

RESOLUTION

NO. R-19-293

CITY HALL: July 25, 2019

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

**APPLICATION OF ENTERGY NEW ORLEANS, LLC FOR APPROVAL OF
RENEWABLES PORTFOLIO AND REQUEST FOR COST RECOVERY AND
RELATED RELIEF**

RESOLUTION AND ORDER APPROVING AGREEMENT IN PRINCIPLE

DOCKET NO. UD-18-06

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

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

WHEREAS, Entergy New Orleans, LLC (“ENO” or “Company”), is a public utility providing electric and natural gas service to all of New Orleans, 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. (“ETI”). These five operating companies are referred to collectively as the “Operating Companies”; and

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

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

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

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

WHEREAS, one of the projects selected was developed by ESI, on behalf of ENO, as a 5 MW, self-build project involving the construction of multiple, distributed generation scale (“DG-scale”) solar photovoltaic (“PV”) systems in New Orleans, which was ultimately approved by the Council in Resolution No. R-18-222; and

WHEREAS, ENO subsequently represented that it had attempted, without success, to negotiate the terms of agreements with third-party bidders to proceed with the two other projects; and

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

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

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

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

WHEREAS, after the Council expressed this concern over the lengthy amount of time it was taking ENO to bring proposals forward to the Council for consideration and adopted

Resolution No. R-18-97 directing ENO to seek approval of its selected resources, ENO filed its Application of Entergy New Orleans, LLC for Approval of Renewables Portfolio and Request for Cost Recovery and Related Relief (“Application” or “Renewables Portfolio”) on July 31, 2018; and

WHEREAS, ENO’s proposed Renewables Portfolio consisted of a 20 MW self-build solar Project to be known as the New Orleans Solar Station (“NOSS”) located in New Orleans East at the National Aeronautics and Space Administration’s (“NASA”) Michoud Assembly Facility, a 50 MW acquisition of a solar electric generation facility located in Washington Parish, Louisiana that would be constructed by a third-party and acquired by ENO (“Iris Solar Facility”), and a 20 MW purchase power agreement (“PPA”) from a to-be constructed solar PV plant located in St. James Parish, Louisiana (“St. James PPA”); and

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

WHEREAS, August 23, 2018, the Council adopted Resolution No. R-18-353 adopting a procedural schedule for the consideration of the Application and expressed its interest in determining whether the parties could reach consensus regarding the Application without the need for an extensive and costly litigated proceeding; and

NEW ORLEANS SOLAR STATION

WHEREAS, ENO proposed in its Application that NOSS be located in New Orleans East, within the property boundaries of the NASA facility protected by levees constructed along the Gulf Intracoastal Waterway (“GIWW”), NASA’s pumping stations, and the Lake Borgne surge barrier, all of which were improved or constructed after Hurricane Katrina; and

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

WHEREAS, ENO’s Application stated that the project originally was submitted into the 2016 RFP as a build-own-transfer acquisition that would have been constructed by another party

and purchased by ENO upon completion. However, following the second round of failed negotiations, ENO elected not to abandon the resource altogether, but instead to purchase site control (i.e. the long-term land lease with NASA and the MISO Interconnection position) from the RFP bidder and pursue the project as an ENO self-build given that it was the only utility-scale solar resource located in Orleans Parish submitted into the 2016 RFP; and

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

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

WHEREAS, ENO also performed an economic impact analysis that demonstrated that NOSS is estimated to generate 537 jobs, as well as labor income, new spending to the local economy, and tax revenues to the City;¹ and

ST. JAMES PPA

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

WHEREAS, according to the Application, the St. James PPA is a long-term (20-year) agreement for the purchase of 20 MW of must-take, unit contingent, as-available capacity,

¹ The economic study and the numbers contained therein have been designated by ENO as Highly Sensitive Protected Materials that cannot be released to the public. However, they were released to the parties to the case that signed the Council's official non-disclosure agreement under the Council's Protective Order.

capacity-related benefits, environmental attributes, energy and other electric products from the facility; and

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

IRIS SOLAR FACILITY

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

WHEREAS, the Company stated in the Application that the ISF acquisition was structured as a build-own-transfer, or “BOT,” asset acquisition. Under the proposed BOT structure, the seller would design and build the ISF if ENO obtains the required regulatory approvals and other necessary conditions to the issuance of notice to proceed are met; and

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

WHEREAS, according to the Application, the ISF transaction was projected to close in the first half of 2021; and

COST RECOVERY REQUESTS

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

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

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

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

SETTLEMENT NEGOTIATIONS

WHEREAS, the parties undertook settlement discussions, and as a result of those discussions, ENO engaged in further negotiations with its counterparties with respect to the NOSS and Iris projects; and

WHEREAS, on March 14, 2019, ENO submitted the Supplemental and Amending Application of Entergy New Orleans, LLC for Approval of Renewables Portfolio and Request for Cost Recovery and Related Relief indicating that it had succeeded in converting the Iris B-O-T project to a PPA for the 50 MW from Iris at substantial savings to ratepayers and seeking Council approval of the Iris project as a PPA rather than as a BOT; and

WHEREAS, on May 10, 2019, ENO submitted the Second Supplemental Direct Testimony of Seth E. Cureington and Supplemental and Amending Direct Testimony of Jonathan E. Long; which indicated that ENO had also achieved substantial cost savings with respect to the NOSS project by developing an innovative interconnection solution for the project and achieving a lower price on the EPC contract; and

WHEREAS, the parties continued their settlement discussions and were successful in reaching settlement; and

WHEREAS, on June 28, 2019, ENO submitted for Council review and approval a Stipulated Settlement Term Sheet (“Settlement”) memorializing a settlement supported by ENO and the Advisors, and not opposed by Air Products and Chemicals, the Alliance for Affordable Energy, and 350 New Orleans; and

WHEREAS, under the Settlement, ENO will enter into a twenty-year PPA between ENO and Iris Solar, LLC for must-take, unit contingent, as-available capacity, capacity-related benefits, environmental attributes, energy and other electric products from a 50 MW to-be-constructed solar photovoltaic (“PV”) plant located on a remote, approximately 500 acre “greenfield” site in Washington Parish, Louisiana. The facility would be owned by Iris, which has secured a lease from the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College. The project is expected to enter service by December 2020; and

WHEREAS, under the Settlement, ENO would also enter into a twenty-year PPA between ENO and St. James Solar, LLC (“St. James”) for must-take, unit-contingent, as-available capacity, capacity-related benefits, environmental attributes, energy and other electric products from a 20 MW to-be-constructed solar photovoltaic (“PV”) plant located on a 200 acre “greenfield” site in St. James Parish, Louisiana. The facility will be owned by St. James, which has secured a lease from Ten-R Farms. The project is expected to enter service by December 2020; and

WHEREAS, under the Settlement, the capacity-related and energy-related components of payments to Iris and St. James, respectively, would be reflected as follows: (i) 25% of the PPA costs are deemed to be capacity costs, and (ii) 75% of the PPA costs are deemed to be energy costs; and

WHEREAS, with respect to cost recovery under the Settlement, ENO would be allowed to include the deemed capacity cost component of ENO’s payments to Iris and St. James through an appropriate known and measurable (in-service) adjustment within the Formula Rate Plan (“FRP”) anticipated in Council Docket No. UD-18-07; and

WHEREAS, to the extent an FRP that includes a mechanism that allows ENO to account for forward-looking known and measurable costs is not approved in Council Docket No. UD-18-07, the deemed capacity cost component of ENO’s payments to Iris and St. James would be eligible for recovery through the proposed Purchase Power Cost Recovery (“PPCR”) Rider until such time as such costs are realigned to ENO’s base rates in a manner approved by the Council; and

WHEREAS, the deemed energy cost component of ENO’s payments to Iris and St. James would be eligible for recovery by ENO through its Fuel Adjustment Clause in accordance with the FAC Rider ultimately approved by the Council in Docket No. UD-18-07; and

WHEREAS, the costs of pursuing the Iris BOT would be recoverable through a regulatory asset amortized in a straight-line manner over 3 years and included in any FRP put into place by the Council or such other reasonable method; and

WHEREAS, under the terms of the Settlement, ENO would proceed with constructing NOSS, a 20 MW solar PV ground-mounted system at the Michoud Assembly Facility in New Orleans, Louisiana, an installation of the National Aeronautics and Space Administration (“NASA”) based on the present estimated cost of \$42.4 million, which represents a \$10.6 million reduction compared to the original estimate due to an innovative approach to interconnect the resources. The parties argue that this project represents a unique opportunity to add a grid-scale solar project within Orleans Parish, which is significantly land-constrained. The project would be located in an ideal location that is protected by flood mitigation structures and it will enhance the reliability of the grid. If there are no unanticipated project delays due to the inability to obtain necessary regulatory approvals, permits, materials, and equipment, NOSS is expected to enter service in the third quarter of 2020; and

WHEREAS, under the Settlement, the supporting parties find that the evidence ENO has presented demonstrates that the St. James and Iris PPAs and the NOSS facility would advance the public policy objectives of the Council and provide fuel diversity and the non-opposing parties do not object to this finding; and

WHEREAS, nothing in the Settlement should be understood to (a) exempt ENO from the obligation to complete construction of NOSS at the lowest reasonable cost; (b) exempt ENO from prudent management of the project following certification, including prudent cost control, continued evaluation of the appropriateness of continued construction of the project, effective administration of the engineering, procurement, and construction contract and all other contracts related to the project, timely completion, reasonable financing decisions, and all other aspects of the project; (c) preclude a party from challenging the prudence of the particular costs that are incurred to construct NOSS; or (d) to be a waiver of (and the parties specifically reserve) any and all arguments as to the prudence standard applicable to the transactions under applicable law; and

WHEREAS, if the Council approves the Settlement, the prudently incurred costs associated with constructing NOSS and placing it in service would be deemed eligible for recovery from ENO’s customers, and the parties agree that ENO will be allowed a reasonable

opportunity to recover its NOSS-related investment, its authorized return and related operation and maintenance expenses on a timely/in-service basis; and

WHEREAS, under the Settlement, ENO would be allowed to include the full revenue requirement of NOSS through an appropriate known and measurable (in-service) adjustment within the FRP anticipated in Council Docket No. UD-18-07; and

WHEREAS, to the extent an FRP that includes a mechanism that allows ENO to account for forward-looking known and measurable costs is not approved in Council Docket No. UD-18-07, the cost of NOSS would be eligible for recovery through the proposed PPCR Rider until such time as such costs are realigned to ENO's base rates in a manner approved by the Council; and

WHEREAS, the Settlement would have no precedential effect in any other proceedings involving issues similar to those resolved therein; and

WHEREAS, commencing the first quarter following Council approval of the Settlement, and until such time as the commercial operation date ("COD") of the NOSS project is achieved, ENO will file in this proceeding quarterly reports on the status of the NOSS project, including schedule, cost status and summary, and other critical activities, within 45 days of the end of each calendar quarter that reflect any material events, including change riders that increase or decrease EPC costs, any law changes affecting project costs, the status of required permits, any delays affecting project costs, and such other information mutually agreed upon by the Council, through the Advisors or the Council Utilities Regulatory Office ("CURO"), and ENO. The reports would be provided to all parties, but no party would be permitted discovery regarding the reports or the subject matter thereof, provided that the Council shall be permitted to request additional information reasonably needed to evaluate the quarterly report; and

WHEREAS, the Settlement seeks Council confirmation that if it approves the terms, conditions, rights, remedies, and limitations set forth in the PPAs, ENO and Entergy Corporation shareholders will not be responsible, beyond the remedies specified in the PPAs, for any acts or omissions by Iris or St. James, their employees, or their contractors of any tier in connection with their ownership or operation of the facilities, including, without limitation, their failure to deliver the contracted products under the PPA. Nothing in the Settlement, however, is intended to limit ENO's obligation to prudently manage and enforce the terms of the PPAs or to act prudently in procuring replacement energy or capacity at the lowest reasonable cost or the Council's authority to investigate the prudence of such activities of ENO; and

WHEREAS, the Settlement does not approve or address any potential future cancellation, or the ratemaking treatment associated with any future cancellation of the NOSS project, should that occur. If ENO determines at some future date that NOSS should be cancelled or modified, it will make any necessary filings at that time; and

WHEREAS, the Council commends the parties for their efforts to work cooperatively to significantly improve the economics of the 90 MW renewables portfolio for the benefit of ENO ratepayers. The Council recognizes that the Settlement represent significant cost savings to ENO customers relative to ENO's Application; and

WHEREAS, the Council recognizes that the Settlement is either supported by or not opposed by all parties to the proceeding; and

WHEREAS, the Council has reviewed the Settlement and concurs with the parties that it furthers the Council's public policy goals and provides increased fuel diversity; and now, therefore:

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

1. The Stipulated Settlement Term Sheet, attached as Exhibit A, is APPROVED without modification.

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

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.



INTER-OFFICE MEMORANDUM

CITY OF NEW ORLEANS
COUNCIL UTILITIES REGULATORY OFFICE

TO: Lora Johnson, Clerk of Council
FROM: ^{ES} Erin Spears - Council Utilities Regulatory Office
DATE: July 22, 2019
SUBJECT: Resolution R-19-293 to be placed on Consent Agenda.

Attached are copies of Resolution R-19-293.

At the July 17, 2019 meeting, the Utility, Cable, Telecommunication and Technology Committee approved and recommended placing the resolution on the consent agenda for the July 25, 2019 Council meeting..

If you have any questions, please contact the Council Utilities Regulatory Office.