentucky Power Co. v. Huelsmann*, 352 F.Supp.2d 777 (E.D.Ky. 2005) (The Court found that a Kentucky statute requiring that when curtailment becomes necessary, priority must be given to retail electric service within the utility’s certified territory violated the dormant Commerce Clause.).

<sup>87</sup> A state regulation violates the Dormant Commerce Clause if (1) it “clearly discriminates against interstate commerce in favor of intrastate commerce,” in which case it is “virtually invalid per se”; (2) “it imposes a burden on interstate commerce commensurate with the local benefits secured”; or (3) “it has the practical effect of ‘extraterritorial’ control of commerce occurring entirely outside the boundaries of the state in question.” *Levy v. Rowland*, 359 F.Supp.2d 267,272-273 (E.D.N.Y. 2005)(quoting *Freedom Holdings, Inc. v. Spitzer*, 357 F.3d 205, 217-218 (2d. Cir. 2004)).

expensive resources, and despite the clear intention of the Council to shift New Orleans energy to cost effective and renewable resources, complemented and enabled by energy efficiency and energy storage.<sup>88</sup>

It is unclear where the EFNO Coalition finds the “clear intention” expressed by the Council to shift New Orleans energy to cost effective and renewable resources, complemented and enabled by energy efficiency and energy storage, to the exclusion of zero-carbon resources such as CCUS and nuclear. They cite no source for this assertion. In Resolution No. R-20-104, having been presented with three potential alternatives - Alternative 1, which was a traditional Renewable Portfolio Resource Standard; Alternative 2, which was a form of clean energy standard that included the use of zero-carbon resources such as CCUS and nuclear; and Alternative 3, which permitted only renewable resources, DSM, energy efficiency, and energy storage resources, the Council stated:

. . .The Council has reviewed all comments and reply comments filed by the parties, and, based upon its review of those comments, is most interested in further exploring the Renewable and Clean Portfolio Standard concept modeled in the Advisors’ Alternative 2; and

**WHEREAS**, for the reasons discussed herein, the Council instructs the parties that it is most interested in gaining further information on a Renewable and Clean Portfolio Standard 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; and<sup>89</sup>

. . .

2. Within 30 days of the technical conference, the Advisors shall circulate to the parties a revised version of the draft regulations that would implement a Renewable and Clean Portfolio Standard, which shall include (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

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<sup>88</sup> EFNO Comments at 2.

<sup>89</sup> Resolution No. R-20-104 at 13.

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.<sup>90</sup>

This language demonstrates that the Council expressly asked the Advisors to further develop Alternative 2, which includes all zero-carbon resources, including CCUS and nuclear as well as renewables and DSM, over both Alternative 1 and Alternative 3 which specifically required renewables and DSM, and thus, the Advisors believe that the inclusion of all zero-carbon resources in the Advisors' Proposed RCPS regulations is consistent not only with the Council's intent, but also with the Council's explicit instructions to the Advisors and parties in this proceeding in Resolution No. R-20-104.

The EFNO Coalition also misapplies that arbitrary and capricious standard. The EFNO Coalition argues "But the Advisors have not provided the most basic due process step of responding to those comments and articulating as justification."<sup>91</sup> Firstly, that statement is factually incorrect, because the Advisors have made several filings responsive to the comments of the parties and in the Advisors' Proposal at Appendix D, provided a detailed, 87-page summary and response to each argument raised by each party. Moreover, the arbitrary and capricious standard of review does not require that the Advisors respond to each party individually. The Louisiana Supreme Court holds that an order of the Council should not be overturned unless it is arbitrary and capricious, a clear abuse of authority, or not reasonably based upon the factual evidence presented.<sup>92</sup> While the arbitrary and capricious standard generally requires that a regulatory body is obligated to identify and comment on the relevant and significant issues raised during the proceeding, it does not require the Council to discuss every fact or opinion contained in

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<sup>90</sup> Resolution No. R-20-104 at 13-14.

<sup>91</sup> EFNO Comments at 2.

<sup>92</sup> *Entergy La., LLC v. La PSC*, 990 So. 2d. 716, 723 (La. 2008)

public comments in a rulemaking proceeding.<sup>93</sup> Further, while the Advisors endeavor to place the Council in a strong position to identify and comment upon the relevant and significant issues in each of its Resolutions, by providing the Council with the Advisors' advice as to the arguments made by the parties, the legal standard of review is applicable to Council Resolutions, not to filings made by the Advisors.

The EFNO Coalition goes on to argue that "One unfortunate reality of the process employed by the Advisors has been a failure to respond to and provide explanations for adopting or rejecting comments of the parties as the process was ongoing. As a result, new ideas-- often beneficial to the utility -- have appeared unannounced and unexpected in versions of the regulations."<sup>94</sup> The Advisors note that they spent nine hours over two technical conferences discussing the drafts and the Advisors proposed changes to the Alternative 2 model directly with the parties as well as circulating a draft of proposed revisions to the parties for review and comment prior to filing a final proposal with the Council. Thus, the request of the EFNO Coalition for even more real-time notification of and explanation for decisions made by the Advisors is unreasonable and would interfere with the Advisors' ability to accomplish the work assigned by the Council in a timely manner. While parties with an interest in the outcome of a docket certainly should have the opportunity to make their views known to the Council and to be heard, they simply do not have a right to limit or edit the independent legal and technical advice the Council receives from its Advisors.

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<sup>93</sup> *South Carolina ex. Rel. Tindal v. Block*, 717 F. 2d 874, 885-886 (4th Cir. 1983). "In determining what points are significant, the "arbitrary and capricious" standard of review must be kept in mind. Thus only comments which, if true, raise points relevant to the agency's decision and which, if adopted, would require a change in an agency's proposed rules cast doubt on the reasonableness of a position taken by the agency. Moreover, comments which themselves are purely speculative and do not disclose the factual or policy basis on which they rest require no response. There must be some basis for thinking a position taken in opposition to the agency is true. *Home Box Office, Inc. v. FCC*, 567 F.2d 9 at n. 58 (D.C. Cir. 1977), citing *Portland Cement Ass'n v. Ruckelshaus*, 158 U.S. App. D.C. 308, 326-327, 486 F. 2d. 375, 393-394 (1973).

<sup>94</sup> EFNO Coalition at 2.

## **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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Advisors to the Council of the City of New Orleans

**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 14th day of October, 2020.



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## Appendix A

### Final 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 carbon-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.<sup>1</sup> At the end of such

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<sup>1</sup> 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 and pollution can also be harmful to the environment and human health, and does expect that this RCPS will also

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 in Tier 1 under this RCPS, the measure must reduce net carbon emissions by the Beneficial Electrification Tier 1 Minimum Threshold. Beneficial Electrification measures that create net reductions of carbon emissions of less than the Beneficial Electrification Tier 1 Minimum Threshold can qualify as a Beneficial Electrification resource in Tier 2 under this RCPS .

**“Beneficial Electrification Tier 1 Minimum Threshold”** is equal to 1,500 pounds of CO<sub>2</sub> per MWh.

**“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

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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.

consumed or produced by a Tier 1 Beneficial Electrification measure or a Qualified Measure. For Beneficial Electrification measures that do not qualify for Tier 1, Clean Energy Credits are earned per MWh in proportion to the project's net CO<sub>2</sub> emission reductions per MWh divided by the Beneficial Electrification Tier 1 Minimum Threshold.<sup>2</sup>

**“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 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 sited close to customers that:

- (i) is interconnected to or on the distribution system, or
- (ii) can provide all or some of the immediate electric and power needs of retail customers and/or can also be used by the system to either reduce demand (such as

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<sup>2</sup> For example, at the outset of this RCPS, the Beneficial Electrification Tier 1 Minimum Threshold is equal to a net reduction of 1,500 lbs. of CO<sub>2</sub> per MWh, so a project with a net emissions reduction of 750 lbs. per CO<sub>2</sub> per MWh would receive 0.5 CECs per MWh.

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.

**“Microgrid”** means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode.

**“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 the Beneficial Electrification Tier 1 Minimum Threshold. 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 the Beneficial Electrification Tier 1 Minimum Threshold.

**“Tier 2 Resource”** means any Renewable Energy Resource, Zero Carbon Emissions Resource, Beneficial Electrification Resource not eligible for Tier 1, 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. The cost of RECs as allowed through the Banking and Compliance Reserve provision that are applied in the compliance year shall be included in the RCPS Cost of Compliance for that year. The cost of RECs acquired for the Banking and Compliance Reserve provision but not applied in that year shall be treated as working capital and shall not be included in the RCPS Compliance Cost for the compliance year.
  2. Incremental costs are the total electric utility revenue requirements associated with the Utility's operations in compliance with the RCPS, net of costs due to any Beneficial Electrification project that are directly allocated or assigned to and collected from the Beneficial Electrification customer, less the total electric utility revenue requirements 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 filed at the Council and served upon both the parties to the relevant IRP docket and the parties to Docket UD-19-01, with the opportunity for stakeholder comment prior to the Council's review and approval. Within 90 days of the adoption of this RCPS, the Utility shall file at the Council and serve on the parties to Docket No. UD-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. Once the Council has approved an RCPS Compliance Plan for a particular time period, if the Utility wishes to add any resources for compliance that are not contemplated in the RCPS Compliance Plan, the Utility should file at the Council and serve upon the parties to the relevant IRP Docket and Docket No. 19-01, with

opportunity for stakeholder comment, a request to include such resource for RCPS Compliance prior to executing plans to implement such resource.

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. UD-19-01, with an opportunity for comment prior to the Council's issuance of a determination as to whether the Utility has achieved the RCPS targets listed in Section 3 and remained within the Customer Protection Cost Cap of Section 6 for the prior calendar year. The Council's approval of the RCPS Compliance Demonstration Report would not eliminate the need for any other Council review and approval of resource costs otherwise required under the Council's Regulations. 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.
5. A draft bill insert to be included in customer bills with an easy-to-understand explanation of the Utility's compliance status for Council review and approval.

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 used for compliance and retired; 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, 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: 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. Grants made from any portion of CleanNOLA Fund funding received from ratepayers must go to projects that would meet the definition of one of the resources eligible for inclusion in the RCPS and all environmental attributes (RECs or CECs) generated by such projects must be transferred to ENO and used by ENO for RCPS Compliance. 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 8/28/2020 Draft Proposed RCPS Regulation

#### DRAFT Renewable and Clean Portfolio Standard (“RCPS”)

##### SECTION 1: OVERVIEW

- c) **Intent:** It is the intent of the Renewable and Clean Portfolio Standard (“RCPS”) to:
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  4. 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 carbon-emissions energy technologies.

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## 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 [in Tier 1](#) under this RCPS, the measure must reduce net carbon emissions by ~~no less than 1,500 pounds of CO<sub>2</sub> per Clean Energy Credit earned~~ [the Beneficial Electrification Tier 1 Minimum Threshold](#). [Beneficial Electrification measures that create net reductions of carbon emissions of less than the Beneficial Electrification Tier 1 Minimum Threshold can qualify as a Beneficial Electrification resource in Tier 2 under this RCPS.](#)

**“Beneficial Electrification Tier 1 Minimum Threshold”** is equal to 1,500 pounds of CO<sub>2</sub> per MWh.

**“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

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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.

consumption resulting from DSM installed after January 1, 2021, (3) or each MWh consumed or produced by a [Tier 1](#) Beneficial Electrification measure or a Qualified Measure. [For Beneficial Electrification measures that do not qualify for Tier 1, Clean Energy Credits are earned per MWh in proportion to the project's net CO<sub>2</sub> emission reductions per MWh divided by the Beneficial Electrification Tier 1 Minimum Threshold.](#)<sup>2</sup>

“**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 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 sited [close to customers that:](#)

[\(i\) is interconnected to or on the distribution system, or](#)

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<sup>2</sup> For example, at the outset of this RCPS, the Beneficial Electrification Tier 1 Minimum Threshold is equal to a net reduction of 1,500 lbs of CO<sub>2</sub> per MWh, so a project with a net emissions reduction of 750 lbs. per CO<sub>2</sub> per MWh would receive 0.5 CECs per MWh.

(ii) \_\_\_\_\_ can provide all or some of ~~their~~ the immediate electric and power needs of retail customers and/or 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.

**“Microgrid”** means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode.

**“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 CO<sub>2</sub> per CEC earned~~ [the Beneficial Electrification Tier 1 Minimum Threshold](#). 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 CO<sub>2</sub> per CEC earned~~, [it may qualify as a Tier 1 resource the Beneficial Electrification Tier 1 Minimum Threshold](#).

**“Tier 2 Resource”** means any Renewable Energy Resource, Zero Carbon Emissions Resource, [Beneficial Electrification Resource not eligible for Tier 1](#), 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

- d) The Utility must meet the specified percentages of Retail Compliance Load with a combination of Tier 1, 2 and 3 resources as follows:
  - 30. 2022: 64% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
  - 31. 2023: 66% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
  - 32. 2024: 68% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.

33. 2025: 70% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
34. 2026: 72% of Retail Compliance Load, with not more than 24% compliance through RECs purchased without the associated energy.
35. 2027: 74% of Retail Compliance Load, with not more than 23% compliance through RECs purchased without the associated energy.
36. 2028: 76% of Retail Compliance Load, with not more than 22% compliance through RECs purchased without the associated energy.
37. 2029: 78% of Retail Compliance Load, with not more than 21% compliance through RECs purchased without the associated energy.
38. 2030: 80% of Retail Compliance Load, with not more than 20% compliance through RECs purchased without the associated energy.
39. 2031: 82% of Retail Compliance Load , with not more than 19% compliance through RECs purchased without the associated energy.
40. 2032: 84% of Retail Compliance Load, with not more than 18% compliance through RECs purchased without the associated energy.
41. 2033: 86% of Retail Compliance Load, with not more than 17% compliance through RECs purchased without the associated energy.
42. 2034: 88% of Retail Compliance Load, with not more than 16% compliance through RECs purchased without the associated energy.
43. 2035: 90% of Retail Compliance Load, with not more than 15% compliance through RECs purchased without the associated energy.
44. 2036: 92% of Retail Compliance Load, with not more than 14% compliance through RECs purchased without the associated energy.
45. 2037: 94% of Retail Compliance Load, with not more than 13% compliance through RECs purchased without the associated energy.
46. 2038: 96% of Retail Compliance Load, with not more than 12% compliance through RECs purchased without the associated energy.
47. 2039: 98% of Retail Compliance Load, with not more than 11% compliance through RECs purchased without the associated energy.
48. 2040: 100% of Retail Compliance Load, with not more than 10% compliance through RECs purchased without the associated energy.
49. 2041: 100% of Retail Compliance Load, with not more than 9% compliance through RECs purchased without the associated energy.
50. 2042: 100% of Retail Compliance Load, with not more than 8% compliance through RECs purchased without the associated energy.
51. 2043: 100% of Retail Compliance Load, with not more than 7% compliance through RECs purchased without the associated energy.

52. 2044: 100% of Retail Compliance Load, with not more than 6% compliance through RECs purchased without the associated energy.
  53. 2045: 100% of Retail Compliance Load, with not more than 5% compliance through RECs purchased without the associated energy.
  54. 2046: 100% of Retail Compliance Load, with not more than 4% compliance through RECs purchased without the associated energy.
  55. 2047: 100% of Retail Compliance Load, with not more than 3% compliance through RECs purchased without the associated energy.
  56. 2048: 100% of Retail Compliance Load, with not more than 2% compliance through RECs purchased without the associated energy.
  57. 2049: 100% of Retail Compliance Load, with not more than 1% compliance through RECs purchased without the associated energy.
  58. 2050: 100% of Retail Compliance Load, with 0% compliance through RECs purchased without the associated energy.
- e) **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.
- f) **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

- i) Calculation of Retail Compliance Load
  2. 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.

j) Calculation of RCPS Compliance Credits

3. 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.
4. CECs associated with Beneficial Electrification can be applied as RCPS Compliance Credits until 2040.

k) Calculation of Percentage of Retail Compliance Load

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

l) 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. The cost of RECs as allowed through the Banking and Compliance Reserve provision that are applied in the compliance year shall be included in the RCPS Cost of Compliance for that year. The cost of RECs acquired for the Banking and Compliance Reserve provision but not applied in that year shall be treated as working capital and shall not be included in the RCPS Compliance Cost for the compliance year.
2. Incremental costs are the total electric utility ~~cost of service incurred as a result of~~ revenue requirements associated with the Utility's operations in compliance with the RCPS, net of costs due to any Beneficial Electrification project that are directly allocated or assigned to and collected from the Beneficial Electrification customer, less the total electric utility ~~cost of service~~ revenue requirements 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.

- m) 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 at~~ submitted to the Council and served upon both the parties to the relevant IRP docket and the parties to Docket UD-19-01, with the 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 ~~submit to~~ file at the Council and serve on the parties to Docket No. UD-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. Once the Council has approved an RCPS Compliance Plan for a particular time period, if the Utility wishes to add any resources for

compliance that are not contemplated in the RCPS Compliance Plan, the Utility should file at the Council and serve upon the parties to the relevant IRP Docket and Docket No. 19-01, with opportunity for stakeholder comment, a request to include such resource for RCPS Compliance prior to executing plans to implement such resource.

- n) 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. UD-19-01, with an opportunity for comment prior to the Council's issuance of a determination as to whether the Utility has achieved the RCPS targets listed in Section 3 and remained within the Customer Protection Cost Cap of Section 6 for the prior calendar year. The Council's approval of the RCPS Compliance Demonstration Report would not eliminate the need for any other Council review and approval of resource costs otherwise required under the Council's Regulations. —The report should include the following clear and concise information that:

6. 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.

7. 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.

8. 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.

9. 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.

9.10. A draft bill insert to be included in customer bills with an easy-to-understand explanation of the Utility's compliance status for Council review and approval.

- o) 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.
- p) 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 Ceompliance Ccredits:

- 4) were in excess of the Ceompliance Ccredits needed for compliance in the compliance year in which they were generated;
- 5) do not exceed ~~the~~ REC limitation specified in Section 3 for compliance with the RCPS in the year they were generated or produced used for compliance and retired; and
- 6) 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

- c) 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.
- d) 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

- c) 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.
- d) 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, 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: 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. Grants made from any portion of CleanNOLA Fund funding received from ratepayers must go to projects that would meet the definition of one of the resources eligible for inclusion in the RCPS and all environmental attributes (RECs or CECs) generated by such projects must be transferred to ENO and used by ENO for RCPS Compliance. 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.