BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS

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| In re: A RULEMAKING PROCEEDING TO ESTABLISH RULES FOR COMMUNITY SOLAR PROJECTS | * * * | Docket No. UD-18-03 |

SCHEDULING ORDER and MEMORANDUM

By motion dated November 25, 2025 ("Motion"), Entergy New Orleans, LLC ("ENO") moved to essentially supplement the existing, indeed completed, "consolidated billing" procedural schedule as set forth in Resolution No. 25-352, issued on June 26, 2025 ("the Resolution"), by the Council of the City of New Orleans ("the Council") and requested the provision of a full evidentiary hearing on the merits respecting "consolidated billing."[1]

By Order dated December 4, 2025, the Hearing Officer established a briefing schedule, which provided for any party desiring to express opposition to the Motion, to file a response by December 11, 2025, and subsequently, ENO, along with any other party in support of the Motion, to file a reply to the opposition responses by December 18, 2025.

An opposition response ("Response") was filed by Intervenor, Together New Orleans ("TNO")[2] on its own behalf, and apparently on behalf of numerous other Intervenors. Response at 2. On December 18, 2025, ENO filed its reply to TNO's opposition ("Reply").

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[1] The Resolution did not provide for an evidentiary hearing, nor the filing of written testimony. The consolidated billing procedural schedule set forth therein required the Council Advisors to file a final Report by October 24, 2025, which was timely filed.

[2] TNO filed its response on December 9, 2025, with a minor typographical correction on December 10, 2025.

In its Response, TNO staunchly presses the notion that ENO has already been accorded "extensive process," Response at 1, and argues that

> ENO's implementation efforts [presumably, as established in Council Resolution 24-310, issued on July 24, 2024] are already far behind schedule due to its repeated failure to meet procedural deadlines. Extending the process further would materially harm community solar stakeholders, including Subscriber Organizations and participating residents.

*Id.*

TNO proceeds to meticulously chronicle, *see* Appendix A of its Response, the "extensive process" to which it alluded *supra*, and cautions that "… the scope of any such [supplemental proceeding] … and associated discovery must be strictly limited to the discrete matter of consolidated billing … [and not] "as a vehicle to reopen or re-litigate the Council's adopted community solar framework"[3] Response at 1-2.

In its Motion and Reply, ENO details scenarios in which it *could* suffer harm if forced to implement a consolidated billing regimen, and advances a position that such a regimen *might* not positively serve the public interest.[4] *See e.g.*, Motion at 2, 6, 8-9, 12, 21-23, 25 and Reply at 1. In support of its claimed legal right to a formal evidentiary hearing, ENO heavily relies upon the recounting of established procedural due process jurisprudence set forth in *Gulf States Utilities v. PSC*, 578 So. 2d 71 (La. 1991), which confirmed that while utility ratemaking is legislative in nature, and does not constitute adjudication, a public utility is entitled to an administrative hearing before being deprived of a *significant* property interest. *See id.* at 80. ENO alleges due

[3] The Hearing Officer fully agrees with this latter admonition.

[4] These contentions are not established by actual "evidence" adduced, but of course, that goes to ENO's point – that an evidentiary proceeding is warranted for both due process concerns, and for the proper development of a factual record.

process deficiencies associated with the recently completed consolidated billing procedural schedule, which in its view, violates established due process jurisprudence detailed in *Gulf States, supra,* by *inter alia*, failing to provide for an *evidentiary* hearing.[5] The *Gulf States* Court acknowledged that an administrative hearing was required to be provided to the utility company. But, the administrative rulemaking case in *Gulf States* involved a major *ratemaking* proceeding (Gulf States Utilities Co. sought to obtain rate support for a $4.4 billion nuclear plant), arguably entailing the singularly most significant property interest of a utility. *See id* at 73.

While ENO here asserts a significant property deprivation due to perceived hurdles and potential costs associated with implementing consolidated billing for the community solar program, clearly the establishment of a billing process does not rise to the "significance" level of a major ratemaking proceeding. Moreover, the *Gulf States* Court approvingly cited *KFC National Management Corp. v. N.L. R.B.,* 497 F.2d 298, 304 (2d Cir. 1974); and *N.L.R.B. v. Baldwin Locomotive Works*, 128 F.2d 39, 47 (3d Cir. 1942) ("[W]e may not tell the Board that it must `hear' in some one particular manner so long as it does `hear,' *i.e.,* consider the evidence and argument."). *Gulf States, supra* at 84 (internal quotes in original).

Indeed, the Supreme Court of the United States has repeatedly stated that procedural due process "is flexible and calls for such procedural protections as the particular situation demands," *Morrissey v. Brewer,* 408 U. S. 471 (1972) ("Its flexibility is in its scope once it has been determined that some process is due; it is a recognition that not all situations calling for

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[5] "[T]he [administrative] record is replete with argument – not evidence." Motion at 19 (emphasis in original).

procedural safeguards call for the same kind of procedure."). *Id* at 481; *cf. Mathews v. Eldridge,* 424 U.S. 319 (1976) at 345 (implying that, depending upon the circumstances, written submissions *may* be an adequate substitute for oral presentation).

When assessing the totality of circumstances relevant to the instant matter, the Hearing Officer observes the following:

(1) The Hearing Officer appreciates that ENO's frustration with the existing procedural structure grew with time. Nonetheless, the appropriate time to have filed its Motion was early in the consolidated billing procedural process. Yet, ENO chose to "keep it's powder dry" until the conclusion of the process, *after* the Council Advisors had already filed its final Report - seemingly seeking "two bites of the apple."

(2) The parties have already availed themselves of an extensive and protracted process of submitting written filings, engaging in formal discovery, and participating in a technical conference, culminating in the filing of a comprehensive Advisors' Report.

(3) As noted *supra*, the extent and significance of the alleged property deprivation invoked by ENO is not at all apparent on its face, but *some* manner of property interest deprivation has certainly been rationally articulated by ENO in its extensive commentary to date, its Motion, and in its Reply.

(4) A full-blown live hearing, that requires attendance by numerous out-of-town witnesses and counsel would involve substantial cost to the ratepayers and stakeholders.

In sum, although the Hearing Officer is not entirely convinced that ENO "is due" any additional "process," *see Morrissey, supra* at 481, this issue is not clear cut. And when confronted with the confounding issue of adequate procedural due process, the Hearing Officer is inclined to err on the side of caution, and provide *some manner* of formal *evidentiary* process.

Under the circumstances here, while short of a full-blown live hearing, that process should include the opportunity to present *written* testimony, adduce documentary evidence sponsored by a witness, and conduct meaningful discovery, including the taking of depositions (which could be structured to serve as an acceptable proxy for cross-examination at a hearing[6]). Accordingly, a supplemental evidentiary process is established as follows:

1. **On or before January 16, 2026, ENO Direct Written Testimony shall be filed;**
2. **On or before February 13, 2026, Intervenor Direct Written Testimony shall be filed;**
3. **On or before March 13, 2026, Advisors Direct Written Testimony shall be filed;**
4. **On or before April 3, ENO Rebuttal Written Testimony shall be filed;**
5. **On or before April 20, all data requests must be propounded;**
6. **On or before May 11, 2026, post-testimony briefs shall be filed by all parties;**
7. **On or before May 18, 2026, reply briefs shall be filed by all parties;**

[6] In order to ensure the efficacy of that "proxy for cross-examination," absent a showing of compelling bases for exclusion, all depositions shall be admitted in their entirety into the evidentiary record.

8. **On or before May 29, 2026, the Hearing Officer shall certify the Record to the City Council for its consideration of the evidentiary record, the full administrative record including the prior administrative proceedings, and post-testimony briefing.**

**Absent a showing of good cause, ENO, the Council Advisors, and the Intervenors (collectively), shall be limited to offering written testimony of two (2) *expert* witnesses each, in addition to fact witnesses if required to sponsor documentary evidence.**[7] All written testimony shall be submitted under oath, and limited in scope to the issue of consolidated billing. Discovery shall be limited to data requests and depositions. **Each witness who submits written testimony, or has sponsored the submission of documentary evidence, may be deposed on one occasion,**[8] unless good cause for extending the deposition is demonstrated and approved by the Hearing Officer. **Data requests may be propounded on a rolling basis with responses due within ten (10) calendar days of receipt. Objections to discovery requests must be filed within seven (7) calendar days of receipt.** All filings shall be effectuated electronically if practicable. Vague and non-specific objections are disfavored and all parties are strongly encouraged to provide complete, unambiguous and non-evasive responses to discovery requests. Failure to do so could cause unnecessary discovery disputes and may lead to disruption and/or extension of the procedural schedule. The parties are encouraged to attempt to resolve their discovery disputes amicably, and document such attempts, prior to seeking the intervention of the Hearing Officer. Unless conflicting with the provisions of this paragraph, **discovery shall otherwise be governed generally by the Louisiana Code of Civil Procedure**.[9] *See e.g.,* La C.C.P. art.1426 (protective orders) and art. 1469 (motions for order to compel discovery).

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[7] The Hearing Officer would expect that virtually all documentary evidence be the subject of stipulation, thereby obviating the need to present fact witnesses.

[8] Hopefully, the parties shall strive to depose, at one sitting, all witnesses offered by an adversary.

[9] New Orleans, La., Code of Ordinances § 158-392 provides that subject to section 158-233 (authorizing the Council or designated hearing officer to modify discovery procedures), discovery is governed by the Louisiana Code of Civil Procedure. *Id* at § 158-392 (b).

Finally, it should be noted that the Hearing Officer would deferentially consider any *stipulated* modifications to the foregoing schedule.

**SO ORDERED this 19th day of December, 2025.**

Jeffrey S. Gulin
Hearing Officer