

February 15, 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

Re: Rulemaking Proceeding to Consider Process for How Any Future Requests for Proposals for Generating Resources or Purchase Power Agreements Issued by Entergy New Orleans, LLC shall be conducted, CNO Docket UD-18-05

Dear Ms. Johnson:

Enclosed please find an original and three (3) copies of the *Advisors' Report* in the above referenced docket, which the Advisors 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-18-05

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

**IN RE: RULEMAKING PROCEEDING )  
TO CONSIDER THE PROCESS FOR )  
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**

**INITIAL REPORT AND RECOMMENDATIONS  
OF THE COUNCIL’S UTILITY ADVISORS**

Entergy New Orleans, LLC (“ENO” or “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. 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. However, due to recent dissatisfaction with the results of ENO’s internal process, the Council has opened this proceeding to consider adopting new requirements regarding ENO’s RFP process.

**BACKGROUND**

On March 22, 2016 Entergy Services, Inc., now Entergy Services, LLC ("ESL"), 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”). 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. One of the projects selected was developed by ESL, 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.

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"), which stated 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. The Council, intent on accelerating the addition of renewable resources to the City's power mix, quickly established a docket and an expedited procedural schedule for the consideration of ENO's DG Application.<sup>1</sup>

Several parties intervened in the docket, including the Alliance for Affordable Energy ("Alliance"), Air Products and Chemicals ("Air Products"), Gulf States Renewable Energy Industries Association, 350 New Orleans and American Institute of Architects New Orleans and all parties, with the exception of Air Products, reached an Agreement in Principle ("AIP") and urged Council approval of the project. In furtherance of its stated goal of increasing renewable resources in New Orleans, the Council adopted Resolution R-18-222 on June 21, 2018 approving the AIP without modification. In an unfortunate and disappointing turn of events, 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. At the time ENO filed its DG Application, the Company did not fully disclose to the Council the details of why it was unsuccessful in reaching an agreement with said third-party bidders.

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 ("IM"), to allow certain third-party bidders the opportunity to submit updated

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<sup>1</sup> Council Resolution R-17-622 established docket UD-17-05.

proposals. However, ENO did not disclose to the Council the process utilized in informing the market and allowing certain third-party bidders the opportunity to submit updated proposals or the content of such proposals. Eventually, upon much criticism from the Council, the Council's Advisors, and members of the public, ENO announced, on January 30, 2018, 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. For several months following ENO's announcement of the latest bid selections, the Company provided very limited information to the Council regarding those potential resources, and had not provided the Council with copies of the updated bids received and other conditions it may have imposed on the reopened RFP process it utilized.

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.<sup>2</sup> 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. As a result of the serious concerns expressed by the Council regarding ENO's RFP process, the Council initiated a proceeding directing ENO to show cause why the timeframe ENO employed to acquire renewable resources since its written commitment to incorporate 100 MW of renewable resources in its generation portfolio as discussed therein had not been imprudent. The Council further directed the Advisors to thoroughly investigate and evaluate ENO's process, its results and consider the timeframe it had employed to acquire renewable resources since its 2016 renewables RFP as discussed therein. A rulemaking proceeding to consider the process for conducting any future requests for proposals for generating

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<sup>2</sup> Resolution R-18-97 dated April 5, 2018.

resources or purchase power agreements issued by ENO, regardless of the type of technology sought, was also required.

The Council established this docket to consider *A Rulemaking Proceeding to Establish A Docket and Opening a Rulemaking Proceeding to Consider the Process for How Any future Requests for Proposals for Generating Resources or Purchase Power Agreements Issued by Entergy New Orleans, LLC Shall Be Conducted*. The Council provided an opportunity for interested parties, the Council's Advisors and ENO to provide comments to the specific topics outlined in the resolution. On October 19, 2018, ENO, 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 purchase power agreements. The Council's Advisors have reviewed and considered the various comments and reply comments and offer the following observations and recommendations to the Council for further consideration in this docket.

#### **I. General Overview of the Parties' Comments**

ENO submitted initial comments expressing a desire to improve the way in which it conducts, and makes selections from RFPs for generating resources and states that this function "has always been an essential part of ENO's business and directly affects ENO's ability to fulfill the core mission of that business – providing reliable, safe electric service to ENO's customers at the lowest reasonable cost."<sup>3</sup>

ENO states that it "shares the Council's interest in improving the manner in which ENO administers and conducts RFPs" and the Company "commends the Council's judicious use of its

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<sup>3</sup> ENO Comments dated October 19, 2018 at p. 1.

regulatory authority” in initiating this proceeding to allow all stakeholders the opportunity to contribute practical and constructive ideas for accomplishing this shared goal.<sup>4</sup> ENO’s initial comments acknowledge the Council’s frustration with the slow pace and lack of information, including the delays in the process caused by failed negotiations between ENO and two bidders for separate solar resources in the 2016 RFP process.<sup>5</sup> After consulting the IM, ENO decided to “allow all shortlisted bidders the opportunity to re-submit their bids with updated pricing information” which caused ENO to have to evaluate those bids, and then enter into a second round of contract negotiations.<sup>6</sup> These decisions added a “significant amount of time” to the 2016 RFP process.<sup>7</sup>

The Company further states that RFPs are issued “to test the market for solutions to particular goals and specific needs that ENO faces in continuing to provide reliable electric service to its customers at the lowest reasonable costs and in an environmentally sustainable manner.”<sup>8</sup> ENO also cautions the Council against adopting rules for future RFPs that are “rigid” and that apply to all RFPs in the same manner and the Company claims adopting a rigid set of rules would “limit the ability of those RFPs to yield optimal solutions to the needs of ENO’s customers and New Orleans in a timely manner.”<sup>9</sup>

Air Products supports the Council’s adopting rules and processes that improve public notice of matters involving ENO.<sup>10</sup> Air Products also recommends that the Council begin publishing an official bulletin that provides notice of new Council dockets and other filings

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<sup>4</sup> ENO Comments dated October 19, 2018 at p. 2.

<sup>5</sup> *Id.* at p. 3.

<sup>6</sup> *Id.* at p. 4.

<sup>7</sup> *Id.* at p. 4.

<sup>8</sup> *Id.* at p. 4-5.

<sup>9</sup> ENO Comments at p. 5.

<sup>10</sup> Air Products’ Comments dated October 19, 2018 at p. 1.

submitted to the Council for informational purposes.<sup>11</sup> As it pertains to this rulemaking proceeding, Air Products believes that an official bulletin could be used for publication by ENO of prior notice that it will be issuing an RFP.<sup>12</sup>

The Alliance states in its initial comments that the 2016 Renewables RFP was lacking transparency and unclear timelines.<sup>13</sup> According to the Alliance, more and more spending on Entergy's system will fall outside the realm of traditional large centralized generation resources, any new rule directing an RFP or procurement policy should apply to a broader range of resources, with some reasonable exceptions.<sup>14</sup> The Alliance asserts that in order to ensure the customers of New Orleans are receiving reliable and cost-effective service from the resources that best fit the city's needs, the Council should "adopt a style of request for proposal guidelines that require competitive, all-source solicitations."<sup>15</sup> It should also be noted that the Alliance believes that "where resources are needed to provide reliable and cost-effective service to customers, large capital expenditures, which will be paid for by those customers, should be subject to the same rules that govern traditional supply side resources."<sup>16</sup>

ENO and the Advisors fundamentally disagree with the Alliance's interpretation of the scope of this proceeding. Specifically, the Alliance asserts 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. As clearly defined in Council Resolution R-18-355, the Council states that this rulemaking proceeding shall consider "the process for how any future requests for proposals for

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Alliance Comments dated October 19, 2018 at p. 2.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

generating resources or purchase power agreements issued by ENO, regardless of the type of technology sought, shall be conducted.”<sup>17</sup> Any application of the rules that may be adopted resulting from this proceeding other than for the acquisition of generating resources or purchase power agreements would violate the Council’s order.

In response to the Alliance on this issue, ENO expressed concern that some suggestions from the Intervenors advocate for 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.<sup>18</sup> ENO opposes a rule that would require “all-source” solicitations in all instances.<sup>19</sup> Accordingly, the Company “strongly urges” that any rules adopted by the Council in this proceeding allow ENO the discretion and flexibility to use its business judgment and expertise when designing RFPs and selecting the resources necessary to fulfill its obligations to customers.<sup>20</sup>

The Alliance and ENO have both commented on their views of the Council’s regulatory authority in the context of issuing requests for proposals for new resources. In their initial comments, the Alliance argues that “there should be no question of the authority of the City Council resolving to supervise and direct ENO’s procurement of new resources.”<sup>21</sup> In its reply comments, ENO makes a distinction between what the Alliance argues and what the Company believes is an accurate interpretation of the Council’s authority in this RFP rulemaking docket. ENO agrees that no question exists as to the Council’s authority to review ENO’s performance of business functions, like resource planning; “such oversight is properly within the scope of the authority vested in the Council by the Home Rule Charter.” The Company strongly objects to the

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<sup>17</sup> Resolution R-18-355 at p. 6.

<sup>18</sup> ENO Reply Comments dated November 16, 2018 at p. 2.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Alliance’s Comments dated October 19, 2018 at p. 3.



Alliance's statement that the Council's authority as ENO's regulator includes the power to "direct" ENO's procurement of generating resources.<sup>22</sup> It should be noted that ENO does not assert that the Council is without authority to regulate ENO's procurement processes and decisions.<sup>23</sup> ENO, however, "reminds" the Council and Intervenors that regulation of those processes does not extend to making managerial decisions on ENO's behalf such as designing the scope of RFPs and selecting resources from them.<sup>24</sup>

The Advisors agree with ENO and the Alliance that the Council, in its vast regulatory authority granted by the City's Home Rule Charter, has the express powers of supervision, regulation, and control, consistent with the Charter and the State Constitution, over all public utilities providing service in the City of New Orleans.<sup>25</sup> The Council's Advisors also agree, generally, that the business decisions of the Company should be left to the utility. However, the Advisors do not believe that the Council's authority to improve the efficiency, transparency and potential results of RFPs for future resources is as narrowly constrained as ENO has argued. The Council sets energy policy in New Orleans, not ENO. While the Advisors agree that ENO is responsible for meeting the needs of its customers by making prudent decisions, the Council is responsible for meeting the needs and expectations of the citizens of New Orleans by establishing energy policies that accomplish their goals in a cost effective, transparent and efficient manner. ENO, a regulated public utility, is required to make business decisions that are consistent with the Council's policies and directives.

Adopting rules that govern the issuance of RFPs for future energy resources is sound regulatory practice. Especially in light of the extraordinarily long 2016 renewables RFP process,

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<sup>22</sup> ENO Reply Comments at p. 3.

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.*

<sup>25</sup> Home Rule Charter Article III, Section 3-130(1).

the Council, its Advisors and the public should reasonably be able to expect that an RFP process for a given resource or combination of resources will be conducted in a much shorter timeframe, even if unanticipated circumstances arise in the process. The process should also include significant improvements in the manner and frequency in which ENO provides information to the Council, its Advisors and whenever possible, the public. The Advisors also agree with the Alliance that the Council's energy policies should guide utility resource procurement. However, the Council's policies should be mindful that, in some instances, the utility seeks resources that are required to satisfy specific reliability or other system needs. In those instances, ENO should be required to clearly demonstrate those reliability needs to the Council in advance of issuing any future RFP. Accordingly, the Advisors believe that "all-source" solicitations in every circumstance is not feasible. To adopt such a policy would effectively solicit proposals from bidders that cannot possibly meet the sometimes specific reliability or other system needs identified by ENO. To that extent, the Advisors agree with ENO that some flexibility should be incorporated into any 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.

## **II. Comments from the Parties on Specific Topics Requested by the Council**

In response to the Council's specific areas of interest outlined in resolution R-18-355, the parties filed initial comments on October 19, 2018 which are summarized below along with the Advisors comments and recommendations at this stage of the proceeding:

1. *Prior to developing the Draft RFP documents*
  - a. *How can the RFP process be improved prior to the development of the Draft RFP to ensure that the Draft RFP:*

- i. *Achieves wide participation by respondents and is not overly constrained to solicit specific, or narrowly defined resources;*
  - ii. *Targets the specific power supply, reliability or other system needs that would be met by acquiring those resource(s);*
  - iii. *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?*
  - iv. *Includes a provision that requires a comprehensive narrative detailing the respondent's plan to comply with the provisions of Article IV of Chapter 70 of the Code of the City of New Orleans pertaining to local and disadvantaged business enterprises ("DBE") goals for the City of New Orleans;*
- b. *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?*
  - c. *What modifications, if any, should be considered regarding the competitive procurement process included in Entergy's Procurement Policy;*

According to ENO, the breadth of participation in RFPs is primarily influenced by the scope of the RFP and the manner in which it is publicized.<sup>26</sup> As to how the RFP process can be improved to ensure that the draft RFP achieves wide participation by respondents, the Company asserts that as a routine part of conducting Company business, its System Planning and Operations (“SPO”) group maintains a large database of potential suppliers, power marketers, and other

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<sup>26</sup> ENO Comments dated October 19, 2018 at p. 5.

entities and informs those entities of the development and issuance of RFPs.<sup>27</sup> SPO also publicizes the existence of RFPs via industry trade publications that regularly include reference to RFPs.<sup>28</sup>

With respect to the scope of RFPs for new resources, ENO argues that it is important to consider that defining the scope of RFPs as broadly as possible and minimizing requirements for proposals to encourage broad participation “can detrimentally affect the goal of ensuring that the RFP solicits resources that meet the specific needs of ENO.”<sup>29</sup> The Company believes that reducing proposal requirements and broadening the RFP scope could also conflict with efforts to reduce the time to evaluate proposals and make selections due to an increased number of issues that would require ENO’s due diligence.<sup>30</sup> As such, ENO states that the desire for broad participation must be balanced with (i) the need to solicit proposals that will meet ENO’s specific needs and (ii) the Council’s goal of reducing the time and administrative expense required for ENO to conduct and conclude RFPs. To that end, the Company cautions that any rules the Council may ultimately adopt should provide ENO the flexibility to design the scope of future RFPs on a case-by-case basis to balance these potentially competing goals as warranted by the needs and circumstances facing ENO’s business at the time an RFP is being developed.<sup>31</sup>

ENO argues that it is important that RFPs could be further improved by specifically defining the geographic region and desired generating characteristics (i.e., peak, baseload, etc.) for resource proposals, and that RFP documents could also more specifically identify interconnection and/or delivery points that would most benefit the transmission and/or distribution systems from a reliability standpoint.<sup>32</sup>

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<sup>27</sup> ENO Comments at p. 5.

<sup>28</sup> ENO Comments at p. 6.

<sup>29</sup> ENO Comments at p. 6.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> ENO Comments at p. 6.

As for how the RFP process can be improved in a manner that minimizes the time required to conduct necessary due diligence and negotiations, ENO states that the 2016 Renewables RFP did include an RFP Schedule which was also posted on the website for the RFP. The Company expects that all future RFPs would contain a similar proposed schedule of milestones events and dates, as including such information with RFPs is a routine component of SPO's management of this aspect of ENO's business.<sup>33</sup>

With regard to contract negotiations following the selection of proposals, ENO points out that the time required for due diligence and contract negotiation can vary and is highly dependent upon the pace of the counterparty, and should provide flexibility between various RFPs and/or proposals and counterparties.<sup>34</sup>

In responding to the question of how the RFP process can be improved to ensure that the Draft RFP includes a provision that requires a comprehensive narrative detailing the respondent's plan to comply with the City of New Orleans' local and disadvantaged business enterprises ("DBE") goals, ENO argues that the applicable DBE provisions of the City Code do not necessarily apply to ENO. The Company claims that ESL created the Supplier Diversity and Development group to help ensure that all Entergy Operating Companies provide business opportunities to minority and women-owned businesses.<sup>35</sup>

In response to the Council's stated objective of increasing the independence of the IM and increasing public confidence in the IM's selection and role in the RFP process, the Company asserts that it is unaware of any public comment or statement that questioned the independence of the IM or expressed a lack of confidence in the selection of the IM or the performance of the IM's duties.<sup>36</sup>

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<sup>33</sup> ENO Comments at p. 7.

<sup>34</sup> *Id.*

<sup>35</sup> ENO Comments at p. 8.

<sup>36</sup> ENO Comments at p. 9.

ENO also notes that ESL's existing policies for RFPs prohibit any entity with a prior business relationship (other than as IM) with any ESL affiliate from serving as IM for at least three years following the termination of such relationship.<sup>37</sup> That said, ENO offers some suggestions to the Council should it wish to further bolster the public's confidence in the integrity and independence of IMs for future RFPs. ENO, admits however, that the Council may adopt rules requiring ENO to notify the Council of the entity ENO has selected to serve as IM and afford the Council the ability to approve or deny the selection.<sup>38</sup>

The Alliance believes that greater independence and transparency is required of an Independent Monitor to provide more confidence in the RFP process.<sup>39</sup> Some jurisdictions, according to the Alliance, require the an Independent Monitor to have a more "balanced relationship to various parties."<sup>40</sup> The Alliance believes that the Council could select the IM and the rules, if adopted, could require the IM to submit reports regarding its work directly to the Council.<sup>41</sup>

Air Products recommends that rules that are adopted in this docket, if any, require that the Council, not ENO, shall issue an RFP for qualified consultants for serving as the IM and select from bidders an IM that is independent from ENO.<sup>42</sup> Air Products also argues that the rules, if adopted, should prohibit any prior contractor of ENO within the last 10 years from serving as an IM.

The Advisors agree with Air Products and the Alliance that greater independence could be achieved by the adoption of rules governing the RFP process for future resources. ENO has

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<sup>37</sup> *Id.*

<sup>38</sup> ENO Comments at p. 10.

<sup>39</sup> Alliance Comments dated October 19, 2018 at p. 7.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Air Products Comments dated October 19, 2018 at p. 4.

detailed its internal policies and procedures utilized when the Company selects an IM and the Advisors recognize these efforts and they should not be diminished. ENO also states that it is unaware of any public comment or statement that questioned the independence of the IM or expressed a lack of confidence in the selection of the IM or the performance of the IM's duties. However, the Advisors believe that the lack of public comment or statements questioning the IM's independence does not preclude the Council from adopting rules that create greater independence and public confidence in the IM. To that end, the Advisors believe that rules could be adopted if the Council is so inclined, to implement a process whereby the Council would issue a Request for Qualifications ("RFQ") for the purpose of determining one or more qualified respondents who could perform the duties of an IM consistent with the criteria outlined in the rules (the RFQ could be reissued every five (5) years or some other period approved by the Council). Once the qualified respondents have been identified by the Council, through its RFQ process, the Council could create a list of qualified potential IMs from whom ENO could request bids in a given RFP process for future generating resources or purchase power agreements. Once the bids are received by the Company, ENO would make the selection of the IM. In a subsequent RFP, ENO could simply solicit bids from the list of qualified respondents (IMs) which will have already been determined by the Council through the above RFQ process. This approach would allow for increased Council involvement in the IM process and would not cause undue delays in the RFP schedule.

The Advisors also support the recommendation that the rules, if adopted, include provisions that would require the IM to make periodic written reports to the Council as part of the RFP process.

In response to how improvements may be made to the RFP process prior to the development of RFP documents, the Alliance states that the "beginning phases of the RFP process

should be available on a website of the City Council, including the utility's initial announcement of intent to conduct a solicitation.<sup>43</sup> The Alliance further states that Entergy has an RFP website that appears to be managed by an "affiliate," SPO, that is "not in the direct control" of ENO.<sup>44</sup> The Council's rules, if adopted should direct ENO to utilize its own RFP website.<sup>45</sup>

Air Products recommends that the Council adopt procedural rules for RFPs for resources that require ENO to design the RFP based on the capacity need and not a particular self-build project that ENO is seeking to construct at a particular location.<sup>46</sup> Air Products also argues that the rules would need to require the RFP to seek resources within a capacity range that provides for sufficient flexibility so as not to require an economic resource to be eliminated from the RFP as non-conforming for failing to fall within a capacity range.<sup>47</sup> Further, Air Products asserts that the rules should require an RFP to have flexibility in the eligibility of resources to meet a capacity need, such as "allowing a capacity need to be met through one or more resources without pre-determined limitations on locations, fuel source, technologies and project structures, in order to allow the market to put forth competitive options that allow the lowest reasonable cost resource(s) to be selected."<sup>48</sup>

The Advisors agree with the Alliance that ENO's draft RFP documents should be placed on the Council's website in addition to publication on ENO's website. As for Air Products' recommendation that the Council publish a periodic bulletin listing utility matters and RFPs for new resources that ultimately may be considered by the Council, the Advisors do not oppose this

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<sup>43</sup> Alliance Comments dated October 19, 2018 at p. 6.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Air Products' comments dated October 19, 2018 at p. 3.

<sup>47</sup> *Id.* at 3.

<sup>48</sup> *Id.*



recommendation but would defer to the Council Utilities Regulatory Office (“CURO”) and the Council for their input on this issue.

The Advisors acknowledge that the desire for broader participation in ENO’s RFP process for new resources must be balanced with the need to solicit proposals that will meet ENO’s specific needs and the Council’s goal of reducing the time required for ENO to conduct and conclude RFPs. However, improvement could be made in this area. The Advisors believe that that Council should consider adopting rules that would encourage increased response to ENO’s RFP process. As Air Products points out, the rules, if adopted, could require the RFP to seek resources within a capacity range that provides for sufficient flexibility so as not to require an economic resource to be eliminated from the RFP as non-conforming for failing to fall within a capacity range. In addition, the Advisors believe that future RFPs could solicit a variety of resources consisting of potentially different technologies, sizes, and sources of energy that, in the aggregate, would satisfy ENO’s capacity needs. These recommendations could increase response to future RFPs for resources.

As for ENO’s argument that flexibility is required in defining the scope of future RFPs, the Advisors acknowledge that the Company should be allowed to seek resources to fulfill specific reliability, capacity, or other system needs. However, the rules, if adopted, should require ENO to clearly articulate those needs to the Council prior to issuing the draft RFP documents with a detailed explanation of why ENO is proposing to issue an RFP that is more narrowly tailored to meet the Company’s specific reliability or other system needs.

The Advisors strongly believe that there can be much improvement in the schedule for RFPs for future resources. While ENO points out that the time required for due diligence and contract negotiation can vary and is highly dependent upon the pace of the counterparty, the length of the 2016 Renewables RFP process was, from the Advisors perspective, unreasonably long and

inefficient. The Council should consider adopting rules with formal timeframes, with some reasonable flexibility, for ENO to complete the RFP process. Once these timeframes are established, the Company should be required to immediately notify and provide a written explanation to the Council, its Advisors, and the public of the reasons for any delays, developments or circumstances that would require a departure from the original schedule. The notification and written explanation should be subject to the Council's protective order that governs the disclosure of the Company's confidential information including sensitive details of contract negotiations for new resources.

The Advisors are deeply concerned about ENO's response to the Council's request for comments regarding including, in the Draft RFP, a provision that requires a comprehensive narrative detailing the respondent's plan to comply with the City of New Orleans' local and disadvantaged business enterprises ("DBE") goals. ENO argues that the applicable DBE provisions of the City Code do not necessarily apply to ENO. The Advisors believe that the applicability of the City's DBE goals to ENO is immaterial. The Council has stated a clear desire that the Draft RFP documents include this component and the responses to RFPs should be evaluated, in part, on each respondent's response regarding DBE participation. Any rules adopted in this proceeding should include a requirement that future RFPs for new resources contain a provision that requires a comprehensive narrative detailing the respondent's plan to comply with the City of New Orleans' local and DBE goals.

2. *Development of the final RFP documents*

- a. *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?*

- b. *What role should the Council have in the comment process?*
- c. *Should the RFP process be changed to a two-step process<sup>49</sup> in an effort to more efficiently evaluate the competitive bid submissions and increase the likelihood of maintaining the RFP schedule?*
- d. *What requirements, if any, should the Council impose regarding the treatment, disclosure and use of "non-price" factors in the weighing offers from third parties against self-build proposals or affiliate offers?*
- e. *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?*

In its initial comments, ENO describes the efforts it made in the 2016 Renewables RFP process to provide opportunities for the Council, its Advisors, potential bidders, and other stakeholders to comment on the documents.<sup>50</sup> ENO also held a public meeting to allow the public to submit questions related to the RFP, including with regard to technical matters, the use of “non-price factors” in the weighing of proposals, and any other topics of interest.<sup>51</sup> These responses, according to ENO, were posted on the Company’s public RFP website.

The Company acknowledges, however, that if the Council wishes to adopt more formal requirements, “the Council could specify the process through which ENO publishes draft RFP documents, makes them available to bidders, stakeholders, the Council and its Advisors, and receives feedback from those groups.”<sup>52</sup>

According to ENO, if the Council desires to formalize these opportunities for potential future RFPs, the Council could adopt rules that require the Advisors to provide feedback on the

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<sup>49</sup> 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.

<sup>50</sup> ENO Comments dated October 19, 2018 at p. 10.

<sup>51</sup> *Id.*

<sup>52</sup> ENO Comments at p. 11.

draft RFP documents issued for future potential RFPs.<sup>53</sup> The Company believes that the Council's rules, if adopted, could specify the topics on which the Advisors would be required to provide feedback to ENO.<sup>54</sup> However, ENO claims that any rules of this nature should also consider the fact that conducting and making selections from RFPs for generating resources constitutes a core component of ENO's business, and thus, afford ENO the appropriate amount of flexibility and discretion to craft RFPs in an optimal manner for meeting the specific supply needs that may exist for its business at any given time.<sup>55</sup>

In response to the suggestion of implementation of a two-step process, ENO looks forward to receiving any clarification on the intent of this topic when reviewing constructive and practical comments submitted by other parties.<sup>56</sup>

ENO claims that the 2016 Renewables RFP "exceeded industry standards" with regard to the fairness of evaluations between self-build and third-party proposals, and that the Company "looks forward to reviewing constructive and practical comments concerning ways to improve the process."<sup>57</sup> In addition, ENO asserts that non-price factors like locational value, the contribution to reliability and/or resilience, distribution and transmission factors, resource diversity, and others are all important to consider when a proposal is selected from an RFP.<sup>58</sup>

ENO acknowledges in its comments that it could, in future RFPs, increase transparency and potentially reduce the time for contract negotiation by including more detailed information contemporaneously with the issuance of the final RFP documents. Specifically, the Company states that it could include more detailed term sheets and scope books (which outline the technical

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<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at p. 12.

<sup>57</sup> ENO Comments at p. 13.

<sup>58</sup> *Id.*

requirements resources must meet) contemporaneously with the issuance of RFP documents for future RFPs and clearly indicate that certain terms and conditions in the term sheets and technical requirements are not up for renegotiation.<sup>59</sup> Adopting such a practice may, in ENO’s view, reduce the time required for negotiating agreements for proposals selected from an RFP since it would help to ensure that only parties willing to transact on the terms in the model contracts and proposals that can meet technical requirements from the scope books would submit proposals.<sup>60</sup>

The Alliance agrees that a public meeting or conference should be required in the development of final RFP documents since this type of engagement increases transparency and encourages participation from the public.<sup>61</sup> According to the Alliance, the Council should be kept informed of RFP developments and where guidance is warranted, “resolve to give direction formally” to ENO, and Council staff, CURO or the Advisors should be involved in the process to confirm that all Council policies are being followed in developing the RFP documents.<sup>62</sup>

As for the implementation of a two-step process, the Alliance is not opposed to a two-step process, if it can keep the procurement timeline on track. The Alliance does not believe, however, that a two-step process is necessary in every situation.

Air Products does not oppose a two-step process as long as there is adequate review by the IM and the Council of ENO’s evaluation process to ensure that proposed resources bid into the RFP are not being wrongly or unfairly excluded on technical grounds in favor of selection of the ENO self-build option.<sup>63</sup>

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> Alliance Comments at p. 8.

<sup>62</sup> *Id.*

<sup>63</sup> Air Products’ Comments at p. 6.

The Alliance asserts that the following information should be required to be included in the RFP documents:

- 1) The utility should describe the need (or problem to solve) clearly, whether it is capacity need, energy, peak shaving, transmission or distribution concerns.
- 2) Criteria the utility will use to rank bids. Disclosure of all non-price factors that the utility will use in scoring final bids, including Council policy, corporate goals, and local system information.
- 3) Links to the utility's most recent Integrated Resource Plan.
- 4) Reasonable estimates of transmission costs for resources located in different areas including a detailed description of how the costs of future transmission will apply to bid resources;
- 5) The dispatchability requirements of bid resources
- 6) ENO's proposed model contracts including contract term lengths
- 7) Employment metrics including the Council and City's policy on Disadvantaged Business Enterprises.<sup>64</sup>

Air Products recommends that the Council begin to use an official bulletin for informational filings and new dockets and develop a central data base for online access to dockets and filings in those dockets.<sup>65</sup> Air Products asserts that the combination of an official bulletin and online data base is important for improving transparency of the filings of ENO at the Council and allowing improved access to documents, which would in turn allow for greater input from stakeholders.<sup>66</sup>

The Advisors firmly believe that the Council should specify the process, by the adoption of formal rules, through which ENO publishes draft RFP documents, makes them available to

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<sup>64</sup> Alliance Comments at p. 8-9.

<sup>65</sup> Air Products' Comments at p. 5.

<sup>66</sup> *Id.*

bidders, stakeholders, the Council and its Advisors, and receives feedback from those groups. This process would include one or more technical conferences conducted by ENO to receive input from the public and to respond to questions or issues raised in the draft RFP documents.

ENO, the Alliance and the Advisors are in general agreement with several of the recommendations that Intervenors make about what kind of information should be included in the RFP documents and informational filings related thereto, including (i) a description of the need to be met, (ii) a general description of the criteria used to evaluate bids, including “non-price” factors, (iii) a link to the most recent Integrated Resource Plan (“IRP”) documents, (iv) a description of any requirements or preferences for transmission arrangements and deliverability, including a description of how transmission issues will be incorporated into bid evaluations, (v) information about the requirements of resources sought, including dispatchability requirements, (vi) draft term sheets to inform potential contract negotiations, and (vii) a draft confidentiality agreement to be used for the process. Including this type of information with the Draft RFP documents will increase transparency and should provide significant information necessary for all stakeholders to understand the goals and objectives of the Draft RFP.

With respect to the question of whether the Council should require a two-step RFP process, the Advisors believe that a formal two-step process or its equivalent should be considered. It should be noted that some technical requirements of ENO’s 2016 Renewables RFP were not initially met by some respondents. As a result ENO sought updated bids from certain respondents which added considerable time to an already slow RFP process. Establishing a process whereby ENO receives unpriced technical proposals prior to sealed bids from the qualified respondents could create a more streamlined and efficient process.

3. *Issuance of the RFP*

- a. *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?*
- b. *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?*
- c. *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?*
- d. *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?*

The Council seeks information that could improve the RFP process for new resources to encourage more market participants and to reduce unnecessary administrative and transaction costs that may produce price premiums in supply offers.

ENO states that it would benefit from clarification on this topic as it is “unclear how increasing the number of participants can reduce administrative and transaction costs, or how those kinds of costs result in price premiums in supply offers.”<sup>67</sup> The Company asserts that participation can be increased by reducing the number of requirements stated up front for proposals.<sup>68</sup> ENO also believes that reducing RFP requirements may encourage greater participation but it must also be balanced with clarity regarding bidder and product expectations, as too little clarity could result in bids that fall short of ENO and the Council’s expectations and ultimately result in prolonged evaluations and negotiations.<sup>69</sup>

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<sup>67</sup> ENO Comments at p. 14.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*



In terms of price premiums, the Council and its Advisors are concerned that in the absence of formal rules adopted by the Council that create a more efficient and less lengthy process, potential bidders may be either dissuaded from submitting bids or may include price premiums in their bids to compensate for a lengthy and protracted RFP process. The Advisors believe that failure to implement a more efficient process could result in potentially fewer or more costly responses which would negatively impact ratepayers. While increasing the number of participants could add additional time to evaluate proposals, greater participation may result in multiple responses that meet the RFP's requirements, thereby reducing the chance that updated bids would be required. This could shorten the overall length of the RFP process and achieve the Council's desired result in a more efficient manner.

With regard to safeguard provisions in the RFP process to assure a fair and competitive solicitation, ENO agrees with the importance of adopting those kinds of safeguards and claims that the 2016 Renewables RFP contained safeguards of this nature.<sup>70</sup> The Company states that it incorporated the following safeguards into the ENO RFP: (1) separation of the self-build team from the evaluation team; (2) application of a Code of Conduct and Affiliate Rules; (3) designation of an RFP Administrator as a single point of contact with bidders; (4) submission and lock-down of the self-build several days before other proposals were submitted; (5) requirement that all bidders, including the self-build, submit the same proposal information to ensure each proposal was consistently evaluated; (6) use of bidder, proposal, and project ID numbers to eliminate any potential bias in the evaluation; (7) blinding of bid information and redaction of bidder names of other non-pertinent information when distributing information to the bid evaluation teams; and (8) inclusion of an active role for the IM.<sup>71</sup> ENO cites the Final IM Report and its discussion of

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<sup>70</sup> *Id.* at p. 14-15.

<sup>71</sup> ENO Comments at p. 15.

safeguards in stating, “The IM found that the implementation of the safe-guards instituted in the process exceeded industry standards. Furthermore, the safe-guards were diligently maintained throughout the solicitation process.”<sup>72</sup> ENO recommends that the Council look to the safeguards utilized in the 2016 Renewables RFP which, according to the Company, provide a good model for any rules that may be adopted in this docket.<sup>73</sup>

The Alliance believes that in order to build confidence in the marketplace for third-party bidders, the Council should require reports be presented by the IM at certain milestones.<sup>74</sup> The Alliance also acknowledges the need for ENO to maintain some information as confidential, including details of specific aspects of contract negotiations, and that the Council should adopt rules that recognize the public’s interest in these matters.<sup>75</sup>

To the extent the Council wishes to adopt formal requirements to help ensure that future RFP processes and regulatory approvals will be conducted in a timely manner, ENO recommends that such requirements be focused on regular communication with the Advisors and Council and, where appropriate, other stakeholders.<sup>76</sup> The Company warns against that adoption of formal substantive requirements in a “one size fits all” fashion because such an approach may do a disservice to future RFPs by being too “rigid” and may not fit the given situation.<sup>77</sup>

As for the regulatory approval process, the Council could even consider formalizing a more streamlined process for resource applications where resources selected through a Council-compliant RFP process are presumed to be in the public interest and necessity unless proven otherwise by an opposing party.<sup>78</sup>

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<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> Alliance Comments at p. 10.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at p. 15-16.

<sup>78</sup> *Id.* at p. 16.

Although ENO cites the successful nature of the 2016 Renewables RFP in attracting a wide range of qualified vendors, ENO is open to ideas for how to ensure even better participation in future solicitations.<sup>79</sup>

However, the Alliance argues that the bid price in ENO's 2016 Renewables RFP was a constraint on applicants and that the bidder's fee along with other bid requirements provide a barrier to entry.<sup>80</sup> As an alternative, the Alliance suggests a bid fee of \$1000 or less per bid.<sup>81</sup>

The Advisors agree with the Alliance that the Council should require reports be presented by the IM at certain milestones that would provide a number of benefits, including building confidence with the Council, the Advisors, the public and the marketplace for third-party bidders. Stakeholders deserve to have confidence in the RFP process employed and faith that the results are fair and impartial. The Advisors also agree with ENO, the Alliance and Air Products that relate to the separation of the ENO evaluation team from the team that develops any self-build options, as well as the anonymization of self-build proposals from other submissions.<sup>82</sup> ENO claims that it strictly followed this type of protocol for the 2016 Renewables RFP. The Council should include in any formal rules adopted in the docket safeguard provisions that ensure fairness in the bidding process, including the evaluation of ENO's self-build options.

4. *Post-issuance of RFP and Evaluation of bid proposals*

a. *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?*

i. *What specific reporting requirements should be imposed?*

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<sup>79</sup> ENO Comments at p. 16.

<sup>80</sup> Alliance's Comments at p. 10.

<sup>81</sup> *Id.*

<sup>82</sup> ENO Reply Comments at p. 12. See also Alliance Reply Comments at p. 5.

b. *What provisions should the Council consider regarding evaluation methods and criteria for bid selection?*

ENO agrees that improved transparency and communication with the Council and its Advisors are important goals for future RFPs and an area in which ENO can improve following the 2016 Renewables RFP.<sup>83</sup> However, the Company cautions that providing information related to ongoing solicitations and negotiations in a public forum could compromise negotiation positions and result in a longer timeline for the RFP process.<sup>84</sup> ENO suggests that requiring ENO to periodically report to the Advisors on the status of negotiations and proposal evaluations while utilizing the Council's Standard Protective Order Non-Disclosure Certificate would be a reasonable measure to help achieve this objective.<sup>85</sup> ENO is concerned, however, about extending these periodic reports to other intervenors because many intervenors in Council utility dockets are (i) for-profit companies that either compete with bidders or are themselves bidders in RFPs for renewable resources, (ii) trade organizations that are composed of and represent the interests of such for-profit entities, and/or (iii) accept direct financial contributions from and, at times, directly advocate for the interest of such entities.<sup>86</sup> In these circumstances, ENO would suggest that any Council rules requiring ENO to provide updates to parties other than the Advisors also require such third-parties to affirmatively demonstrate no affiliation with any of the types of entities described above as a pre-condition to being eligible to receive such commercially sensitive information.<sup>87</sup>

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<sup>83</sup> *Id.* at p. 17.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at p. 18.

Finally, ENO states that it looks forward to reviewing suggestions from parties on how evaluation methodologies and criteria for bid selection can be improved, while also facilitating the goal of completing evaluations in a timely, expeditious, and cost-conscious manner.<sup>88</sup>

On this topic, the Alliance states that the evaluation of bid proposals should be conducted collaboratively with the Independent Monitor and emphasize that reporting by the monitor to the Council should be incorporated in the rules, if adopted.<sup>89</sup> Air Products suggests that to the extent that the RFP schedule changes, ENO should be required to file a notice with the Council, identifying the schedule change and reason(s) why, and provide the new schedule either in a docket established for the consideration of the RFP or published in a periodic bulletin issued by the Council for informational purposes.<sup>90</sup>

As discussed above, the Advisors agree that the IM should provide periodic reports to the Council including, but not necessarily limited to, information regarding the bid proposals, selection(s), and safeguards utilized in evaluating any ENO self-build options. These reports can be accomplished by utilizing the Council's Standard Protective Order Non-Disclosure Certificate. The Advisors agree with ENO that any Council rules requiring ENO and/or the IM to provide updates to parties other than the Advisors also require such third-parties to affirmatively demonstrate as a pre-condition to being eligible to receive such commercially sensitive information, no affiliation with any entities that are (i) for-profit companies that either compete with bidders or are themselves bidders in RFPs for renewable resources, (ii) trade organizations that are composed of and represent the interests of such for-profit entities, and/or (iii) entities that

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<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> Air Products' Comments at p. 7.

accept direct financial contributions from and, at times, directly advocate for the interest of such entities.

**III. Conclusion**

The parties to this docket generally support the adoption of formal rules governing future RFPs for generating resources or purchase power agreements issued by ENO, regardless of the type of technology sought. Upon considering the various comments provided in this docket, the Advisors recommend that the Council provide additional dates in the procedural schedule that would allow for the Advisors to develop and circulate draft rules to the parties. An opportunity for the Company and the Intervenors to comment on the draft rules should also be provided prior to any final action by the Council.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon "The Official Service List" via electronic mail and/or U.S. Mail, postage properly affixed, this 15th day of February, 2019.



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J. A. "Jay" Beatmann, Jr.