

RESOLUTION

NO. R-16-106

BY:     CITY HALL: April 7, 2016  
WILLIAMS, HEAD, GUIDRY, BROSSETT AND GRAY

IN RE: RESOLUTION REGARDING PROPOSED RULEMAKING TO ESTABLISH  
INTEGRATED RESOURCE PLANNING COMPONENTS AND REPORTING  
REQUIREMENTS FOR ENTERGY NEW ORLEANS, INC.

DOCKET NO. UD-08-02

**RESOLUTION AND ORDER  
DENYING MOTION FILED BY BUILDING SCIENCE INNOVATORS, LLC**

**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, Inc. (“ENO” or “Company”), effective September 1, 2015, is a public utility providing electric and natural gas service to all of New Orleans;<sup>1</sup> and

**WHEREAS**, on December 16, 2015, Building Science Innovators, LLC (“BSI”) filed a motion seeking various forms of relief related to the Council Integrated Resource Plan (“IRP”) process; and

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<sup>1</sup> Prior to September 1, 2015, ENO’s electric service area consisted of all of New Orleans except for Algiers.

**WHEREAS**, on January 26, 2016, BSI filed two additional motions seeking various additional forms of relief related to the Council’s IRP process; and

**WHEREAS**, on January 27, 2016, BSI filed a fourth motion rescinding the motions filed on December 16, 2015 and January 26, 2016; and

**WHEREAS**, in light of BSI’s decision to rescind its December 16, 2015 and January 26, 2016 motions, the requests for relief in the first three motions are now moot and will not be addressed by the Council; and

**WHEREAS**, the Council’s Advisors filed a response to BSI’s January 27, 2016 motion on March 9, 2016; and

**WHEREAS**, ENO filed an opposition to BSI’s Motion on March 17, 2016;<sup>2</sup> and

**WHEREAS**, BSI makes the five followings requests in its January 27, 2016 motion:<sup>3</sup>

1. The [Utility, Cable, Telecommunications and Technology Committee (“Utility Committee” or “UCTT Committee”) and its advisors will allow BSI to present a short presentation (no more than 15 minutes each) outlining the potential benefits of [Consumer Lowered Electricity Price (“CLEP”)] and [Inverted Demand Compliant Construction (“IDCC”)] for the February or March meeting;
2. Frequency Regulation (*fine tuning in real time for the network to match supply and demand and to that end keep a constant frequency*) and Spinning Reserve (*voltage support*) services at prices commensurate with their value be purchased by ENO from its customers using specifications to be defined;
3. CLEP and independently IDCC will be considered as pilot programs in the 2015 IRP to test these technologies and pricing regimes including smart meters with data collection at 5-minute granularity;
4. The Council will direct its [Council Utility Regulatory Office (“CURO”)] office, and legal and technical teams to investigate opportunities for Demand Response expansion within MISO under FERC rule 745; and

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<sup>2</sup> *Entergy New Orleans, Inc. Opposition to Motion of Building Science Innovators*, Docket No. UD-08-02 (Mar. 17, 2016 (“ENO Opposition”).

<sup>3</sup> *Motion by BSI to Rescind its December 16, 2015 and January 26, 2016 Motions and for the Council to Adopt Pilot Projects for IDCC & CLEP*, Docket No. UD-08-02, at 4 (Jan. 27, 2016) (“BSI Motion”).

5. The Council will direct ENO to host a technical conference with local contractors, experts, ENO and CleaResult to review Energy Smart and identify opportunities since the program stands to grow significantly over the next several years; and

**WHEREAS**, BSI's first request is to be allowed to make a presentation at a UCTT Committee meeting regarding its "CLEP" and IDCC; and

**WHEREAS**, the Advisors recommended that the Council consider the issues of due process and fairness to the other parties to the proceeding when considering such requests;<sup>4</sup> and

**WHEREAS**, the Advisors state that they do not believe there is a justification for granting BSI any privilege not equally available to all Intervenor; and

**WHEREAS**, the Council observes that there are now thirteen Intervenor in the proceeding, and that granting 30 minutes of presentation time to each Intervenor and the ENO would result in seven hours of presentations at a UCTT Committee meeting; and

**WHEREAS**, the Council has rules of procedure in order to assure that the process by which the Council makes regulatory decisions is transparent and fair to all parties; and

**WHEREAS**, the Council finds that BSI has not shown good cause why it should be afforded privileges not available to other Intervenor; and

**WHEREAS**, the Council finds that providing equal opportunity for a 30-minute presentation to all parties would result in an unreasonably long UCTT Committee meeting; and

**WHEREAS**, the Council finds that all parties to the case have ample opportunity to present their views to the Council through the opportunities to provide written comments in the docket; and

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<sup>4</sup> *Response of the Advisors to the Motion by Building Science Innovators, LLC*, Docket No. UD-08-02, at 2 (Mar 9, 2016) ("Advisor Response").

**WHEREAS**, BSI's second request is that ENO be required to purchase Frequency Regulation and Spinning Reserve services at prices commensurate with their value using specifications to be defined; and

**WHEREAS**, the Advisors state that Frequency Regulation and Spinning Reserve services are traditionally wholesale transmission services regulated by the Federal Energy Regulatory Commission ("FERC"), and the value of such services in the Midcontinent Independent Transmission System Operator, Inc. ("MISO") market has been established by FERC through the MISO tariff.<sup>5</sup> The Advisors also note that parties wishing to sell Frequency Regulation and Spinning Reserve services into the wholesale market are governed by the FERC-approved MISO tariff regarding rates, terms, and conditions for such services;<sup>6</sup> and

**WHEREAS**, the Advisors state that although promising in theory, proactive management of distributed energy resources on the distribution grid is still largely conceptual, and a best practices model has not yet been developed;<sup>7</sup> and

**WHEREAS**, the Advisors are of the opinion that there is not enough granularity in available data to demonstrate a material difference in the value of Frequency Regulation and Spinning Reserve services provided by retail customers in New Orleans than those provided at wholesale, and that if such services were to be provided by retail customers, then the same standards, rates, terms, and conditions should be applied to such services at both wholesale and retail; and

**WHEREAS**, the Advisors state that to the extent it can be demonstrated that Frequency Regulation and Spinning Reserve services can be made available by retail customers in a manner that meets the standards FERC has set for the provision of such services at wholesale, the

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<sup>5</sup> Advisor Response at 3.

<sup>6</sup> *Id.*

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

Advisors believe that ENO could consider proposing a pilot program to acquire such services from its retail customers at the same prices it would pay to acquire such services at wholesale.<sup>8</sup> The Advisors recommend that any such pilot program would need to assure that the Frequency Regulation and Spinning Reserve Services acquired would meet all current legal and technological standards for the provision of such services.<sup>9</sup>

**WHEREAS**, the Advisors also note that to date, no such demonstration has been made in the record to the Council that such services can be provided at retail in a cost-effective manner specific to New Orleans in a manner comparable to how such services are provided at wholesale in the MISO market, and therefore the Advisors do not recommend allowing the provision of such resources at retail at this time;<sup>10</sup> and

**WHEREAS**, ENO argues that BSI's suggestions raise serious technical concerns;<sup>11</sup> and **WHEREAS**, ENO also argues that BSI presents no analysis to demonstrate the merits of these proposed programs and fails to show that they are even realistic given the current state of technology;<sup>12</sup> and

**WHEREAS**, ENO states that successful implementation of these programs would require participating customers to have access to reliable, affordable behind-the-meter storage resources, not to mention upgraded metering and potentially real-time communications, none of which is currently feasible to implement on a one-off basis;<sup>13</sup> and

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> ENO Opposition at 8.

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

<sup>13</sup> *Id.*

**WHEREAS**, the Council finds that there is not sufficient evidence in the record to support a decision to require ENO to purchase Frequency Regulation and Spinning Reserve services from its customers at this time; and

**WHEREAS**, BSI's third request is that CLEP and independently IDCC will be considered as pilot programs in the 2015 IRP to test these technologies and pricing regimes including smart meters with data collection at five-minute granularity;<sup>14</sup> and

**WHEREAS**, the Advisors recommend that parties wishing to propose such pilot programs should submit a proposal in their comments on the Final 2015 IRP Plan filed by ENO on February 1, 2016;<sup>15</sup> and

**WHEREAS**, the Advisors also recommend that any such proposal should include the design of the program for Council review and approval, and should include, at a minimum, (1) the number of customers to be included in order to generate adequate data for evaluation, which customer classes should participate, whether participation is voluntary or mandatory; (2) what data is to be collected and how it will be collected; (3) the duration of the proposed pilot program; (4) draft tariff provisions to implement such a pilot program; and (5) the anticipated costs and rate impact of such a pilot program;<sup>16</sup> and

**WHEREAS**, as ENO argues,<sup>17</sup> the Council has previously set forth its expectations for the proposals to establish pilot programs for Energy Smart in Council Resolution No. 15-140; and

**WHEREAS**, ENO argues that BSI has failed to even attempt to meet the minimum criteria for proposing a pilot program,<sup>18</sup> and fails to set forth even a surface level discussion of

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<sup>14</sup> BSI Motion at 4.

<sup>15</sup> Advisor Response at 4.

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

<sup>17</sup> ENO Opposition at 7.

the minimum requirements for any of the proposed programs it asks the Council to include in the 2015 IRP;<sup>19</sup> and

**WHEREAS**, ENO argues that the proposal that the IDCC and CLEP programs incorporate smart meters with data collection at 5-minute granularity does not reflect an understanding of the present reality for ENO's customers<sup>20</sup> and that it suggests ENO should sidestep widespread and much more cost-effective full Advanced Metering Infrastructure ("AMI") deployment to instead selectively install AMI across the city in a dispersed manner that would require an inefficient patchwork of communications and software integration investment;<sup>21</sup> and

**WHEREAS**, the Council is generally interested in considering the merits of pilot programs that are likely to add valuable data to the record to support Council decisions, because having such data assists the Council in making sound decisions; and

**WHEREAS**, before approving any such pilot program, a proposal for the program must be made, the parties to the docket should be given an opportunity to comment on such proposal, and a recommendation from the Advisors should be received, so that the Council has a fully informed record upon which to base a decision; and

**WHEREAS**, there are currently no proposed program designs for a CLEP or IDCC pilot program before the Council for evaluation; and

**WHEREAS**, the Council finds that rendering a decision on pilot programs for CLEP or IDCC would be premature at this time without the type of information needed to make an informed decision; and

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<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.* at 9.

<sup>21</sup> *Id.*

**WHEREAS**, BSI's fourth request is for the Council to direct its CURO office, and legal and technical teams to investigate opportunities for Demand Response expansion within MISO under FERC Order No. 745;<sup>22</sup> and

**WHEREAS**, the Advisors observe that FERC Order No. 745 has been in effect since 2011, and therefore the MISO's tariff and market rules already provide for demand response in its wholesale electricity markets in accordance with Order No. 745 so the recent U.S. Supreme Court ruling upholding Order No. 745<sup>23</sup> is expected to have little impact on MISO's demand response provisions;<sup>24</sup> and

**WHEREAS**, the Advisors state that the Council and the Advisors are knowledgeable of MISO's Demand Response programs, and will continue to work with ENO to identify where there are opportunities to bring value and benefit to New Orleans ratepayers;<sup>25</sup> and

**WHEREAS**, the Council is aware that its Advisors are active in MISO stakeholder proceedings and participate in the Entergy Regional State Committee ("ERSC") and MISO Organization of MISO States ("OMS") state regulator stakeholder groups;<sup>26</sup> and

**WHEREAS**, the Advisors also note BSI's request that the Council direct its legal teams to petition MISO to issue a statement accepting locational marginal price ("LMP") for battery as a peak load supply resources as is allowed in PJM Interconnection, L.L.C.<sup>27</sup> The Advisors state that MISO cannot change its rules simply by issuing a statement, but that there is a lengthy

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<sup>22</sup> BSI Motion at 4. See also *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, III FERC Stats. & Regs. Preambles ¶ 31,322, *order on reh'g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *vacated and remanded*, *Electric Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *reversed and remanded*, *Electric Power Supply Ass'n v. FERC*, 136 S. Ct. 760 (2016).

<sup>23</sup> *F.E.R.C. v. Elec. Power Supply Ass'n*, 136 S. Ct. 760 (2016).

<sup>24</sup> Advisor Response at 5.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> Advisor Response at 5, BSI Motion at 3.



stakeholder process to develop a proposal to change any MISO rule, which MISO must then file at FERC, with supporting evidence, for review and approval;<sup>28</sup> and

**WHEREAS**, the Advisors inform the Council that MISO's market rules do currently recognize certain energy short-term and long-term storage technologies, and that MISO is currently undertaking a review of its market rules to determine how to accommodate various types of energy storage resources, including medium-term energy storage technologies such as batteries. The Advisors report that they are actively monitoring and participating in the stakeholder process regarding the review of these rules and will report back to the Council regarding any developments; and

**WHEREAS**, ENO states that BSI's did not offer any justification for its requests that the Council direct its Advisors to investigate Demand Response expansion within MISO under FERC Order No. 745 and that they petition MISO to issue a statement accepting LMP for battery as a peak load supply resource and that those requests ignore, and would undercut, the efforts of ENO and other Entergy Operating Companies ("EOCs") have devoted to advocating for Demand Response and energy storage participation opportunities in MISO markets;<sup>29</sup> and

**WHEREAS**, ENO states that the EOCs are advocating a position at MISO that seeks market mechanisms that accommodate energy storage options in a manner that provides mechanisms to deliver value to end use customers and does not impose unreasonable or unnecessary limits on the flexibility accorded to these types of resources;<sup>30</sup> and

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<sup>28</sup> Advisor Response at 5.

<sup>29</sup> ENO Opposition at 10.

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

**WHEREAS**, ENO states that the EOCs are advocating at MISO for the elimination of barriers to participation in MISO markets by energy storage resources and for flexibility in MISO's approach to energy storage;<sup>31</sup> and

**WHEREAS**, ENO opposes any blanket treatment of all potential energy storage resources such as BSI's suggestion that storage technology be treated as a peak load supply resource, and believes that BSI's proposal is likely to do more harm than good;<sup>32</sup> and

**WHEREAS**, ENO notes that the United States Supreme Court decision upholding FERC Order No. 745 does not change or affect the assumptions employed concerning Demand Response for the 2015 IRP;<sup>33</sup> and

**WHEREAS**, the Council finds that the Advisors are already actively participating in MISO proceedings regarding energy storage and conveying the Council's views to MISO; and

**WHEREAS**, BSI's fifth and final request is that the Council direct ENO to host a technical conference with local contractors, experts, ENO, and ClearResult to review Energy Smart and identify opportunities since the program stands to grow significantly over the next several years;<sup>34</sup> and

**WHEREAS**, the Advisors note that there has already been substantial opportunity for stakeholder input in this proceeding.<sup>35</sup> The Advisors state Resolution No. R-14-224 required ENO to hold four technical conferences with stakeholders as it developed its IRP.<sup>36</sup> Those technical conferences were open to the public and were held on (June 23, 2014 - DSM Potential Study Inputs), (October 2014 - DSM Potential Study Results), (February 2015 - IRP Modeling

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<sup>31</sup> ENO Opposition at 11.

<sup>32</sup> *Id.* at 12.

<sup>33</sup> *Id.* at 13.

<sup>34</sup> BSI Motion at 4.

<sup>35</sup> Advisor Response at 6.

<sup>36</sup> *Id.*

Results), and (June 2015 - Draft IRP Report).<sup>37</sup> In addition, the Advisors report that at the request of the parties, an additional two technical conferences were held to discuss various aspects of the IRP on (September 2014 - Renewables) and (May 2015 - presentation of final results of portfolio evaluation).<sup>38</sup> Thus, the Advisors report, stakeholders have currently had six opportunities to express their views to ENO and the Advisors regarding the IRP process,<sup>39</sup> and

**WHEREAS**, the Advisors have recommended to the Council a procedural schedule for the IRP docket which will incorporate a further technical conference and a public hearing to allow the public's views to be heard.<sup>40</sup> The Advisors are of the opinion that seven stakeholder technical conferences and a public hearing allow for ample public participation in the IRP process.<sup>41</sup> The Advisors also note that in addition to the opportunities for public participation, Intervenor were provided the opportunity to file written comments on the draft IRP plan circulated by ENO and will also have an opportunity to file written comments regarding the final proposed IRP under the recommended procedural schedule.<sup>42</sup> The Advisors therefore believe that the IRP process has contained significant opportunity for stakeholder input into the IRP process including participation by parties that have intervened and members of the public, and that an additional technical conference will not be necessary,<sup>43</sup> and

**WHEREAS**, the Council agrees with the Advisors that there has been and will continue to be ample opportunity for interested parties to participate in this proceeding and express their views to the Council; and

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

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

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

<sup>41</sup> *Id.* at 6-7.

<sup>42</sup> *Id.* at 7.

<sup>43</sup> *Id.*

**WHEREAS**, the Council notes that interested parties may meet with each other to discuss issues and opportunities related to Energy Smart amongst themselves at any time; and

**WHEREAS**, the Council finds it unnecessary to order an additional technical conference in this proceeding; and

**WHEREAS**, in addition to its requests, BSI recommends (but does not request) that the Council amend Council Resolution No R-10-142 to state that "all future IRP work ENO's will continue to analyze Supply-Side Planning and Demand-Side planning and, in addition, shall formalize an in-depth Demand-Side Technical Planning Process above current planning efforts to help meet all of the goals described in R-10-142. The formal process could function similar to the 2012 IRP Demand-Side Technical Planning group meetings";<sup>44</sup> and

**WHEREAS**, ENO argues that the Council's current IRP procedures afford significant opportunity for stakeholder input into the IRP process and require appropriate emphasis on DSM planning;<sup>45</sup> and

**WHEREAS**, ENO argues that BSI's repeated vehement criticisms of the Energy Smart program and the DSM planning methods used in the IRP process removes all credibility from its new assertion that a process similar to that employed in 2012 would alleviate its concerns;<sup>46</sup> and

**WHEREAS**, the Council notes that while Resolution No. R-10-142 sets the necessary elements of and the standards to be used for the evaluation of a proposed IRP, the actual procedural schedules for evaluating each IRP proposal are set individually for each triennial filing by Resolution and are not set by Resolution No. R-10-142; and

**WHEREAS**, the Council notes that BSI has not supported its recommendation to amend R-10-142 with any evidence that Resolution No. R-10-142 creates an unjust and unreasonable

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<sup>44</sup> BSI Motion at 3.

<sup>45</sup> ENO Opposition at 4-5, *quoting* Advisor Response at 7.

<sup>46</sup> ENO Opposition at 6.

result, nor has it supported its recommendation with any evidence that implementation of it would create a just and reasonable result; and

**WHEREAS**, the Council finds that BSI's recommendation to amend Resolution No. R-10-142 is too vague and ambiguous to warrant Council action at this time; and

**WHEREAS**, ENO argues that no need exists for DSM planning "above" current efforts and BSI's proposed amendment would only serve to skew the balanced approach to the IRP currently fostered by the Council's procedural process;<sup>47</sup> and

**WHEREAS**, ENO argues that BSI's proposals for altering the IRP process demonstrate that BSI is out of touch with the purpose and reality of that process;<sup>48</sup> and

**WHEREAS**, ENO also argues that the changes BSI asks the Council to make would unnecessarily duplicate the procedures already established for evaluating Demand-Side Management ("DSM") planning;<sup>49</sup> and

**WHEREAS**, BSI has failed to provide the necessary support for the requests made in its motion and the Council is not persuaded by BSI's arguments; now therefore:

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

**THAT:**

1. The request of BSI for the opportunity to make a 30-minute presentation regarding CLEP and IDCC at a UCTT Committee meeting is denied.
2. BSI's request that ENO be required to purchase Frequency Regulation and Spinning Reserve services from its customers is denied, without prejudice to such programs being proposed at a time in the future when the necessary demonstrations have been made and program design determined.
3. BSI's request for CLEP and independently IDCC to be considered as pilot programs in the 2015 IRP to test these technologies and pricing regimes including smart meters with data collection at five-minute granularity is denied as

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<sup>47</sup> *Id.* at 4.

<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.*

premature, without prejudice to program designs that meet the Council's requirements being proposed for consideration in timely filed comments on the 2015 Final IRP.

4. BSI's request for the Council to direct its CURO office, and legal and technical teams to investigate opportunities for Demand Response expansion within MISO under FERC Order No. 745 is denied, however the Council instructs its Advisors and CURO to continue their participation in the MISO stakeholder processes and to continue to report back to and take direction from the Council regarding developments at MISO.
5. BSI's request that the Council direct ENO to host a technical conference with local contractors, experts, ENO and CleaResult to review Energy Smart and identify opportunities since the program stands to grow significantly over the next several years is denied.

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

**YEAS:       Brossett, Cantrell, Gray, Guidry, Head, Ramsey, Williams - 7**  
**NAYS:       0**  
**ABSENT:     0**

**AND THE RESOLUTION WAS ADOPTED.**

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY  
*Jana W. Johnson*  
CLERK OF COUNCIL