**RESOLUTION**

**R-20-\_\_\_\_\_**

**CITY HALL: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**BY: COUNCILMEMBERS MORENO, WILLIAMS, GIARRUSSO, BANKS,**

**AND BROSSETT**

**RESOLUTION AND ORDER ADOPTING RULES REGARDING HOW ANY FUTURE REQUESTS FOR PROPOSALS FOR GENERATING RESOURCES OR PURCHASE POWER AGREEMENTS ISSUED BY ENTERGY NEW ORLEANS, LLC SHALL BE CONDUCTED**

**DOCKET NO. UD-18-05**

**WHEREAS**, pursuant to the Constitution of the State of Louisiana and the Home Rule Charter of the City of New Orleans (“Charter”), the Council of the City of New Orleans (“Council”) is the governmental body with the power of supervision, regulation, and control over public utilities providing service within the City of New Orleans; and

**WHEREAS**, pursuant to its powers of supervision, regulation, and control over public utilities, the Council is responsible for fixing and changing rates and charges of public utilities and making all necessary rules and regulations to govern applications for the fixing and changing of rates and charges of public utilities; and

**WHEREAS**, Entergy New Orleans, LLC (“ENO” or "Company"), is a public utility providing electric and natural gas service to all of New Orleans; and

**WHEREAS,** ENO has an obligation to provide safe and reliable service to its customers at just and reasonable rates; and

**WHEREAS**, the Company, from time to time, seeks to acquire resources to meet its load requirements and reliability needs in order to fulfill its service obligations to its customers; and

**WHEREAS**, ENO has historically utilized an internal process whereby it issues requests for proposals ("RFP") to solicit bids from parties that are interested in potentially supplying ENO with a resource for its electric power supply mix; and

**WHEREAS**, in April 2018, the Council expressed deep concern about the lack of information it and its Advisors had received throughout ENO’s 2016 Renewables RFP and the slow pace at which ENO had been pursuing potential renewable resources; and

**WHEREAS**, as a result of the serious concerns expressed by the Council regarding ENO's 2016 RFP process, on April 5, 2018, the Council adopted Resolution R-18-97 containing several ordering paragraphs, including a directive to its Advisors to propose a procedural schedule for a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or purchase power agreements (“PPAs”) issued by ENO, regardless of the type of technology sought, shall be conducted; and

**WHEREAS**, consistent with Resolution R-18-97, the Advisors recommended an initial procedural schedule for a rulemaking proceeding that provided opportunities for ENO, Intervenors, and the Advisors to file comments addressing how ENO’s RFP process for generating resources or PPAs may be improved; and

**WHEREAS**, on August 23, 2018, the Council adopted Resolution R-18-355 establishing a docket and opening a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or PPAs issued by ENO, shall be conducted; and

**WHEREAS**, Resolution R-18-355 also provided a procedural schedule for interested parties to intervene and provide comments on the specific topics outlined in the resolution; and

**WHEREAS**, specifically, the Council was particularly interested in receiving comments that address the following areas of concern:

1. Prior to developing the Draft RFP documents
   1. How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP:
      1. Achieves wide participation by respondents and is not overly constrained to solicit specific, or narrowly defined resources;
      2. Targets the specific power supply, reliability or other system needs that would be met by acquiring those resource(s);
      3. Includes a proposed schedule of milestone events and dates that minimizes the time required to conduct the RFP while still allowing time for ENO to conduct necessary due diligence and negotiations?
   2. To further the objective of increasing the independence of the Independent Monitor ("IM") and increasing public confidence in the IM's selection and role in the RFP process, what changes to the selection process of the IM should the Council consider?
   3. What modifications, if any, should be considered regarding the competitive procurement process included in Entergy’s Procurement Policy?
2. Development of the final RFP documents
   1. How should the draft RFP comment process be improved to increase transparency and facilitate opportunities for public input, access to draft RFP materials and technical discussions among the parties in the docket, and responses to questions or issues in the draft RFP raised by other parties?
   2. What role should the Council have in the comment process?
   3. Should the RFP process be changed to a two-step process[[1]](#footnote-2) in an effort to more efficiently evaluate the competitive bid submissions and increase the likelihood of maintaining the RFP schedule?
   4. What requirements, if any, should the Council impose regarding the treatment, disclosure and use of "non-price" factors in weighing offers from third parties against self-build proposals or affiliate offers?
   5. What information should be provided contemporaneously with the issuance of the final RFP documents to ensure a more efficient and timely negotiation process with respondents to any RFP?
3. Issuance of the RFP
   1. How can the RFP process be improved to encourage more market participants and thereby reduce unnecessary administrative and transaction costs that may produce price premiums in supply offers?
   2. What safeguard provisions are necessary to assure a fair and competitive solicitation, increase the opportunity for the best resource to be selected, and provide confidence to the market that there will be no preferential treatment of utility or affiliate offers?
   3. What provisions are necessary to provide increased confidence in the market and provide a reasonable level of certainty that the RFP process and regulatory approval will be conducted in a timely and efficient manner and in accordance with the Council's RFP rules?
   4. What provisions should the Council consider regarding the issuance and distribution of the RFP such that it encompasses a sufficiently wide range of vendors who may be qualified to perform the work required by the RFP?
4. Post-issuance of RFP and Evaluation of bid proposals
   1. Can the RFP process be made more transparent by requiring ENO to provide periodic updates to the public without compromising the Company's negotiations with bidders and without releasing Highly Sensitive Protected Materials?
      1. What specific reporting requirements should be imposed?
   2. What provisions should the Council consider regarding evaluation methods and criteria for bid selection?

**WHEREAS**, on October 19, 2018, ENO and Intervenors, the Alliance for Affordable Energy (“Alliance”) and Air Products and Chemicals, Inc. (“Air Products”), filed comments in the docket, and on November 16, 2018, ENO, Air Products and the Alliance filed reply comments outlining their positions with respect to the Council’s consideration of establishing rules pertaining to ENO’s process for issuing requests for proposals for future generating resources or PPAs; and

**WHEREAS**, ENO indicated in its comments that the Company shares the Council’s interest in improving the manner in which ENO administers and conducts RFPs and commended the Council’s judicious use of its regulatory authority in allowing all stakeholders the opportunity to contribute practical and constructive ideas for accomplishing this shared goal; and

**WHEREAS**, ENO also urged that the Council focus its RFP rules, if adopted, on creating a collaborative framework that fosters communication and maintains flexibility so that future RFPs will yield solutions to the needs of ENO’s customers in a timely manner; and

**WHEREAS**, the Alliance argued that the Council’s RFP rules, if adopted, should apply to not only generating resources but also a broader range of capital expenditures; and

**WHEREAS**, with respect to resource acquisitions, the Alliance argues that all source solicitations would allow the market to fairly and transparently answer the call to resolve a utility’s resource needs with solutions that are tailored to those needs and at the least cost; and

**WHEREAS**, the Alliance further supported the Council’s goals of creating increased transparency and timeliness in ENO’s RFP process for generating resources; and

**WHEREAS**, Air Products indicated in its comments that it supported the development of RFP rules that would provide increased availability to public RFP documents and facilitate greater public input; and

**WHEREAS**, Air Products also urged the Council to require RFPs for generating resources to have flexibility in the eligibility of resources to meet a capacity need in order to allow the market to put forth competitive options that allow the lowest reasonable cost resource(s) to be selected that meets the general capacity need identified in the RFP; and

**WHEREAS**, on February 15, 2019, the Advisors filed their report as required by Resolution R-18-355 which addressed comments made by the parties and recommended that the Council provide additional dates in the procedural schedule that would allow additional input and participation from the parties; and

**WHEREAS**, the Advisors fundamentally disagreed with the Alliance’s interpretation of the scope of this proceeding. Specifically, the Alliance asserted that any new rule directing an RFP or procurement policy should apply to a broader range of resources and expenditures. Such broad application of the RFP rules contemplated by this docket fall far outside of the scope of this proceeding; and

**WHEREAS**, the Advisors point out in their report that Council Resolution R-18-355 requires this rulemaking proceeding to consider “the process for how any future requests for proposals for generating resources or PPAs issued by ENO, regardless of the type of technology sought, shall be conducted.”[[2]](#footnote-3) Any application of the rules that may be adopted resulting from this proceeding other than for the acquisition of generating resources or PPAs would violate the Council’s order; and

**WHEREAS**, ENO expressed concern that some suggestions from the Intervenors encourage rigid rules that would apply to all RFPs in the same manner, thus precluding flexibility and limiting ENO’s ability to design RFPs to yield optimal solutions to its specific needs; and

**WHEREAS**, all parties submitted comments expressing a desire to improve the way in which ENO conducts and makes selections from RFPs for generating resources and ENO acknowledged the Council’s frustration with the slow pace and lack of information provided throughout ENO’s 2016 Renewables RFP process; and

**WHEREAS**, all parties were also generally in support of the Council adopting rules in this proceeding but expressed different opinions in their comments regarding specific aspects of any proposed rules; and

**WHEREAS**, after having received initial comments from the parties, the Council adopted Resolution R-19-110 directing its Advisors to draft a set of prospective rules consistent with the Council’s goals and objectives as described in Resolutions R-18-97 and R-18-355; and

**WHEREAS**, on May 10, 2019, the Advisors filed a set of draft rules applicable to future RFPs issued by ENO for generation resources or PPAs and circulated the draft rules to the Official Service List in this docket; and

**WHEREAS**, on or about June 7, 2019, ENO, Air Products and the Alliance all filed reply comments in response to the proposed rules addressing issues, including but not limited to, the scope and purpose of the rules, the RFP process, compliance with the New Orleans DBE Goals, the selection of the IM, and periodic reporting by ENO and the IM; and

**WHEREAS**, in some instances the parties provided specific recommended changes to the draft rules for the Council’s consideration; and

**WHEREAS**, the Council has carefully considered the draft rules, the extensive written comments and other input provided by the parties, and based on all of the information contained in the record of this docket the Council has concluded that adopting rules that govern the process for how future RFPs issued by ENO for generating resources or PPAs shall be conducted is in the best interest of ENO’s customers; and

**WHEREAS**, the Council agrees with the Advisors and ENO that some flexibility should be maintained and incorporated in the rules adopted in this docket that would allow the Company to solicit resources with characteristics necessary to maintain system reliability or to satisfy specific system needs; and

**WHEREAS**, the Council also finds that greater independence of the IM can be achieved by the adoption of rules governing the RFP process for future generating resources without causing undue delays in the RFP schedule; and

**WHEREAS**, the Council further finds that the proposed rules, attached to and made a part of this resolution, will increase transparency, efficiency and public confidence in the manner in which ENO conducts RFPs for generating resources and PPAs; **NOW, THEREFORE:**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS THAT:**

The attached Rules Applicable to Future Requests for Proposals Issued by Entergy New Orleans, LLC for Generating Resources or Purchase Power Agreements are adopted without modification.

**THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:**

**YEAS:**

**NAYS:**

**ABSENT:**

**AND THE RESOLUTION WAS ADOPTED.**

1. Typically, in a two-step procurement process, step 1 would evaluate unpriced technical proposals, and step 2 would encompass the technically qualified proposals submitting sealed bids. [↑](#footnote-ref-2)
2. Resolution R-18-355 at p. 6. [↑](#footnote-ref-3)