

RESOLUTION
(AS CORRECTED)

NO. R-18-355

CITY HALL: August 23, 2018

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

**RESOLUTION AND ORDER ESTABLISHING 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**

DOCKET NO. UD-18-05

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

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

WHEREAS, Entergy New Orleans, LLC (“ENO” or “Company”), is a public utility providing electric and natural gas service to all of New Orleans;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, the Company, from time to time, seeks to acquire resources to meet its load requirements and reliability needs in order to fulfill its service obligations to its customers; and

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

WHEREAS, most recently 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, 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, ENO's October 6, 2017 filing in Docket UD-17-05 did not fully disclose to the Council the details of why it was unsuccessful in reaching an agreement with said third-party bidders; 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, 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; 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, 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; and

WHEREAS, in April 2018, by Resolution R-18-97, 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 paragraphs,

1. The Council hereby directs ENO to show cause why the timeframe ENO has employed to acquire renewable resources since it issued its 2016 renewables RFP is not imprudent.
2. The Council hereby directs ENO to show cause why the timeframe ENO has employed to acquire renewable resources since its written commitment to incorporate 100 MW of renewable resources in its generation portfolio as discussed herein is not imprudent.

3. The Council directs the Advisors to thoroughly investigate and evaluate ENO's process, its results and consider the timeframe it has employed to acquire renewable resources since its 2016 renewables RFP as discussed herein.
4. ENO shall provide to the Advisors all RFP documents, responses, correspondence, evaluations and analyses in ENO's possession related to the Company's 2016 renewables RFP, both original and re-opened.
5. 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.
6. Following the passage of the Resolution, ENO shall provide the Advisors and the Council with monthly updates concerning the status of negotiations related to the 90 MW of renewables and the status of ENO's application for approval thereof.
7. The Council may make additions to the schedule outlined herein and make such further determination as it deems appropriate on the most appropriate future course of action.
8. The Advisors shall propose to the Council, within 30 days of the passage of this Resolution, a procedural schedule for a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or purchase power agreements issued by ENO, regardless of the type of technology sought, shall be conducted. If ENO does not file an application requesting approval of a portion of or all 90MW of renewable resources selected by the Company from the updated bid responses received by ENO and announced in its January 30, 2018 press release by the July 31, 2018 deadline, then the Company shall be required to issue a new RFP for renewable resources following the new RFP procedures ultimately approved by the Council as a

result of the Advisors' proposal, which RFP shall be issued within 30 days of the Council adopting new RFP procedures.

9. In the Combined Rate Case to be filed this year, ENO shall propose for the Council's consideration a green pricing proposal under which customers may voluntarily choose to have some or all of their electricity supplied by renewable resources. The rider proposed by ENO should contain multiple options for customers, at least one of which should allow customers to choose to supply 100% of their electricity needs through renewable resources. The green pricing proposal should reflect to a reasonable extent ENO's incremental net cost to provide this option to customers.

WHEREAS, consistent with ordering Paragraph No. 8 of Resolution R-18-97, the Advisors have recommended a procedural schedule for a rulemaking proceeding to consider the process for how any future requests for proposals for generating resources or purchase power agreements issued by ENO, regardless of the type of technology sought, shall be conducted; and

WHEREAS, the Council believes that in light of the slow pace of ENO's 2016 RFP process and the lack of information provided to the Council and its Advisors throughout the process, the Council may consider adopting rules that would govern how ENO will conduct future RFPs for generating resources or purchase power agreements; and

WHEREAS, the Council desires to solicit comments from the public addressing how ENO's RFP process for generating resources or purchase power agreements may be improved; and

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

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;
2. Development 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 process² 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?

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?

² 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.

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

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

1. The Council establishes Docket No. UD-18-05 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.*
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. Interested parties shall intervene in the case within 30 days of adoption of this resolution. 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. Comments from all parties on the specific topics outlined in this resolution shall be filed no later than October 19, 2018.
 - c. Reply comments shall be filed no later than November 16, 2018.
 - d. An Advisors' Report responding to the comments and reply comments and providing the Advisors' recommendations to the Council shall be filed no later than February 15, 2018.

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

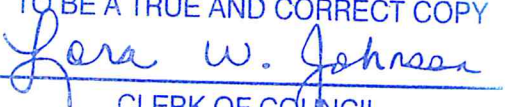
YEAS: Banks, Brossett, Giarrusso, Gisleson Palmer, Moreno, Nguyen, Williams - 7

NAYS: 0

ABSENT: 0

AND THE RESOLUTION WAS ADOPTED.

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THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY

CLERK OF COUNCIL