

Appendix A

Redline of Council Renewable and Clean Portfolio Standard (“RCPS”) Against Advisors’ Final Draft Proposed Regulation

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: with a goal to eliminate carbon emissions in 2050 and reach “net-zero” emissions in 2040.
 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.¹ At the end of such

¹ 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 result in reductions of

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 CO2 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~~

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 CO₂ emission reductions per MWh divided by the Beneficial Electrification Tier 1 Minimum Threshold.² each MWh associated with a Tier 3 Resource.~~

“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

~~² 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 CO₂ per MWh, so a project with a net emissions reduction of 750 lbs. per CO₂ per MWh would receive 0.5 CECs per MWh.~~

- (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 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.~~means any Renewable Energy Resource, Zero Carbon Emissions Resource or DER, directly connected to the Utility's transmission or distribution system. Tier 1 resources include the cumulative MWh savings of DSM programs installed after January 1, 2021.

~~“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.~~

~~“Tier 3 Resource” means any Qualified Measure or electric vehicle charging infrastructure directly connected to the Utility's transmission or distribution system. For Tier 3 Resources the Utility must provide the Council with either a certified engineering calculation demonstrating the net reduction in carbon emissions or data demonstrating measured emissions reductions. The Utility must also propose the annual amount of CECs in MWh associated with each proposed Tier 3 Resource for Council consideration.~~

~~“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 resources. The deployment of CCUS on a generating resource that produces energy from fossil fuels is excluded from eligibility as a Zero Carbon Emissions Resource.~~

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 ~~1.25~~^{1.25}; Tier 2 Resources at a multiplier of ~~1.25~~^{1.0}; 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.~~2021.

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~~Tier 3 Resources 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 ~~costs~~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 No. 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. 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.
- 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.