

November 19, 2019

BY HAND DELIVERY

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

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

Dear Ms. Johnson:

Enclosed please find an original and three (3) copies of the *Advisors' Reply Comments on Renewable Portfolio Standards* in the above referenced docket, which we are requesting that you file into the record along with this letter in accordance with your normal procedure.

Sincerely,

Jay Beatmann
Counsel

JAB/dpm
Enclosures

cc: Official Service List for UD-19-01

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

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

ADVISORS' REPLY COMMENTS ON RENEWABLE PORTFOLIO STANDARDS

Pursuant to Resolution No. R-19-109 (“Resolution”), the Utility Advisors to the Council of the City of New Orleans (“Advisors”) on September 3, 2019 submitted their Advisors’ Report on Renewable Portfolio Standards (“Advisors’ Report”) addressing the comments filed by the parties and summarizing for the Council of the City of New Orleans (“Council”) the basic three policy directions that such comments suggested might be appropriate directions for the Council to consider pursuing for a Renewable Portfolio Standard (“RPS”) for the City of New Orleans (“City”). In that Report, the Advisors also set forth for public comment three possible alternative RPS structures, acknowledging that while the Council initiated this rulemaking proceeding with the intention of adopting a simple RPS, parties to the case have brought forward at least two alternative conceptual RPS models that are worthy of further exploration and discussion before the Council renders a decision. On October 15, 2019, the parties submitted their comments on the Advisors’ Report and the Advisors now submit these reply comments for the Council’s consideration.

As is discussed in greater detail herein, the Advisors recommend that the Council issue a Resolution instructing the parties as to which type of RPS the Council wishes to adopt along with any other specific instructions the Council would like to provide at this time, and setting a further procedural schedule for specific regulations implementing the Council’s chosen RPS to be developed. Because the parties appear to be heading further away from each other in each successive round of comments (and indeed, one group of Intervenors entirely declined to even

comment on any of the three Alternatives presented in the Advisors' Report¹), the Advisors believe that such guidance issued by the Council at this stage of the proceeding would allow the parties to focus their discussions on how to develop regulations that best implement the Council's chosen policy, rather than continuing to debate what path the Council should choose.

Although the parties remain widely divergent on the appropriate public purposes of an RPS, and indeed, appear to be heading further apart on that topic, the Advisors are pleased to note that there do appear to be a few common threads emerging among the comments. First, there seems to be some consensus that it is appropriate to include energy efficiency, distributed generation, and demand-side management ("DSM") resources within the RPS, and even a level of consensus that to the extent the Council decides to prioritize certain types of resources over others, that these types of resources should be included among high priority resources.² Second, there seems to be

¹The Comments of Audubon Louisiana, Vote Solar, 350 New Orleans, PosiGen Solar, Sierra Club, and Alliance for Affordable Energy on Advisors' Report on Renewable Portfolio Standards ("Intervenor Group Comments") at 15, UD-19-01, Oct. 15, 2019.

² At page 12 of its comments, ENO concurs with the Advisors' definitions of Demand-Side Management, Energy Efficiency Programs, Beneficial Electrification, and Net Energy Metering, and with their inclusion in an RPS and classification as "Tier 1 Resources" that would receive some kind of multiplier credit. Entergy New Orleans, LLC's Comments in Response to the Advisors' Report and Proposed Alternative Frameworks Concerning Renewable Portfolio Standards ("ENO Comments") at 12, UD-19-01, Oct. 15, 2019. The Intervenor Group Comments state at page 4 that they continue to urge the Council to adopt a Resilient and Renewable Portfolio Standard ("R-RPS) for New Orleans that would require 55% of ENO's retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040, and then go on to state at page 6 that the Energy Future New Orleans ("EFNO") parties had offered the R-RPS proposal as an integrated whole, not as a menu from which portions of the proposal would be selected, or deselected, without an opportunity to consider the implications of such decisions. This leads the reader to conclude that these six parties still support the EFNO R-RPS proposal, which included energy efficiency and at least some net energy metering resources as Tier 2 resources and would require that at least 30% of the compliance portfolio requirements be met with a combination of Tier 1 and Tier 2 resources. Joint Reply of 350 New Orleans, Alliance for Affordable Energy, National Audubon Society, Deep South Center for Environmental Justice, PosiGen Solar, Sierra Club, Southern Renewable Energy Association, and Vote Solar (Collectively the "Energy Future New Orleans" Coalition of "EFNO") Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans ("EFNO Proposal") at Appendix A at 9-10). Air Products supports the Advisors' Report Alternative 2 (with unrelated modifications), which includes energy efficiency, distributed generation and DSM in Tier 2. Air Products and Chemicals, Inc. Comments on Advisors' Report ("Air Products' Comments") at 2, UD-19-01, Oct. 15, 2019, and Advisors' Report at Appendix A p. 11. The Southern Renewable Energy Association ("SREA") supports the Advisors' Report Alternative 1 (with modifications) which includes energy efficiency, distributed generation and demand-side resources in Tier 1. Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard ("SREA Comments") at 4, UD-19-01, Oct. 15, 2019, and Advisors' Report at Appendix A 5. SREA proposes modifications to the Tier structure, but does not appear to be proposing that energy efficiency and demand-side management be excluded. SREA Comments at 4.

general consensus that it would be appropriate to incorporate the RPS into the IRP process to some extent. While parties disagree on precisely how the IRP and RPS should be integrated and whether or not the IRP process should be modified, it does appear that there is a degree of general agreement that some level of integration of the RPS into the IRP is desired.³ The Advisors agree that greater consideration should be given to the interaction between the IRP process and RPS regulations. Finally, several of the parties call for more time and analyses to be performed before any RPS rules are finalized.⁴

As was noted by several of the parties, the three alternatives included in the Advisors report were meant as samples of the potential different forms an RPS could take in order to assist the Council in its consideration of what policy direction it wants to take the RPS, rather than as specific options for the Council to adopt at this time. They were based on the concepts presented in the parties' initial rounds of comments and were meant to provide examples of the types of regulations the Council could adopt to elicit comments from the parties on the pros and cons of various approaches for the Council to consider. The Advisors agree with the general sentiment expressed by the parties that once the Council has chosen a policy direction, and given the parties guidance as to the purpose and goals the RPS should meet, further work will be needed to develop a comprehensive set of regulations to implement the Council's chosen RPS model. That said, the three examples of RPS standards were designed to elicit comment on various specific proposals to stimulate dialog among the parties regarding the best way to accomplish various goals. It was contemplated by the Advisors in constructing the three samples of RPS standards, that parties might voice a preference for combining features of the different models and/or introducing potential additional methods of accomplishing a particular goal in the spirit of collaboration.

³ See generally, ENO Comments at p. 3 and Intervenor Group Comments at 6.

⁴ See generally, ENO Comments at p. 32 and Intervenor Group Comments at 15.

Several of the parties responded with comments regarding the merits of the various proposals and options set forth in the Advisors' report. Six of the eight members of the EFNO coalition, however, continue to maintain that the EFNO coalition's R-RPS proposal should be adopted as it was proposed by them, and acknowledges that implementing the R-RPS would mean that some Council procedures must be changed, and that certain rules that might limit the R-RPS might need amendment.⁵ The Alliance for Affordable Energy goes even further in this round of comments, arguing that the R-RPS rules should replace cost-of-service regulation with an open-access distribution network incorporating (1) unbundled interconnection and distribution costs; (2) equal access to the distribution network, and; (3) open markets mechanisms for competitive clean energy supply and grid services.⁶ Such a complete upheaval of the utility regulatory structure in New Orleans goes well beyond the scope of what the Council set forth for consideration in this docket and has implications well beyond the adoption of an RPS. The Advisors do not recommend that such a drastic change be made as an action incidental to the adoption of an RPS. Moving away from cost of service monopoly regulation and toward retail competition with market-based rates and a standard offer service has been attempted in approximately half of the U.S. states with mixed results. In some states, like Texas and much of New England it is generally considered to have been successful, however other states began the process and then decided to reverse it, and in other states, a poorly-designed transition led to significant problems, the most notable of which is the infamous Enron scandal in California. There are now many examples of best practices and practices to avoid in designing a market transition, but it is not a process to be undertaken lightly or without extensive and careful study.

⁵ Intervenor Group Comments at 4 and 6.

⁶ Comments of the Alliance for Affordable Energy ("AAE Comments") at 29, UD-19-01, Oct. 15, 2019.

The parties pointing out that the Advisors' Report was premised largely on the assumption that the existing regulatory model will continue in place in New Orleans⁷ are correct. As legal and technical Advisors to the Council, advising the Council on the legal and technical feasibility and viability of various proposals before it is an inherent part of the Advisors' role. As the Advisors have had no indication to date from the Council that a complete overhaul of the Council's regulatory structure is desired, the Advisors have focused their efforts on RPS designs that could be implemented and would function within the existing regulatory and legal constructs.

The Advisors also note that responding to the various parties' position has been made increasingly difficult by the manner in which certain parties have filed multiple sets of comments both as individual parties and as members of groups with apparently shifting memberships, making it difficult to track which parties actually support which proposals and statements. The Advisors have endeavored in good faith to accurately portray and respond to the parties' positions herein, but there is now considerable confusion in the record.

Advisors' Positions

The Advisors believe that the adoption of an RPS for the City of New Orleans is a policy determination for the Council to make. The Advisors' role is most properly to provide the Council with relevant information and to assist the Council in understanding the potential implications and outcomes of the various proposals of the parties and to assist the Council in drafting a standard that is legally and technically feasible. Although some parties attempt to discredit the Advisors and claim that the Advisors have an improper bias (while misrepresenting the Advisors' positions),⁸ beyond providing legal and technical assistance to the Council, the Advisors have no

⁷ Intervenor Group Comments at 5.

⁸ Intervenor Group Comments at p. 11.

business, monetary, or political interest in which type of RPS standard is chosen by the Council. Simple disagreement with a party's position is not evidence of bias.

The Advisors support a mandatory, enforceable RPS standard. The Advisors recognize, however, that it would be unfair to penalize the utility for failing to meet an impossible goal, given proposed constraints; thus, the Advisors recommend that the Council include mechanisms for the Council to provide due process and render a determination that a failure to comply with the RPS standard was imprudent prior to penalizing the utility or disallowing recovery of costs. In addition, to the extent that the Council adopts a standard that must be met through some measure of third party compliance (such as mandating a carve-out for rooftop solar installed on customer rooftops or that resilient microgrids be built on customer property), any enforcement mechanism would need to take into account that the utility cannot actually compel customers to participate in such programs. Similarly, any enforcement mechanism would need to recognize any rate impact cap set by the Council, the Council could not require ENO to spend beyond the cap to comply with the RPS and then prohibit ENO from recovering such costs from ratepayers.⁹

ENO recommends more simple compliance mechanisms, like those for Energy Smart or those applied in R-18-221¹⁰ and proposes that the Council use the IRP to evaluate the path to long-term decarbonization goals.¹¹ The Advisors note that a significant number of the states that have adopted an RPS have also modified that RPS over the years to change the targets or to adjust the resources that are permitted for compliance. While the Advisors would recommend that the basic

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

¹⁰ ENO Comments at 3.

¹¹ ENO Comments at 11.

structure of the RPS be generally stable enough to allow for prudent long-term planning, the Advisors also recommend that the Council consider adding a provision to any RPS that requires periodic reassessment of the targets as informed by the progress made toward existing targets, rate and customer impact, and any market or industry developments that might indicate it would be prudent to make adjustments to the RPS.

In addressing these issues, the Advisors recommend that the Council consider the possibility of using a structure for the RPS that is similar to the Energy Smart program, where, once the IRP modeling (which is required to produce at least some resource portfolios that accomplish the Council's regulatory goals as IRP planning strategies) is complete, ENO files an Implementation Plan for the next three program years of Energy Smart which details the program design, budgets, and kWh savings goals. ENO then files annual compliance reports indicating its progress toward achieving the Council's goals, the utilization of the authorized budgets and general performance of the plan. While that particular structure would likely need to be adjusted to accommodate the specific RPS standard ultimately adopted by the Council, the Advisors suggest that the basic model of requiring ENO to periodically file an RPS implementation plan for a multi-year, near-term period informed by the outcome of the IRP modeling, and then to file annual compliance reports detailing progress toward the Council-set goals, is a workable structure that could be adapted and employed for RPS purposes. To be clear, however, unlike the Energy Smart program, the Advisors do recommend that the long-term goals of the RPS program be set forth by the Council in adopting its RPS standard, rather than developed through IRP modeling, which is generally designed to consider several different planning strategies such as those that would prioritize least cost options over emissions-free options.

The Advisors also recommend that the standard ultimately adopted by the Council allow considerable flexibility regarding which resources are permitted to be utilized to comply with the standard. Providing as much flexibility as possible increases the likelihood that ENO would be able to achieve compliance with the standard while preserving reliability and keeping electricity rates reasonable.

The Advisors support a firm cap on the ratepayer impact, whether it be in the form of a net bill impact limit or a net expenditure limit. If there is no limit on the amount of costs ENO must incur to comply with the RPS standard adopted by the Council, there is a possibility that compliance would cause rates to increase to an unacceptable level. The Advisors recommend that such a limit be constructed to apply to net ratepayer impact, meaning that the cap applies only to costs that ENO incurs solely to comply with the RPS. This would mean, for example, that if ENO has a need to add capacity or energy to serve its customers, and it chooses to add a more expensive resource rather than a less expensive resource because the more expensive resource would allow it to comply with the RPS standard, then the portion of the costs subject to the cap is the difference between the more expensive resource chosen and the less expensive resource that could have been used to meet the capacity need if the RPS standard were not in place.

The Advisors would like to clarify their position on RECs, as it is evident from comments from at least one party,¹² that there is some confusion as to what the Advisors intended. The Advisors' suggestion is essentially that New Orleans should work toward having an energy portfolio that is 100% free of carbon emissions, not merely "net zero." To that end, allowing the utility to purchase RECs without purchasing the associated energy is helpful toward achieving a "net zero" status quickly and less expensively, and use of multipliers for certain high-value

¹² Comments of Audubon Society within Intervenor Group Comments at 13.

resources can help boost earlier adoption of those resources than might otherwise occur. However, eventually, the practice of using RECs purchased without the associated energy in order to offset emissions from other resources used to provide energy will need to be phased out if the goal is to eventually get to an actual emissions-free portfolio.

Thus the Advisors' suggestion was that the Council consider pushing ENO to achieve "net zero," the state where they are able to obtain a REC balance sufficient to offset any emissions caused by their portfolio by 2040, but then to spend the next decade phasing out that practice in favor of eliminating the sources of emissions entirely from ENO's portfolio to achieve a true zero-emissions portfolio by 2050. RECs would be used as the accounting mechanism to ensure that ENO's carbon emissions are offset until such time as ENO is able to demonstrate that it has no emissions-producing resources in its portfolio that need to be offset. ENO is correct to note in its comments that this would create a jump-step of compliance requirements that may cause additional costs;¹³ however, the Advisors note that 2040 is still 20 years into the future, meaning that (1) the utility, Council and stakeholders would have 20 years to develop a strategy for managing the transition; and (2) if it becomes evident over the next 20 years that phasing out the use of RECs not paired with the associated energy will not be feasible, adjustments can be made to the RPS.

The Advisors are concerned about the impacts of an RPS on low income customers, but rather than creating an elaborate program to provide incentives for low income customers to put rooftop solar on their homes in the hope that the bills of the participating low income families would be reduced and those families could have the benefits of renewable power, the Advisors generally prefer a model that prevents electricity rates from skyrocketing due to an RPS and increases the percentage of renewable power in ENO's portfolio that all customers, including all

¹³ ENO Comments at 29.

low-income customers (not just those low income customers participating in a rooftop solar program), receive. The Advisors believe that getting as much clean power into ENO's energy mix at the lowest reasonable cost is the best path forward. The Advisors also agree with the apparent consensus of the parties that energy efficiency, distributed generation, and DSM resources, many of which would be expected to benefit low income customers, should be included in an RPS standard for New Orleans and classified as high priority resources.

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

The Advisors agree that none of the three sample RPS proposals set forth in the Advisors' Report are sufficiently vetted to be adopted as-is (especially when several of the parties declined to comment on them in any specificity), and recommend that subsequent to the receipt of the reply comments of the parties in this docket, the Council issue guidance to the parties on the path the Council wishes to pursue, and establish a further procedural schedule to allow for the development of regulations to implement the Council's chosen direction.

Advisor Response to Specific Comments of the Parties

Intervenor Group Comments

Six of the eight original EFNO Coalition parties joined to file a set of comments, though it is unclear whether all parties support all comments made in that filing. The comments from page 10 to page 14 of that pleading appear to be attributed only to Audubon Society raising doubts as to whether they are supported by the other parties to the pleading. In addition, comments were filed separately by PosiGen Solar, who clarified that any comments in their separate pleading that are inconsistent with the Intervenor Group Pleading should be considered to prevail over the position taken in the Intervenor Group Pleading.¹⁴ 350 New Orleans and the Alliance for Affordable Energy also each filed stand-alone comments in addition to participating in the Intervenor Group Pleading, but did not specify which set of comments should prevail in the event of any conflict between them.¹⁵ EFNO Coalition member Southern Renewable Energy Association (“SREA”) filed separate comments taking a different position than the positions taken in the Intervenor Group Comments, recommending that the Council adopt a modified version of Alternative 1 in the Advisors’ Report, rather than adopting the Intervenor Group Position of urging adoption of the EFNO Coalitions proposed R-RPS standard.¹⁶ EFNO Coalition member Deep South Center for Environmental Justice neither joined the Joint Intervenor Comments nor filed separate comments.

Further, PosiGen previously filed an additional letter on September 23, clarifying its position in its initial reply comments, and yet another grouping of parties - both Intervenor and parties who have not intervened in the case, Audubon Society, AAE, VoteSolar, 350 New Orleans, The Justice Alliance, Greater New Orleans Housing Alliance, Center for Sustainable Engagement & Development, and Sierra Club (five of whom were part of the EFNO Coalition) filed a letter in

¹⁴ Reply Comments of PosiGen Solar (“Posigen Comments”) at 1, UD-19-01, Oct. 15, 2019.

¹⁵ 350 New Orleans Reply Comments (“350 New Orleans Comments”), UD-19-01, Oct. 14, 2019; and AAE Comments.

¹⁶ SERA Comments at 4.

support of the two specific issues raised in PosiGen’s September 23 letter, consideration of a rooftop solar carve-out for low-income residents, and evaluation of generation resources using a full analysis and accounting of the total cost of each resource, including spillover costs like climate impacts, air pollution, water use, and others.¹⁷

The overall position of the Intervenor Group itself is somewhat unclear. On the one hand, the group continues to urge the adoption of an R-RPS for New Orleans that would require 55% of ENO’s retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040¹⁸ and argues that the EFNO parties offered their R-RPS proposal as an integrated whole, not as a menu from which portions of the proposal would be selected, or deselected, without an opportunity to consider the implications of such decisions.¹⁹ On the other hand, the Intervenor Group argues that “The Advisors’ proposal of three alternative RPS structures is helpful, but is not at all ready to constitute the sum and substance of choices before the Council. More modeling, analysis, and vetting is absolutely necessary for something as big and important as the RPS for New Orleans. For this reason, we do not offer detailed critiques of the optional RPS approaches offered by the Advisors.”²⁰ Thus, despite urging that the Council adopt the EFNO Coalition’s proposed R-RPS, which was presented to the Council without any modeling or analysis supporting the proposed standard, the Intervenor Group finds that the options the Advisors’ present for discussion are too premature to even be commented upon because such unspecified modeling and analysis has not yet been performed.

The appear to have at least some areas of commonality with the Intervenor Group, namely that it is essential for the Council to carefully consider the goals of its RPS, that the parties have

¹⁷ Comments Supporting Consideration of Issues Raised by PosiGen, UD-19-01, Oct. 15, 2019.

¹⁸ Intervenor Group Comments at 4.

¹⁹ Intervenor Group Comments at 6.

²⁰ Intervenor Group Comments at 15.

presented more than a “simple RPS” to the Council for consideration, that climate change is a real and serious threat to New Orleans, that ENO will need a mandatory standard to ensure compliance, that an RPS alone is not enough to drive rapid decarbonization, that getting to zero climate pollution emissions by a date certain is necessary, that more data is needed, that the RPS should be implemented in a way that avoids backsliding, that the impacts of multipliers should be analyzed, that ENO should be required to report RPS progress on an annual basis and held accountable for failures to meet RPS obligations, and that multi-year budget and program cycles are appropriate to support ENO and market resource development flexibility.²¹

The Intervenor Group Comments acknowledge that the R-RPS is not consistent with the Council’s current procedures and rules, writing, “Implementing the R-RPS means that some procedures must be changed, and rules that might limit the R-RPS might need amendment.”²² They then go on to state that “The Advisors appear to assume that the status quo for utility regulation is the structure in which any RPS must be implemented.”²³ The Advisors did assume in the Advisors’ Report that the existing Council procedures and City Code would generally continue to apply to utility regulation in New Orleans and would govern the implementation of an RPS standard. While the regulatory structure has evolved over time, and the Advisors expect that it will continue to evolve to meet new developments in the utility industry, a significant rewrite of the underlying structure of utility regulation was not contemplated in the scope of the rulemaking set forth by the Council in this proceeding. Further, to the extent that a proposed RPS standard would violate existing procedures and rules, it is the job of the Advisors to highlight such conflict

²¹ Intervenor Group Comments at 7-8.

²² Intervenor Group Comments at 4.

²³ Intervenor Group Comments at 5.

to the Council such that the Council is made aware of the conflict and can adjust either the proposed RPS standard or the underlying regulations accordingly to resolve the conflict.

The Intervenor Group claims that the Advisors' Report does not fully appreciate, and reflect "the value and character of clean, community energy development."²⁴ They go on to write that "CCED resources are an option that provides superior energy economics and economic development."²⁵ First, insofar as the Advisors have been able to determine, the Intervenor Group has invented the term "clean, community energy development" or "CCED" in this set of comments and has never provided a definition thereof, any form of identification of which resources would qualify as CCED or any sort of analysis or research regarding the energy economics of those resources. Nor do they specify which other energy resources the CCED resources provide superior economics in comparison to. While the Advisors could hazard an educated guess as to which resources the Intervenor Group is referring to based on which resources the EFNO Coalition included in its R-RPS proposal, significantly more information would be needed to make any sort of determination that the energy economics of those resources are "superior" to any other particular energy resource or whether or not they provide the other local job creation, economic development benefits and energy security claimed in the Intervenor Group Comments. As the Intervenor Group Comments note, "...the Advisors' Report does not include energy and capacity statistics and assumptions for the resource choices addressed in its three RPS options, nor does it reflect analysis of sources, sinks, economic impacts, and other important aspects of resource options"²⁶ thus it would appear there is simply no basis in this proceeding to determine that one or other types of resources has definitively better energy economics. This lack of definitive data as to which

²⁴ Intervenor Group Comments at 5.

²⁵ Intervenor Group Comments at 5.

²⁶ Intervenor Group Comments at 9

resources have better energy economics causes the Advisors to favor including as many different zero emissions technologies in the RPS as possible, such that they, as well as newly emerging technologies can be evaluated and ultimately chosen for RPS compliance if they prove to be the most economically advantageous resource. To exclude any zero-emissions resource now as to too uneconomic to be considered at any time over the next 30 years would be premature. ENO should be encouraged to pursue a least-cost planning method of complying with the RPS adopted by the Council. To the extent that there is a credible analysis that supports that “CCED” resources do truly offer superior energy economics, they should prevail in such a process without the need for a carve-out or multipliers. To be clear, the Advisors are not recommending the exclusion of the resources the EFNO Coalition proposed utilizing for their R-RPS proposal, only that other zero-emission resources be included as well.

The Intervenor Group Comments also misrepresent the Advisors’ position in at least two respects. They state that they strongly disagree with the Advisors’ inconsistent application of sound resource assessment, citing the Advisors’ Report discussion of assertions regarding New Orleans rooftop solar potential based on the Google Project Sunroof tool.²⁷ The Advisors did not attack Google Project Sunroof numbers because an ENO study exists that produced smaller numbers. The Advisors noted that due to the methodology used by Google Project Sunroof, which measured only how much sunlight a roof receives and how many solar panels could fit on it, and did not account for several other factors that would limit the ability to deploy rooftop solar, the Google Project Sunroof could not be viewed as determinative of how much solar generation could realistically be installed in New Orleans. The Advisors cited to the existence of the report by ENO

²⁷ Intervenor Group Comments at 9.

as simply another factor speaking to the need for further study prior to setting an RPS standard that would require a particular amount of such resources to be deployed in New Orleans.

The Intervenor Group Comments also misrepresent the Advisor position by suggesting that the Advisors in any way argued that decarbonization and economic development are an “either/or” choice.²⁸ As was clearly written by the Advisors in the referenced section, “rapid and deep decarbonization and the growth of the renewables industry can complement each other.”²⁹ The Advisors did not suggest that any of the proposed RPS options would only serve a single purpose. What the Advisors discussed is that placing heavy emphasis on fostering local economic development would slow down the pace of decarbonization relative to what could be achieved under a Clean Energy Standard.³⁰ The Advisors did not state or imply that prioritizing economic development would not bring decarbonization benefits, only that it would bring them more slowly and expensively. Similarly, pursuit of a Clean Energy Standard would likely provide some level of stimulus to the local economy, it would just not be as much as an RPS standard that prioritized economic development over rapid decarbonization.

The Advisors are concerned with a number of the comments attributed in the Intervenor Group Comments solely to Audubon Society, in particular the dismissive nature of the comments toward important new work and industry trends of which the Council should be advised and take notice. The comments attributed to Audubon Society raise a question about Dentons’ strategic relationship with Secretary Moniz and the EFI think tank created by the former Secretary and a number of highly recognized national and international thought leaders.³¹ Dentons’ strategic relationship with Secretary Moniz has always been public, is informal, and does not involve

²⁸ Intervenor Group Comments at 9.

²⁹ Advisors’ Report at 14.

³⁰ Advisors’ Report at 14.

³¹ Intervenor Group Comments at 10.

remuneration at the present time. It essentially involves sharing of best practices and information regarding developing trends between the EFI think tank and the Dentons law firm. Further, Secretary Moniz has made presentations to the Council on the subject of Smart cities several times and each time we have identified to the Council and the public that Secretary Moniz is a strategic advisor to Dentons. We know that members of the Alliance and other organizations have been present for those presentations and have heard an explanation of the relationship. That said, Dentons did not participate in any way in the development of the California study, and had no influence upon its outcome.

The comments attributed to Audubon Society also dispute the applicability of the California study or the recent trends in other states to the development of a New Orleans RPS on the grounds that those states have different economies and access to different resources than New Orleans.³² The Advisors did not offer any such state as a specific example to be copied without modification by the Council, rather the Advisors offered such examples as informative on new trends in the industry and what many leading states are encountering for the Council to consider as it weighs its options. The California Study itself has been well received and highly regarded and discussed including at respected think tanks in the U.S. with broad constituencies and points of view far beyond California, even though California is a very unique state within the U.S.

The comments of Audubon Society rejecting the use of the 2018 IRP as a baseline for the Council's RPS misunderstand the reason for which the Advisors refer to the IRP.³³ The 2018 IRP is a good source of data for understanding the starting point of what resources ENO currently has and what resources are currently planned to be added to the system in order to determine how far

³² Intervenor Group Comments at 10-11.

³³ Intervenor Group Comments at 11.

away from an RPS goal ENO currently is -- an important consideration when considering what the target and relevant time frame should be.

The Audubon Society's statement that "the Advisors appear to have a bias in favor of expensive nuclear and fossil resources (e.g. gas with carbon capture) that is inappropriate and unjustified for New Orleans"³⁴ is a gross misrepresentation of the Advisors' position. The Advisors recommend against eliminating any truly zero-carbon resource from being able to contribute to compliance with an RPS. The Advisors recommend that all available resources for eliminating emissions be utilized, rather than limiting an RPS to only renewable power sources. However, at no point anywhere in the Advisors' Report is there even a suggestion that nuclear and fossil fuel resources should be prioritized over any other resource, only that they be allowed to count. In fact none of the three sample RPS standards set forth would even put nuclear or fossil fuel generating resources in the top Tier of compliance resources (the RCPS standard would allow carbon capture technology, but only to the extent it would be utilized to reduce emissions from an already-existing source of emissions in Orleans Parish, it would not include the addition of new fossil fuel generation with CCUS technology in Tier 1).³⁵

Audubon Society's statement that the Advisors took the position that the Council should not prioritize renewable energy is also a gross misrepresentation of the Advisors' position. The Advisors have stated a preference for allowing all forms of zero-emissions generation to count, and have noted that prioritizing economic development of the local renewable industry over rapid decarbonization may slow decarbonization efforts. The Advisors, however, have never said or suggested that renewable energy should not be a high priority under an RPS, in fact in each of the

³⁴ Intervenor Group Comments at 11.

³⁵ Advisors' Report at Appendix A.

three sample RPS standards in the Advisors' Report, renewable energy is at least as high as Tier 2 in priority, if not Tier 1, and is no lower in priority than any other source of generation.

Audubon Society also states that they "disagree with the Advisors' position that the legal standard for proponents of policy positions at this stage of the proceeding should be 'convincing proof' of the economics of options available to the Council"³⁶ and "we strongly disagree with the Advisors' unsubstantiated assertion that the R-RPS proposal from EFNO is 'likely to be the least successful' in meeting the Advisors' cost caps."³⁷ The sections of the Advisors' Report referred to by the Audubon Society are not advising the Council of a particular legal standard to be applied, it is simply advising the Council that the Advisors have not yet been convinced that a either 100% renewable energy by 2050 standard, or the EFNO Coalition's R-RPS proposal can be accomplished at a reasonable cost to ratepayers. Whether or not the Council is convinced is up to the Council to determine upon review of the record.

Audubon Society's statement that they "strongly disagree that EFNO's proposal for an R-RPS was "incomplete and potentially faulty" such as to merit dismissal or ignoring of the proposal in whole or part. (Report at 24.) The Advisors' statement suggests that EFNO (and every other party) bore a burden to produce an uncontroverted plan in order to secure Council consideration"³⁸ again mischaracterizes the Advisors' Report. First, the statement, which appears at page 16 of the Advisors' Report, not page 24, refers to the estimate of the potential for success of the EFNO R-RPS proposal, not to the design of the proposal: "The Advisors believe that the EFNO coalition's estimates of the potential of its plan for success are based on incomplete and potentially faulty data."³⁹ The statement does not suggest that any party bore a burden to produce an uncontroverted

³⁶ Intervenor Group Comments at 11.

³⁷ Intervenor Group Comments at 12.

³⁸ Intervenor Group Comments at 12.

³⁹ Advisors' Report at 16.

plan in order to secure Council consideration. The statement only implies that the EFNO coalition may have overestimated the chances of success of their proposed R-RPS.

Alliance for Affordable Energy Comments

The AAE's comments go well beyond the Intervenor Group Comments and the original EFNO Coalition's proposed R-RPS, having apparently abandoned any attempt at an RPS standard that fits within the Council's current regulatory structure and now argue that:

Rather than encouraging or approving expensive utility investments in generation, Council should implement RPS rules that replace cost-of-service regulation with an open-access distribution network incorporating (1) unbundled interconnection and distribution costs, (2) equal access to the distribution network, and, (3) open markets mechanisms for competitive clean energy supply and grid services.⁴⁰

To the best of the Advisors' knowledge, no other state has attempted to simultaneously move to retail competition and adopt an RPS in the same legislative or regulatory vehicle. Such an extensive change to the underlying regulatory structure is well beyond the scope of what the Council set forth for consideration in this rulemaking proceeding. Further, it is unclear precisely what competitive structure AAE is advocating for - whether it is, for example seeking to enable some form of direct retail competition, where other utilities could enter ENO's territory and sell directly to retail customers, or whether it is seeking some other form of retail competition. The elimination of cost-of-service regulation and ENO's monopoly on retail utility service has far-reaching implications well beyond the adoption of an RPS, and should not be undertaken as an action incidental to the adoption of an RPS.

AAE writes "Despite the suggestion by Entergy and The Advisors that EFNO is recommending over-reliance on a single resource, neither the R-RPS nor these supporting comments suggest reliance on a single set of technologies or strategies."⁴¹ AAE mischaracterizes

⁴⁰ AAE Comments at 29.

⁴¹ AAE Comments at 8.

the Advisors' position. The Advisors' position is that the R-RPS too narrowly constrains the types of resources that must be used and the percentages of those resources that must be utilized as compared to both more traditional RPS structures and the newer clean energy standard structures. The Advisors' position is not that the R-RPS relies on a single resource, but rather that expanding the number of resources would provide more options to achieve RPS compliance and emissions reductions goals at a potentially lower cost to ratepayers.

AAE offers four overarching comments for the RPS rules: (1) resource investment strategies should leverage private capital investments of customers and communities; (2) renewable energy procurement should rely on competitive mechanisms and access to open markets; (3) the RPS should prioritize capital investments that enhance grid resilience and integration of distributed energy resources; and (4) a resilient grid strategy will mitigate ratepayer exposure to investment risk.⁴² In order to achieve these objectives, however, AAE argues the entire regulatory structure within New Orleans should be overturned.

AAE argues that the way to leverage private and community investments is to require the distribution system to adhere to open access principles and promote grid services⁴³ and to ensure that competitive market mechanisms be established so that energy customers, DER providers, and community resources can develop and deliver grid service for fair value, including voltage support, load balancing, and enhanced utilization of clean energy resources.⁴⁴ Undertaking such an effort would require the Council to establish a comprehensive set of regulations over such sellers of grid services to ensure the stability and reliability of the grid.

⁴² AAE Comments at 9.

⁴³ AAE Comments at 10.

⁴⁴ AAE Comments at 12.

AAE also makes a number of statements in their comments that are unsupported by any analysis or evidence submitted in this docket:

- Entergy’s RPS implementation proposal assumes significant utility development and ownership of generation assets. While understandable, this assumption is misguided and will result in unnecessary ratepayer costs and long-term commitments.⁴⁵
- While we enthusiastically agree that local, distribution-level solar installations bring additional benefits to New Orleans, it is also clear that competitive solicitations that leverage non-utility investment and third-party ownership represented the most effective and efficient investment strategies for ratepayers.⁴⁶
- In addition, as Entergy New Orleans has applied for expensive resources in the name of “reliability” in the last few years, the Alliance has no confidence that if nuclear and CCS are included in a future energy standard for New Orleans that these resources would not be favored by the utility at any cost.⁴⁷

PosiGen Comments

PosiGen’s comments highlight the need for programs that address ending energy poverty, benefits of solar carve-out programs, and comparing the full cost of resources on an even playing field in the RPS.⁴⁸ PosiGen recommends a vision statement for the Council to adopt to guide the Advisors and the RPS development process.⁴⁹ The Advisors note that any vision statement adopted by the Council would reflect the RPS goals the Council chooses to pursue.

PosiGen’s comments discuss the energy burden in New Orleans. PosiGen argues that Washington, DC and other jurisdictions have proven that carve-out solar programs in RPS policies significantly lower energy costs for low-income customers, and that it is much less expensive for rate-payers when these investments are made by a third party, free market provider rather than a monopoly utility, but offers no indication of the magnitude of savings occurring for both the low-

⁴⁵ AAE Comments at 18.

⁴⁶ AAE Comments at 20.

⁴⁷ AAE Comments at 27.

⁴⁸ PosiGen Comments at 3.

⁴⁹ PosiGen Comments at 3.

income customer and the rate payer or any empirical evidence to support the claim.⁵⁰ PosiGen provides a table of the cost difference between ENO's 100-home low-income solar program and PosiGen's solar + energy efficiency program, but it provides no information regarding where the data in the table came from and states that it is using an assumed cost for ENO's program rather than the actual figures.⁵¹

PosiGen makes several other unsupported claims throughout its Comments without providing adequate support for its conclusions:

- PosiGen asserts that “economical” generation is based on an accurate reflection of total cost, which means incorporating “spillover costs” into resource planning and modeling.⁵² PosiGen does not define spillover costs or provide any model for calculating such costs.
- PosiGen references, but does not cite or provide the name of an Illinois Citizens Utility Board 2018 study which concluded that “lower-income consumers are subsidizing higher-income consumers.”⁵³ However, detailed hourly usage data for low income customers in New Orleans is not available and there is no credible method to correlate that specific study to New Orleans, so the purpose of referencing that study is uncertain.
- PosiGen refers to a "solar subsidy" fallacy - that customers with rooftop solar are being subsidized by all other customers – that is “...not borne out by the facts.”⁵⁴ In fact, there are no detailed New Orleans studies comparing hourly utility costs allocated to solar and non-solar customers, other than the analysis ENO offered in Council Docket UD-13-02,⁵⁵ and PosiGen did not present a comparable study. PosiGen goes on to state that “...it is

⁵⁰ PosiGen Comments at 4.

⁵¹ PosiGen Comments at 4-5.

⁵² PosiGen Comments at 7.

⁵³ PosiGen Comments at 7.

⁵⁴ PosiGen Comments at 7.

⁵⁵ ENO's NEM Cost Benefit Study 06/28/2016, HSPM, in Docket No. UD-13-02.

unfair to argue that people should not be allowed to lower their own energy bill because of a ‘subsidy’.” However, the Advisors have not argued in this proceeding, and to their knowledge no other party has argued, that customers should not be allowed to put solar panels on their homes or reduce their energy bills due to a subsidy.

- PosiGen states that it “knows firsthand with our high volume of low-income customers that before the upgrades to their home, families couldn't afford their electric bill and suffered with extreme heat and cold temperatures in their homes.”⁵⁶ It would be more helpful to provide the Council with data on how many customers had missed bill payments prior to upgrades, how much money the customers saved on their bills due to upgrades, and whether customers were then able to make all of their payments after upgrades to enable the Council to assess how effective rooftop solar is on easing the energy poverty burden.
- PosiGen argues that rooftop solar delivers a net positive benefit to the grid, and as storage options become increasingly affordable and available, will deliver increasingly exceptional net positive benefits to New Orleans’ resiliency and ability to remain sustainable in the face of worsening climate impacts and potential grid cyberattacks.⁵⁷ While the Advisors believe it is possible that rooftop solar delivers a net positive benefit to the grid based on a Total Resource Cost test, but no data supporting the claim has ever been submitted to the Council so the Advisors cannot verify this at this time or determine the magnitude of the net benefit and what level of subsidy/incentive might be justified by such net benefit.

⁵⁶ PosiGen Comments at 8.

⁵⁷ PosiGen Comments at 6.

PosiGen recommends designing a low-income solar program modeled after the Energy Smart program, which incentivizes upgrades by paying a small percentage of the total cost, arguing that by using ratepayer dollars to incentivize private spending on low-income solar programs instead of ENO-funded programs, then the total cost of the program will be reduced while maximizing the number of families who would directly benefit.⁵⁸ PosiGen also encourages the Council to look for other ways to leverage private capital by using innovative financing mechanisms like green bonds, PACE financing, partnering with local financing institutions, and the creation of a local Green Bank with potential funding from the Finance Authority of New Orleans as well as philanthropic and social impact investors.⁵⁹ PosiGen also suggests that the Council consider partnering with local community development financial institutions which are “100% dedicated to delivering responsible, affordable lending to help low-income, low-wealth, and other disadvantaged people and communities join the economic mainstream.”⁶⁰ PosiGen offers no details, however, on what any partnership or other financing method might look like, whether the Council would be expected provide any funding to such sources as part of such a partnership or where such funds would come from.

PosiGen grossly misrepresents the Advisors’ position on Google Project Sunroof.⁶¹ The Advisors neither stated that Google Project Sunroof is not a reputable source, nor that New Orleans rooftops are not appropriate for solar. The Advisors have no reason to doubt that the Google Project Sunroof made a good faith estimate that approximately 94% of rooftops in New Orleans get enough sun and are large enough for a solar installation and that those installations could add up to approximately 2.7 GW of solar capacity generating up to 3.5 MWhs of electricity per year.

⁵⁸ PosiGen Comments at 5.

⁵⁹ PosiGen Comments at 5.

⁶⁰ PosiGen Comments at 5.

⁶¹ PosiGen Comments at 6.

What the Advisors noted, however, is that it is not appropriate, particularly in light of Google Project Sunroof’s methodology,⁶² to draw the conclusion from Google Project Sunroof’s data that ENO would be able to meet 58% of its retail sales with only rooftop solar. As the Advisors explained in the Advisors’ Report, the Google Project Sunroof methodology does not account for several known factors in New Orleans that would reduce the number of rooftops able to host a solar installation, therefore it would be more reasonable to conclude that the rooftop solar potential in New Orleans would be somewhat less than that calculated by Google Project Sunroof.

PosiGen also cites to a study by the National Renewable Energy Laboratory (“NREL”).⁶³ The NREL study states clearly that the results of the study do not exclude systems based on their economic performance, and thus they provide an upper bound on potential deployment rather than a prediction of actual deployment.⁶⁴ The NREL study that concluded, based on estimated energy consumption in New Orleans, and NREL’s estimation of how much sunlight rooftops in New Orleans receive as well as the size, shape and angle of the rooftops, that the upper bound on potential rooftop solar deployment in New Orleans would be 2.1 GW and 2,425 GWh/year, representing approximately 39% of estimated consumption in New Orleans.⁶⁵

Similar to the Google Project Sunroof assessment, the NREL study primarily assesses how much space exists on rooftops that could accommodate solar panels and how much sun those panels receive.⁶⁶ There is no indication that the NREL study takes into account zoning restrictions, historical designations or limitations on the distribution system that would prevent solar panels from being installed in certain areas and on certain buildings in New Orleans. As PosiGen is no

⁶² See <https://www.google.com/get/sunroof/data-explorer/data-explorer-methodology.pdf>

⁶³ PosiGen Comments at 6.

⁶⁴ Gagnon, Margolis, Melius, Phillips, and Elmore, *Rooftop Solar Photovoltaic Technical Potential in the United States: A detailed Assessment*, National Renewable Energy Laboratory, Technical Report NREL/TP-6A20-65298 (“NREL Report”) at v.

⁶⁵ NREL Report at 19.

⁶⁶ NREL Report at 4-15.

doubt aware, Net Energy Metering is not permitted on the Central Business District Underground Secondary Networks, Spot Network Grids, and Downtown Underground Radially Fed Installations (essentially anywhere the distribution system is underground), due to safety restrictions on the distribution network in those areas. This encompasses, but is not limited to Downtown New Orleans and the French Quarter.⁶⁷

Thus, the Advisors would expect, if those factors were taken into account, NREL's estimate would also be reduced. Which is not to say that there is not considerable potential for rooftop solar deployment in New Orleans -- the Advisors do believe that there is considerable potential for rooftop solar. The Advisors just do not believe that either the Google Project Sunroof or NREL calculations provide numbers that should be relied upon in setting targets for an RPS. There is no allegation that New Orleans has some general impairment to comprehensive rooftop solar adoption, and for PosiGen to suggest that the Advisors made such an argument⁶⁸ is disingenuous at best. The Advisors merely stated that the methodology of Google Project Sunroof does not consider certain factors that would reduce the potential for rooftop solar in the City from Google Project Sunroof's estimate.

PosiGen's statement that: "To date, neither ENO nor New Orleans ratepayers have invested a single dollar into the existing rooftop solar PV infrastructure in New Orleans"⁶⁹ is also misleading. The revenue requirement for the 5 MW Rooftop Solar program will be included in ENO's electric rates, and as PosiGen has noted in their own comments, ENO has a 100-home rooftop solar pilot program that does have a ratepayer impact.⁷⁰ ENO provided workpapers in

⁶⁷ See Entergy New Orleans, LLC Rate Schedule NM-3, Net Metering Service. https://www.entergy-neworleans.com/userfiles/content/price/tariffs/eno/enol_elec_nm.pdf

⁶⁸ PosiGen Comments at 6.

⁶⁹ PosiGen Comments at 4.

⁷⁰ PosiGen Comments at 4.

Council Docket No. UD-13-02 showing their calculations of the extent to which non-participating customers are subsidizing Net Energy Metering customers.⁷¹ At a minimum Net Energy Metering customers are currently using the distribution system as a battery to store excess power they generate until they are able to use it and pay nothing for that service.

350 New Orleans Comments

350 New Orleans argues that “It could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing a more economical, and strategically deployed renewable energy infrastructure.”⁷² However, no party in the case has suggested that the Council officially mandate a CCUS. The Advisors’ position is that an RPS should leave room for effective and economical CCUS technology that might develop in the future, not that the Council should require ENO to acquire CCUS instead of investing in renewables.

350 New Orleans seriously mischaracterizes *The Green Real Deal* report by stating that it “presents a binary choice between a very specific deep decarbonization strategy including CCNG with CCUS, and a dismissal of distributed energy resources to lay the foundation for a more resilient and community-choice-centered energy infrastructure.”⁷³ The key takeaway from *The Green Real Deal* is not that distributed energy resources and renewable power should be abandoned in pursuit of CCNG. The key takeaway is that an increasing amount of evidence is coming to light that relying on today’s technologies such as renewable power and distributed energy resources paired with energy storage will not be enough to achieve mid-century emissions reductions goals needed to address global warming - that they simply do not appear to be able to

⁷¹ ENO’s NEM Cost Benefit Study 06/28/2016, HSPM, in Docket No. UD-13-02.

⁷² 350 New Orleans Comments at 5.

⁷³ 350 New Orleans Comments at 6.

go far enough fast enough.⁷⁴ *The Green Real Deal* concludes that an “all of the above” approach is needed -- that in order to meet mid-century goals, other zero-carbon technologies will have to be deployed alongside renewable energy and storage, including nuclear power, effective CCUS and that there is a need to continue researching and developing additional zero-carbon resources and options for reducing emissions.⁷⁵

SREA Comments

SREA, having previously participated in the EFNO Coalition, now states that it would prefer a version of Alternative 1 presented in the Advisors’ Report, modified to be more aggressive and to simplify the Tier system to a two-tier system, with Tier 1 resources being inside New Orleans and Tier 2 being resources located outside the city.⁷⁶ SREA recommends that the Council establish a 20%+ by 2023 RPS, ramping up to 60% by 2030 for renewable energy only, and a longer-term goal of 100% clean (zero carbon) energy, create a competitive bidding process for fulfilling the RPS, allow for modest carve-outs for local generation, and require ENO to move beyond capacity-only planning.⁷⁷

The Advisors note that ramping up to 60% renewable energy by 2030 would require ENO to retire several plants early, likely leaving customers to absorb significant stranded costs. It would also require ENO to replace some of its existing zero-emissions nuclear capacity with renewables. The economic impacts of forcing the early retirement of existing resources and/or early termination

⁷⁴ Energy Futures Initiative, *The Green Real Deal, A Framework for Achieving a Deeply Decarbonized Economy*, August 2019, at 14, available at: <https://static1.squarespace.com/static/58ec123cb3db2bd94e057628/t/5d41c61878b170000194e2af/1564591645307/EFI+Green+Real+Deal.pdf> (the “Green Real Deal”).

⁷⁵ Energy Futures Initiative, *The Green Real Deal, A Framework for Achieving a Deeply Decarbonized Economy*, August 2019, at 14 and 16, available at: <https://static1.squarespace.com/static/58ec123cb3db2bd94e057628/t/5d41c61878b170000194e2af/1564591645307/EFI+Green+Real+Deal.pdf> (the “Green Real Deal”).

⁷⁶ SREA Comments at 4.

⁷⁷ SREA Comments at 2.

of contracts to satisfy an RPS could be significant. For many such ENO resources, the Federal Energy Regulatory Commission, and not the Council, would determine the extent to which ENO would be permitted to escape its commitments to the resources and what price New Orleans customers would be required to pay for it. Given the likely lifespan of ENO's plants, the Advisors believe that there is a reasonable opportunity for ENO to exceed mid-century emissions reductions goals without the need to retire resources early and incur significant stranded costs.

SREA recommends that the Advisors' suggested target of "not less than 100% clean energy by 2050" be mandated, and that the Advisors include a simple method of accounting for emissions reductions.⁷⁸ The Advisors note that ENO has already suggested one method of accounting for beneficial electrification under an RPS standard.⁷⁹ The Advisors agree with SREA that this is an area that requires further development and would be ideal to address in a subsequent procedural phase of this docket once the Council gives the parties guidance as to which type of RPS standard the Council intends to adopt.

SERA encourages the Council to adopt clear standards that support the development of renewable energy resources, while several other options such as beneficial electrification, EVs, micro-grids, and other technologies or methodologies would likely reduce carbon emissions, but argues a problem of accounting should be readily apparent.⁸⁰ With respect to EVs, SREA argues that ENO should not get credit for customers offsetting their own emissions, and not reducing ENO's.⁸¹

SREA supports the use of carve-outs to the use of multipliers, and recommends the Council include a reasonable carve-out based on nameplate capacity for local power resources (perhaps

⁷⁸ SREA Comments at 2.

⁷⁹ ENO Comments at 26.

⁸⁰ SREA Comments at 3.

⁸¹ SREA Comments at 3.

50-100 megawatts).⁸² The Advisors remain concerned that use of a carve-out encourages investment in the designated resources at any cost, whereas the appropriate use of multipliers could encourage investment in the designated resources when they reach a reasonable price point relative to the cost of other options for RPS compliance.

SREA recommends that all renewable energy resources not fulfilling the local carve-out be allowed to bid into a competitive solicitation.⁸³ Then, they argue, the City Council would be allowed to evaluate all potential projects based on cost and potentially other metrics developed in the future.⁸⁴ The Advisors support consideration of a competitive process for RPS fulfillment and note that the Council is currently considering rules for ENO RFPs in Docket No. UD-18-05.

Air Products Comments

Air Products supports a standard that allows ENO to pursue generation resources (via acquisition or contract) that use clean energy (including renewables and other clean energy resources) when there is a need for additional generation and the proposed resource is the lowest reasonable cost resource to meet the need and provide reliability of service.⁸⁵ Based on the alternatives provided in the Advisors' Report, Air Products recommends that if the Council decides to adopt an energy standard for New Orleans, that it adopt Alternative 2, RCPS, with the following modifications: (1) include the Alternative 1 cap for large customers; (2) state the multiplier for Tier 3 resources as 1; (3) separate the compliance and procurement plan annual reports, provide intervention and comment for each; (4) clarify how compliance costs are to be estimated relative to the cap similar to Alternative 1, Section 5.b; (5) clarify Alternative Compliance Payment language (specific language proposed); (6) clarify how cost recovery and bill impact cap carries

⁸² SREA Comments at 3.

⁸³ SREA Comments at 3.

⁸⁴ SREA Comments at 3.

⁸⁵ Air Products Comments at 1-2.

forward (language proposed); and (7) add stronger language that the CleanEnergy fund can only be used for RCPS compliance.⁸⁶ While ENO argues that the proposed large customer cap would harm the vast majority of ENO's customers for the exclusive benefit of two customers by shifting a portion of the costs above the cap to other customers,⁸⁷ the Advisors believe that Air Products' proposal to add a large customer cap to Alternative 2 to be reasonable. The Advisors also agree that under Alternative 2, the multiplier for Tier 3 Resources can be stated as 1.

Air Products requests that ENO be required to make two separate filings -- a report filed by April 1 of each year on its achievement of its RCPS goal for the prior calendar year and a plan filed by June 1 each year for how ENO will achieve RPS compliance for the next calendar year. Both the report and the plan should be filed in a docketed proceeding, and there should be opportunity for intervention and discovery on each filing. For the report, there should also be a process for addressing any potential disputed issues through a hearing procedure.⁸⁸ The Advisors agree as to the annual report on the achievement of the goal, but as is discussed above, suggest that the forward-looking RCPS compliance plan could be filed every three years and be informed by the analyses conducted in the IRP process.

Air Products makes several suggestions regarding RPS compliance payments and costs for purposes of observing the cost cap⁸⁹ that the Advisors believe are worthy of further discussion in a subsequent phase of this proceeding once the Council has issued its guidance on which RPS alternative it intends to adopt. The Advisors are similarly willing to consider Air Products'

⁸⁶ Air Products Comments at 2-9.

⁸⁷ ENO Comments at 26.

⁸⁸ Air Products Comments at 6.

⁸⁹ Air Products comments at 6 and 8.

proposal to limit use of any alternative compliance payment fund to compliance with the RPS standard.⁹⁰

ENO Comments

ENO argues that the Council should (i) make reducing emissions and addressing climate change the primary focus of this proceeding, and as such (ii) adopt a technology neutral CES.⁹¹ ENO says as far as a long-term goal, ENO will work with the Council towards a net-zero carbon emissions by 2050 if the Council chooses to adopt that policy, but it should not be mandatory or a cause for penalizing ENO.⁹² ENO argues that penalizing ENO for failing to meet an impossible goal would not be viable or enforceable under Louisiana law.⁹³

ENO proposes that the Council (i) adopt a near-term 70% CES for 2030, requiring that ENO plan to serve 70% of its customer load with zero-emitting resources by 2030, and (ii) use its existing IRP process to monitor technology, costs, resource diversity, and system reliability as ENO and the Council chart the course to net-zero emissions by 2050.⁹⁴

ENO argues that the Council should use IRP to evaluate long-term goals and the means for achieving them.⁹⁵ ENO also recommends more simple compliance mechanisms, more like Energy Smart or R-18-221.⁹⁶ While the Advisors disagree that the long-term RPS goals should be set through the IRP, the Advisors do believe that the analyses performed in the IRP could inform ENO's RPS compliance plan, and therefore, rather than filing an annual plan for complying with the IRP, the Advisors are now suggesting that, as is done with the Energy Smart program, once the IRP analyses have been completed, ENO develop and file with the Council an RPS

⁹⁰ Air Products at 10.

⁹¹ ENO Comments at 2.

⁹² ENO Comments at 2.

⁹³ ENO Comments at 2.

⁹⁴ ENO Comments at 8.

⁹⁵ ENO Comments at 3.

⁹⁶ ENO Comments at 3 and 20.

implementation plan covering at least the next three-year period that is informed by the IRP analyses.

ENO argues that the record established in this proceeding to date provides adequate support for the Council to (i) clarify that its desired policy objective is to combat climate change; (ii) reject the call of those who would use the climate crisis as a pretext for subsidizing the local rooftop solar installation sector at a significant, unacceptably high cost to ENO's customers, (iii) establish a near-term, potentially mandatory CES target that is specifically tailored to New Orleans' energy needs, and (iv) establish an aspirational long-term objective for further decarbonizing ENO's resource portfolio.⁹⁷ As has been previously stated, the Advisors also believe the Council has enough information at this time to choose an RPS alternative and set forth a further procedural schedule to develop detailed regulations implementing the standard.

ENO disagrees that subsidizing a small segment of the local economy at the expense of combatting climate change, keeping rates low, and preserving reliability is a legitimate public policy goal.⁹⁸ ENO believes the only legitimate public policy purpose the Council can pursue in this proceeding is deep decarbonization in a manner that keeps electric rates low and preserves reliability.⁹⁹

ENO further argues that any targets adopted should pursue decarbonization in a responsible, realistically achievable manner.¹⁰⁰ ENO argues that setting a technology-neutral CES target alone is not enough to maintain low rates and preserve reliability, the specific targets for such a standard must be tailored to New Orleans' unique circumstances and ENO's existing (and

⁹⁷ ENO Comments at 3.

⁹⁸ ENO Comments at 4.

⁹⁹ ENO Comments at 4-5.

¹⁰⁰ ENO Comments at 5.

approved) least-cost resource portfolio.¹⁰¹ ENO also argues that it does not have the same access to resources as utilities in other regions.¹⁰² The Advisors note, however, that the RPS Alternatives in the Advisors' Report have left room for standards to be satisfied through purchase of RECs.

ENO argues there is some thought that current goals of carbon free electricity by 2045 or net-zero-emission resource portfolios by 2050 cannot be reached with currently viable technologies and further research and development, along with relying on existing dispatchable generation, will be necessary.¹⁰³ ENO states electric sector decarbonization at a reasonable cost requires (i) utilization of all zero-emitting and emission-reducing technologies, (ii) near-term goals that take technological limitations into account; and (iii) long-term goals that are flexible and have been carefully analyzed considering a utility's specific circumstances.¹⁰⁴ The Advisors note that RPS standards adopted by other states are regularly adjusted and updated to reflect new market dynamics and achievements. The Advisors would expect same to happen here, and are open to adding a provision that the Council would re-examine the RPS goals periodically and adjust them as circumstances warrant.

ENO argues that the Advisors' recommendation for a more ambitious target ignores that ENO's target was optimized to make sure that incremental clean energy added to ENO's portfolio is mainly serving ENO's customers, rather than being exported to MISO's markets as surplus.¹⁰⁵ ENO argues that going beyond what its analysis supports would not actually result in more clean energy serving New Orleans customers; instead, it would result in ENO "going long" on renewable generation to meet an arbitrarily imposed standard where that long position would result in ENO

¹⁰¹ ENO Comments at 5.

¹⁰² ENO Comments at 6.

¹⁰³ ENO Comments at 7.

¹⁰⁴ ENO Comments at 8.

¹⁰⁵ ENO Comments at 9.

being a significant seller in the market, subject to the risk inherent in being a significant net-exporter to MISO.¹⁰⁶ The Advisors note that ENO's scenario ignores the possibility of purchasing RECs rather than building capacity to meet the RPS standard.

ENO argues that the three alternatives set forth in the Advisors' Report would, as proposed, result in higher customer rates than ENO's proposed CES Target with Alternatives 1 and 2 having notably lower cost impacts than Alternative 3.¹⁰⁷ ENO's analysis shows that the total system average rate impact from 2021-2040 of Alternative 1 would be in the 1%-7% range, of Alternative 2 would be in the 1%-6% range and Alternative 3 in the 4%-16% range.¹⁰⁸

ENO argues further work beyond what is required in the current procedural schedule will be needed to establish the details of compliance and other mechanics of tracking progress toward whatever goals the Council sets in this Docket.¹⁰⁹ The Advisors agree and are recommending that the Council issue a Resolution indicating which of the RPS alternatives the Council will pursue and setting forth a further procedural schedule for the development of regulations to implement the RPS.

ENO argues it is inconsistent with Louisiana law for ENO to affirmatively prove the reasonableness and/or prudence of the decisions it makes and the costs it incurs to comply with the Council's mandate, absent any demonstration of imprudence by the Council or anyone else.¹¹⁰ ENO argues that requiring ENO's compliance with the Council's mandate while prohibiting ENO from recovering the associated costs of complying with the mandate would be arbitrary, unreasonable, and improper under the prudent investment rule.¹¹¹

¹⁰⁶ ENO Comments at 10.

¹⁰⁷ ENO Comments at 18-19.

¹⁰⁸ ENO Comments at 19 and Appendix C.

¹⁰⁹ ENO Comments at 20.

¹¹⁰ ENO Comments at 30.

¹¹¹ ENO Comments at 30.

ENO argues the penalty mechanisms also cannot set forth standards that are inconsistent with prior Council decisions, such as the approval of Union Power Block 1 and other fossil resources (i.e., because Council approved UPB1, it cannot require 100% zero emissions by 2050 with zero RECs).¹¹² The Advisors note that 2050 is well beyond anticipated deactivation of UPB 1 that ENO has publicly discussed. Given the anticipated deactivation dates of the various ENO facilities, the Advisors believe there is at least a reasonable chance that ENO will be able to comply with the RPS without having to retire any of its existing fleet early.

ENO argues the establishment of a fund like a CleanNOLA fund would constitute the imposition of an impermissible tax intended to raise revenue for the subsidization of unspecified projects, as opposed to fees designed to implement a specific utility regulatory program.¹¹³ As is indicated above, the Advisors are willing to consider specifying that any such fund can only be used for compliance with the RPS standard ultimately adopted by the Council.

ENO opposes the EFNO Coalition's proposed R-RPS Alternative on several grounds. ENO argues that the R-RPS abandons basic principles of resource planning in favor of an unsubstantiated "Resilience" concept.¹¹⁴ ENO argues it limits the available resources to only five and emphasizes localized requirements for siting a large portion of the renewable generation, both of which undermine reliability.¹¹⁵ ENO argues that intermittent renewables resources tied to small residential battery storage systems do not provide added resilience.¹¹⁶

ENO argues the EFNO R-RPS proposal would upend the Council's regulatory process and decisions, resulting in years of litigation.¹¹⁷ ENO states the Advisors' Report correctly points out

¹¹² ENO Comments at 31.

¹¹³ ENO Comments at 31-32.

¹¹⁴ ENO Comments at 15-16.

¹¹⁵ ENO Comments at 15-16.

¹¹⁶ ENO Comments at 16.

¹¹⁷ ENO Comments at 16-17.

that the EFNO coalition's proposal is a blatant attempt to re-open several other Council rulemakings (NEM, IRP, and community solar) and revise those rules outside of the normal rulemaking process and without notice to potentially affected parties.¹¹⁸ Also, ENO argues, the Council cannot require ENO to divest or transfer its interest in FERC-jurisdictional utilities such as Grand Gulf.¹¹⁹ ENO argues that any standard that would require ENO to retire Council-approved resources before the end of their useful lives, or that would penalize ENO for operating those resources in a manner consistent with prior Council approvals, would be unenforceable and lead to litigation.¹²⁰

ENO argues the costs of the R-RPS would increase rates drastically -- a minimum of 30% by 2033 and 65% by 2040 -- and damage the local economy.¹²¹ ENO states that the Advisors are correct that the cost containment proposal by EFNO would not limit costs, just spread it over a longer period of time and add interest.¹²² The Advisors have not verified ENO's costs and recognize that they are estimates which could be overstated, but we do have significant concerns about the lack of any effective cap on expenditures in the EFNO Coalition's proposed R-RPS - it is a plan to meet the goal at any cost.

Conclusion

The Advisors recommend that as a next step, the Council issue a resolution choosing its policy goals for the RPS and providing any further guidance to the parties it is prepared to offer at this time, and the set a further procedural schedule for the development of detailed regulations to implement the Council's RPS.

¹¹⁸ ENO Comments at 16.

¹¹⁹ ENO Comments at 17.

¹²⁰ ENO Comments at 17.

¹²¹ ENO Comments at 17-18.

¹²² ENO Comments at 18.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading has been served upon the following parties of record by electronic mail on this 12th day of November 2019.



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