

RESOLUTION

R-18-353

CITY HALL: August 23, 2018

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

**RESOLUTION AND ORDER ESTABLISHING A DOCKET AND PROCEDURAL
SCHEDULE TO CONSIDER THE APPLICATION OF ENTERGY NEW ORLEANS, LLC FOR
APPROVAL OF RENEWABLE PORTFOLIO AND REQUEST FOR COST RECOVERY AND
TIMELY RELIEF**

DOCKET NO. UD-18-06

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;¹ and

WHEREAS, ENO is a wholly owned subsidiary of Entergy Utility Holding Company, LLC ("EUH"), and the other four operating companies are Entergy Arkansas, Inc. ("EAI"), Entergy Louisiana, LLC, ("ELL"), Entergy Mississippi, Inc. ("EMI"), and Entergy Texas, Inc.

¹ On November 30, 2017, Entergy New Orleans, Inc. undertook a restructuring which resulted in the transfer of substantially all of its assets and operations to Entergy New Orleans, LLC, which since that date provides retail electric and gas utility service to New Orleans.

("ETI"). These five operating companies are referred to collectively as the "Operating Companies"; and

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

WHEREAS, on March 22, 2016 Entergy Services, Inc. ("ESI") published a public notice stating that ENO intended to issue a renewables-specific RFP, and subsequently, on July 13, 2016, ENO released the RFP ("2016 RFP"); and

WHEREAS, in April 2017, the Company announced that it would increase its renewables commitment from the 20 megawatts ("MW") sought in the 2016 RFP to up to 100 MW of renewable resources; and

WHEREAS, on May 16, 2017, ENO announced that it had selected three proposals from its 2016 RFP and that two of these three projects were planned to be located in Orleans Parish; and

WHEREAS, one of the projects selected was developed by ESI, on behalf of ENO, as a 5 MW, self-build project involving the construction of multiple, distributed generation scale ("DG-scale") solar photovoltaic ("PV") systems in New Orleans; and

WHEREAS, on October 6, 2017, ENO submitted its Application of Entergy New Orleans, Inc. for Approval to Construct Distributed Generation-Scale Solar Photovoltaic Systems and Request for Cost Recovery and Related Relief ("DG Application"); and

WHEREAS, ENO's DG Application explained that the proposed project resulted from the 2016 Renewables RFP and was one of three solar PV resource proposals selected by ENO from the RFP; and

WHEREAS, on December 14, 2017, the Council adopted Resolution R-17-622 establishing Docket UD-17-05 and an expedited procedural schedule for the consideration of ENO's DG Application; and

WHEREAS, several parties intervened in the docket, including the Alliance for Affordable Energy, Air Products and Chemicals ("Air Products"), Gulf States Renewable Energy Industries Association, 350 New Orleans and American Institute of Architects New Orleans; and

WHEREAS, on May 11, 2018, all of the parties to Docket UD-17-05, with the exception of Air Products, reached an Agreement in Principle ("AIP") and urged Council approval of the project; and

WHEREAS, Air Products agreed to not oppose the AIP; and

WHEREAS, after careful consideration of the AIP, on June 21, 2018, the Council adopted Resolution R-18-222 approving the AIP without modification; and

WHEREAS, ENO represented that it had attempted, without success, to negotiate the terms of agreements with third-party bidders to proceed with the two other projects selected in the 2016 RFP process and as a result, ENO declined to further pursue those projects; and

WHEREAS, after ENO and the third-party bidders were unable to reach contract terms consistent with the proposals submitted, ENO indicated that the 2016 RFP was reopened, with the approval of the independent monitor, to allow certain third party bidders the opportunity to submit updated proposals; and

WHEREAS, on January 30, 2018, ENO announced that the Company had selected a portfolio of updated proposals that would allow it to pursue an anticipated total of 90 MW of additional renewable resources; and

WHEREAS, in April 2018, the Council expressed deep concern about the lack of information it and its Advisors had received on ENO's selections and the slow pace at which ENO had been pursuing potential renewable resources; and

WHEREAS, the Council also found it extremely troubling that nearly two years had elapsed since ENO issued its 2016 Renewables RFP and only one 5 MW self-build solar PV project had been submitted to the Council for consideration; and

WHEREAS, as a result of the serious concerns expressed by the Council regarding ENO's RFP process, on April 5, 2018, the Council adopted Resolution R-18-97 containing the following ordering paragraph,

ENO shall file with the Clerk of the Council on or before July 31, 2018 an application requesting approval of a portion of or all 90 MW of renewable resources selected by the Company from the updated bid responses received by ENO and announced in its January 30, 2018 press release. The filing shall include such testimony, evaluations, analyses, workpapers, and other information the Company believes will be of assistance to the Council in determining whether the proposed acquisitions are in the public interest and should be approved. To the extent that the Company does not seek approval of all 90 MW of renewable resources identified in its January 30, 2018 press release on or before July 31, 2018, then ENO shall, within the same time period, provide a detailed report explaining why any portion or all of the 90 MW of renewables are not being presented to the Council for consideration. The detailed report shall include all RFP documents, responses, correspondence, evaluations and analyses in ENO's possession related to the Company's January 2018 reopening of the 2016 renewables RFP, regardless of whether said documents support ENO's decision to not present the proposed projects to the Council for its consideration.

WHEREAS, in response to Resolution R-18-97, ENO filed its Application of Entergy New Orleans, LLC for Approval of Renewables Portfolio and Request for Cost Recovery and Related Relief ("Application" or "Renewables Portfolio") on July 31, 2018; and

WHEREAS, ENO's renewable energy resources portfolio consists of a 20 MW self-build solar Project to be known as the New Orleans Solar Station ("NOSS") located in New Orleans

East at the National Aeronautics and Space Administration's ("NASA") Michoud Assembly Facility, a 50 MW acquisition of a solar electric generation facility located in Washington Parish, Louisiana that will be constructed by a third-party and acquired by ENO ("Iris Solar Facility"), and a 20 MW purchase power agreement ("PPA") from a to-be-constructed solar PV plant located in St. James Parish, Louisiana ("St. James PPA"); and

WHEREAS, according to ENO, two of the projects were selected from the 2016 RFP while the third resource, NOSS, originated from the 2016 RFP but was transitioned into an ENO self-build project due to a bidder's inability to hold its 2016 RFP price and dedicate sufficient resources to ensure that the project could actually be completed; and

NEW ORLEANS SOLAR STATION

WHEREAS, the Company states that the NOSS will be located in New Orleans East, within the property boundaries of the NASA facility and will be protected by levees constructed along the Gulf Intracoastal Waterway ("GIWW"), NASA's pumping stations, and the Lake Borgne surge barrier, all of which were improved or constructed after Hurricane Katrina; and

WHEREAS, ENO's filing indicates that the project will be constructed by engineering, procurement, and construction ("EPC") contractors under a fixed price, date certain form of EPC contract, which is expected to be executed by the fourth quarter of 2018 and construction under the EPC agreement will not commence until the contractor receives notice to proceed from ENO following Council approval of the contract; and

WHEREAS, ENO's Application states that the project originally was submitted into the 2016 RFP as a build-own-transfer acquisition that would have been constructed by another party and purchased by ENO upon completion. However, following the second round of failed negotiations, the Company elected not to abandon the resource altogether, but instead to

purchase site control (i.e., purchase the long-term land lease with NASA and the MISO Interconnection position) from the RFP bidder and pursue the project as an ENO self-build given that it was the only utility-scale solar resource located in Orleans Parish submitted into the 2016 RFP; and

WHEREAS, ENO also asserts that the overwhelming majority of the Company's installed capacity is located outside of its service territory, thus, ENO has a stated goal of building new resources in proximity to the load they will serve, which carries a host of benefits for customers. ENO points out, for example, that to the extent it is available and producing, the resource could limit transmission losses that result from importing energy from remote locations and potentially mitigate transmission congestion price risk and supply power to help mitigate customers' exposure to Locational Marginal Prices of energy purchased from Midcontinent Independent System Operator ("MISO"); and

WHEREAS, According to ENO's filing, with respect to NOSS, if there are no unanticipated project delays due to the inability to obtain necessary regulatory approvals, permits, materials, and equipment, NOSS is expected to enter service in the second quarter of 2020; and

ST. JAMES PPA

WHEREAS, ENO's second resource in its Renewables Portfolio is the St. James PPA, a 20 MW to-be-constructed solar PV plant located in St. James Parish near Vacherie, Louisiana. The facility is a "greenfield" project to be owned by St. James Solar, LLC, which has secured and maintained site control for the facility through a long-term lease agreement for 200 contiguous acres; and

WHEREAS, according to the Application, the St. James PPA is a long-term (20-year) agreement for the purchase of 20 MW of must-take, unit-contingent, as-available capacity, capacity-related benefits, environmental attributes, energy and other electric products from the facility; and

WHEREAS, ENO states that the St. James PPA was selected from the 2016 RFP because it was the highest economically ranked proposal and has significant net benefits to customers; and

IRIS SOLAR FACILITY

WHEREAS, ENO has provided testimony in support of its Application that describes the Iris Solar Facility ("ISF") as a 50 MW solar PV electric generation facility that will be constructed by a third-party and acquired by ENO. The facility will be located on a remote approximately 440 acre "greenfield" site in Washington Parish, Louisiana and will be subject to a long-term lease, with options to extend at the end of the term; and

WHEREAS, the Company states that the ISF acquisition is structured as a build-own-transfer, or "B-O-T," asset acquisition. Under the proposed B-O-T structure, the seller would design and build the ISF if ENO obtains the required regulatory approvals and other necessary conditions to the issuance of notice to proceed are met; and

WHEREAS, after the plant has achieved a prescribed level of completion and other closing conditions have been satisfied, ENO states that it would buy the plant and related assets from the seller for the pre-agreed purchase price. ENO claims to have structured the timing of the acquisition to ensure that the Company would have the opportunity to obtain the federal investment tax credit ("ITC") available for the project; and

WHEREAS, according to ENO's filing, the ISF transaction is projected to close in the first half of 2021; and

COST RECOVERY REQUESTS

WHEREAS, with respect to cost recovery, ENO claims that there are multiple potential benefits associated with the addition of the Renewables Portfolio, those benefits, however, do not come without a cost. Therefore, ENO requests that the Council approve the proposed cost recovery treatment as proposed in its Application; and

WHEREAS, the Company suggests that the incremental costs associated with NOSS and ISF fall within two broad categories: (1) capital investment (i.e., the cost to construct the projects) and ongoing operations and maintenance expense ("O&M"); and (2) any revenue or expense resulting from MISO market settlements; and

WHEREAS, ENO proposes that the first category initially be recovered through the Purchased Power and Capacity Acquisition Cost Recovery Rider ("PPCACR Rider"), as modified by the 2018 Combined Rate Case, then realigned to base rates in the next Formula Rate Plan filing. Regarding the second category, MISO costs and revenues, the Company proposes that those market settlements be recognized in the Company's Fuel Adjustment Clause ("FAC"), consistent with the Council-approved treatment of those MISO market settlement revenues and expenses attributable to other ENO resources; and

WHEREAS, with respect to the costs associated with the St. James PPA, the Company proposes for its costs to be recovered through the Company's FAC, since they will be incurred in the form of energy-only payments that will be unaffected by the capacity provided by the facility; and

WHEREAS, while ENO represents that two of the three proposed projects will produce net economic benefits to customers, the Council directs its Advisors to thoroughly evaluate the Company's proposal and to determine whether ENO's cost/benefit analyses for these projects are reasonable; and

WHEREAS, ENO's Renewables Portfolio purportedly offers a number of potential benefits to customers, which include but are not limited to the following: (i) environmental benefits associated with providing incremental zero-emitting energy; (ii) protection against uncertainty in the level and volatility of future natural gas prices, changes in environmental regulations (e.g., regulation of CO2 emissions), and the LMPs of energy purchased from MISO at the New Orleans Load Zone; (iii) substantial local economic benefits in the form of jobs, increased spending, and increased tax revenues to the City of New Orleans with respect to one of the projects; (iv) increased supply cost savings with respect to two of the projects; and (v) making New Orleans a leading regulatory jurisdiction for solar adoption; and

WHEREAS, the Council has repeatedly expressed an interest in acquiring cost-effective renewable resources in its electric generation mix; and

WHEREAS, ENO requests that the Council adopt a six-month procedural schedule to evaluate and approve its Application; and

WHEREAS, the Company's filing specifically requests that the Council approve its Application as follows:

1. Find that the Company's proposed Renewables Portfolio serves the public convenience and necessity and is in the public interest, and is, therefore, prudent;
2. Find that costs associated with the St. James PPA, NOSS, and ISF are eligible for recovery from customers, and that the Company will have a full and fair opportunity to recover all prudently-incurred costs related to these projects;

3. With respect to NOSS and ISF, find that the retail revenue requirements associated with the projects (to be determined in a subsequent revenue requirement filing) are deemed eligible for recovery in the first billing cycle of the month following commercial operation via the applicable PPCACR Rider, which would be modified for such purpose, or a similar exact cost recovery rider;
4. With respect to the St. James PPA, approve recovery, through the FAC, of the energy costs and expenses incurred under the PPA;
5. Grant a waiver of any applicable requirement to the extent that such a waiver may be required to facilitate approval of the transaction described in this Application; and
6. Order such other general and equitable relief as to which the Company may show itself entitled; and

WHEREAS, due to the long delays experienced to date since ENO first published its 2016 RFP for renewables, the Council wishes to determine whether parties choosing to participate in this proceeding can reach some consensus, within a reasonable period of time and without an extensive and costly litigated proceeding, regarding the issues raised in ENO's Application; and

WHEREAS, the Council also wants members of the public to have an opportunity to intervene in the docket created by this resolution and, at the same time, provide any comments they may have regarding ENO's Application; and

WHEREAS, the Council believes that a discovery period should be established immediately to allow its Advisors and Intervenors (once they have intervened) have the opportunity to submit requests for information to ENO regarding its proposal; and

WHEREAS, in the event the parties are unable to reach consensus on the issues raised in ENO's Application, the Council would, at that time, adopt a procedural schedule that allows for the development of an evidentiary record and hearing upon which it can render a decision; and

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS

THAT:

1. The Council establishes Docket No. UD-18-06 to consider the *Application of Entergy New Orleans, LLC for Approval of Renewables Portfolio and Request for Cost Recovery and Related Relief*.
2. The Honorable Jeffrey S. Gulin is hereby appointed as Hearing Officer in this docket to preside over the proceedings and rule on procedural disputes, including motions and discovery, and shall, for good cause shown and as required by the circumstances of the proceeding, have the authority to change or amend the procedural dates set forth herein.
3. To the extent that the City Clerk's office closes before 5:00 pm on the date of any deadline contained herein or otherwise set by the Hearing Officer, the deadline shall be extended to the next business day.
4. The Council adopts the following procedural schedule:
 - a. ENO and the Council's Advisors are designated as Parties to this proceeding. Interested parties shall intervene in the case no later than September 28, 2018. Persons desiring to intervene shall do so by filing a motion to intervene with the Clerk of Council and paying the applicable filing fee, unless such fee is waived pursuant to Council Resolution No. R-16-365, with a copy submitted to Director, Council Utility Regulatory Office, Room 6E07 City Hall, 1300 Perdido Street, New Orleans, LA 70112. The Council's requirements for motions to intervene may be found in the City Code (which is available on the Council's website) at sections 158-236, 158-240, 158-286, 158-287, 158-322, and 158-324. Objections to intervention requests shall be filed within five days of such requests. Timely-filed intervention requests not objected to within that time period shall be deemed GRANTED.
 - b. A discovery period shall commence upon the issuance of this Resolution and run until the filing of an Agreement in Principle with the Council or until 8 days prior to the date of the Evidentiary Hearing in the event the parties are not able to reach settlement. Discovery requests must be made in time that responses may be received prior to the close of the discovery period. Responses to such data requests shall be made on a rolling basis and shall be due in hand within 10 calendar days of receipt. Parties are encouraged to submit their data requests and responses electronically, where appropriate. Any documentary discovery responses that are readily available for production upon request and are not the subject of a timely objection shall be produced by the responding

party as soon as practicable notwithstanding the 10 calendar day deadline established herein. Objections to data requests shall be filed within 5 days of receipt. Vague and non-specific objections are disfavored and all applicable statutes and rules governing discovery shall be liberally and broadly construed to facilitate a comprehensive evaluation of ENO's Application. All parties are strongly encouraged to provide complete, unambiguous and non-evasive responses to requests for information. Failure to do so could cause unnecessary discovery disputes and may disrupt the procedural schedule outlined herein.

The parties are encouraged to attempt to resolve their discovery disputes amicably prior to seeking the intervention of the Hearing Officer or appealing to the Council. It is anticipated that during discovery, the parties may be required to produce documents or information that is deemed confidential and/or highly sensitive and, accordingly, the Council adopts for use in this docket its Official Protective Order adopted by Resolution R-07-432, a copy of which can be obtained from the Council Utilities Regulatory Office.

- c. Comments and/or Position Statements from all Intervenors on ENO's Application shall be filed no later than October 26, 2018.
- d. Comments and/or Position Statements from the Council's Advisors on ENO's Application shall be filed no later than November 9, 2018.
- e. Reply comments by ENO shall be filed no later than November 30, 2018.
- f. A concise Joint Status Report indicating whether the Parties believe they can reach a full or partial settlement, contested or uncontested, to resolve all issues in the case shall be filed by the Council's Advisors no later than December 7, 2018. If the Parties indicate that a full or partial settlement may be attained, the Joint Status Report would also include a deadline within which the Settling Parties would submit an Agreement in Principle to the Council for consideration.

- g. To the extent that the Parties believe that a settlement may not be reached, then the Council's Advisors shall file a motion on December 7, 2018 requesting that the Hearing Officer establish a procedural schedule that would allow for parties to submit evidence into the record of this docket and set a date for an evidentiary hearing on the merits of ENO's Application. Following the Council's Advisors motion, the Hearing Officer shall set an accelerated procedural schedule and hearing date.

THE FOREGOING RESOLUTION WAS READ IN FULL, THE ROLL WAS

CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Banks, Brossett, Giarrusso, Gisleson Palmer, Moreno, Nguyen,

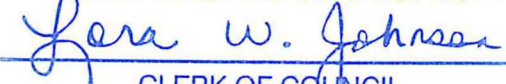
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NAYS: 0

ABSENT: 0

AND THE RESOLUTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY


CLERK OF COUNCIL