

**RESOLUTION
(AS CORRECTED)**

NO. R-21-182

CITY HALL: May 20, 2021

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

**RULEMAKING PROCEEDING
TO ESTABLISH RENEWABLE PORTFOLIO STANDARDS
RESOLUTION AND ORDER ADOPTING A RENEWABLE AND CLEAN PORTFOLIO
STANDARD**

DOCKET NO. UD-19-01

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”) is a public utility providing electric and natural gas service to all of New Orleans; and

New Orleans Renewable and Clean Portfolio Standard Overview

WHEREAS, in this Resolution and Order, the Council adopts a Renewable and Clean Portfolio Standard (RCPS) for the City of New Orleans, and makes the following significant findings, as explained more fully herein:¹

- The RCPS should be a mandatory standard.
- The RCPS should require net zero carbon emission resources by 2040 and 100% zero carbon emission resources no later than 2050.
- The use of renewable energy credits (“RECs”) without the purchase of associated energy should be limited to 25% in the initial years and should be phased out entirely by 2050.
- RECs must be certified at the time of purchase as well as tracked, and may be used up to three years from the date of their creation.
- An array of zero-carbon emissions resources, including, but not limited to, utility-scale and distribution-scale renewable resources, energy efficiency, demand-side management, energy storage, and nuclear power, should be permitted to count toward achievement of the Council’s standard.
- High-priority resources shall be incentivized through a Tier receiving a multiplier for compliance credit. Tier 1 shall be for resources directly connected to the Utility’s transmission or distribution system and RECs or CECs produced shall receive a 1.25 multiplier until 2040. Tier 2 shall be for any Renewable Energy Resource or Zero Carbon Emissions Resource not eligible for Tier 1 and RECs or CECs produced shall receive a multiplier of 1.0. Tier 3 shall be for any Qualified Measure or electric vehicle charging infrastructure directly connected to the Utility’s transmission or distribution system, and the CECs received will be determined by the Council and a multiplier of 1.0 shall be applied to the CECs.
- A Customer Protection Cost Cap limiting compliance costs to not more than 1% of plan year total utility retail sales shall be imposed.
- In years where the Utility is unable to comply with the RCPS through reasonable measures, it shall pay an Alternative Compliance Payment into a CleanNOLA Fund (up to the Customer Protection Cost Cap), which funds shall be used for RCPS compliance purposes.

¹ Including in Appendix B hereto.

- The Utility shall file three-year compliance plans informed by the Utility's Integrated Resource Planning Process with the Council for review and approval, as is currently done in the Energy Smart Program. The Utility shall also file annual compliance reports with the Council and maintain a website making RCPS compliance information easy for customers to find.

WHEREAS, the RCPS goal for New Orleans of achieving net zero carbon emission electricity by 2040 and a 100% carbon-free portfolio by 2050 will be among the most aggressive clean energy standards in the country.² Since 2018, fourteen states, California, Colorado, Delaware, Nevada, New Mexico, Washington, Connecticut, Maine, Maryland, Massachusetts, New York, New Jersey, Virginia, and Wisconsin, have adopted either a Clean Energy Standard or a Clean Energy Goal, each of which has a target of reaching net zero in either 2040, 2045, or 2050, with the exception of Connecticut which has a target of reaching 44% by 2030, Delaware, which has a target of reaching 40% by 2035, Maryland with a target of reaching 50% by 2030, and Massachusetts with a target of reaching 80% by 2050,³ and

WHEREAS, the Council considers the adoption of this aggressive RCPS that would strengthen the Utility's local distribution system, balanced by a Customer Protection Cost Cap, to be a key element of moving the City toward the clean energy future the Council envisions while ensuring a safe, affordable, and reliable energy supply to the City; and

² Advisors' Reply Comments Regarding Proposed RCPS Regulations, filed October 13, 2020, Docket No. UD-19-01, ("Advisors RCPS Reply Comments"), at 4-5, citing data compiled by N.C. State University Clean Energy Technology Center's Database of State Incentives for Renewables & Efficiency® (DSIRE insight) <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>.

³ See Advisors RCPS Reply Comments at 3-4, citing N.C. State University Clean Energy Technology Center's Database of State Incentives for Renewables & Efficiency® (DSIRE insight) at <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2021/07/RPS-CES-June 2019.pdf> and <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>; see also Laura Shields, *State Renewable Portfolio Standards and Goals*, National Conference of State Legislatures (Apr. 7, 2021), <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx>.

WHEREAS, as a result of the Council’s regulation of Entergy New Orleans, LLC (“ENO”) and the programs already put in place by the Council, ENO’s emissions are nearly 50% below the national average⁴ with coal-fired generation currently only approximately 2% of ENO’s portfolio⁵ and its electricity rates that have stayed more than 20% below the national average rate;⁶ and

WHEREAS, this rulemaking builds on over a decade of prior initiatives by the Council, that have either directly increased or strongly encouraged energy efficiency, which include the adoption of Net Energy Metering (“NEM”) Rules for rooftop solar in 2007,⁷ the establishment of the award winning Energy Smart energy efficiency and conservation program in 2009,⁸ the issuance of guidance on the creation of a decoupling rate structure in 2016,⁹ the revision of the Council’s Integrated Resource Plan (“IRP”) rules in 2017 to expressly require the consideration of renewable resources, demand-side resources, and distributed energy resources in the IRP,¹⁰ the approval of full implementation of Advanced Metering Infrastructure (“AMI”) across the ENO service territory in 2018,¹¹ the approval of ENO’s project to build 5 MW of distributed-generation scale solar within New Orleans in 2018,¹² the modification of the Council’s Customer Service Regulations to allow the release of aggregated whole building energy use data to building owners

⁴ Entergy New Orleans, LLC’s Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards, June 3, 2019, Docket No. UD-19-01, (“ENO Comments”), at 4

⁵ Entergy New Orleans, LLC, 2018 Integrated Resource Plan, July 19, 2019, Docket No. UD-17-03, (“ENO’s 2018 IRP”), at 11.

⁶ Advisors’ RCPS Reply Comments at 2 citing https://www.eia.gov/electricity/sales_revenue_price/; https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf; and https://www.eia.gov/electricity/sales_revenue_price/pdf/table6.pdf

⁷ See Resolution No. R-07-132.

⁸ See, Resolution No. R-09-136.

⁹ See, Resolution No. R-16-103.

¹⁰ See, Resolution Nos. R-17-332 and R-17-429.

¹¹ See, Resolution No. R-18-37.

¹² See, Resolution No. R-18-222.

for benchmarking and energy efficiency purposes in 2018,¹³ the adoption of Community Solar Rules,¹⁴ and the approval of ENO's 90 MW portfolio of renewable resources;¹⁵ and

Procedural History

WHEREAS, as part of the Council's continued efforts to increase the availability and utilization of clean, sustainable energy resources, on March 28, 2019, the Council adopted Resolution R-19-109 establishing a docket and opening this rulemaking proceeding to establish a renewable portfolio standard ("RPS") for the City; and

WHEREAS, in Resolution R-19-109, the Council welcomed comment from the public and ENO on any aspect of a potential RPS for New Orleans, and specifically requested comments and input on certain questions. The Council also set forth a procedural schedule that provided for the intervention of interested parties, comments and reply comments on the particular questions set forth by the Council, an Advisors' Report responding to those comments and setting forth a recommendation with a draft RPS requirement, and comments and reply comments on the Advisors' Report; and

WHEREAS, in Resolution R-19-109, the Council set forth the following specific questions to facilitate the Council's consideration of an RPS design:

¹³ See, Resolution No. R-18-539.

¹⁴ See, Resolution No. R-19-111.

¹⁵ See, Resolution No. R-19-293.

1. What would an appropriate RPS target for New Orleans be, and should it be a requirement or a goal?
 - a. What percentage of ENO's load should be met through renewable resources, and what data or other information exists indicating that the target is achievable in New Orleans?
 - b. In what year should ENO be required to meet this target, and should ENO have specific, incremental targets to meet?
2. How should a New Orleans RPS target be satisfied?
 - a. Should ENO be allowed to purchase RECs to satisfy the requirement, and if so what, if any, limitations should be applied to the use of RECs? If RECs are allowed, how should they be certified or verified?
 - b. What resources should be included in the definition of resources that may be used to meet the target (whether through the addition of resources to ENO's system or through the purchase of RECs) -- Solar Water Heat, Solar Space Heat, Geothermal Electric, Solar Thermal Electric, Solar Thermal Process Heat, Solar Photovoltaics, Wind (Large and Small), Biomass, Hydroelectric, Geothermal Heat Pumps, Combined Heat & Power, Landfill Gas, Hydroelectric (Large and Small), Geothermal Direct Use, Anaerobic Digestion, Fuel Cells using Renewable Fuels, other?
 - c. Should there be a requirement that some portion of the RPS must be met through specific types of renewables (or RECs), such as solar or distributed generation?
 - d. Should the Council consider adopting a method of encouraging local renewable resources, such as by providing ENO with greater credit toward meeting the RPS requirement for local resources than for remote resources?
3. How should the RPS be enforced, should the Council consider a penalty or Alternative Compliance Payment Structure?
4. What protections should be put in place to protect ratepayers from unreasonable increases in rates due to the RPS?
 - a. What would be an unacceptable level of rate impact resulting from compliance with an RPS?
 - b. If a limit on rate impact is established, how should it be structured -- as a flat cap, as an Alternative Compliance Payment structure, or through some other structure? and

WHEREAS, there was widespread stakeholder participation in this proceeding. The following parties intervened in these proceedings: the Alliance for Affordable Energy (“AAE”),¹⁶ Air Products and Chemicals, Inc. (“Air Products”),¹⁷ Center for Climate and Energy Solutions (“C2ES”),¹⁸ Gulf States Renewable Energy Industries Association (“GSREIA”),¹⁹ National Audubon Society (“Audubon”),²⁰ Southern Renewable Energy Association (“SREA”),²¹ and 350 New Orleans (“350 NO”),²² New Orleans Chamber²³, PosiGen Solar (“PosiGen”)²⁴, Vote Solar²⁵, Deep South Center for Environmental Justice (“DSCEJ”)²⁶ and the Sierra Club.²⁷ Additionally, throughout these proceedings, several additional entities submitted comments or joined comments filed by a party without intervening, including Third Way, the United States Business Council for Sustainable Development, Jensen Companies, South Coast Solar, STEM Nola, Joule, Professors Smith and Connor of the Tulane Energy Institute, the American Association of Blacks in Energy, the Edison Electric Institute (“EEI”), and the Alliance for Transportation Electrification (“ATE”) generally in favor of a technology-neutral clean energy standard,²⁸ while the Union of Concerned

¹⁶ The Alliance for Affordable Energy Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 2, 2019.

¹⁷ Air Products and Chemicals, Inc. Motion for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 30, 2019.

¹⁸ Center for Climate and Energy Solutions’ Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 24, 2019.

¹⁹ Gulf States Renewable Energy Industries Association, Motion of Intervention, Docket No. UD-19-01, Apr. 25, 2019.

²⁰ The National Audubon Society (dba Audubon Louisiana) Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, May 1, 2019.

²¹ Southern Renewable Energy Association Petition for Intervention and inclusion on Service List, Docket NO. UD-19-01, May 1, 2019.

²² 350 New Orleans Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 10, 2019.

²³ New Orleans Chamber Petition for Intervention and Inclusion on Service List, Docket UD-19-01, April 30, 2019.

²⁴ PosiGen Solar Motion to Intervene, Docket UD-19-01, April 29, 2019.

²⁵ Vote Solar Motion to Intervene, Docket UD-19-01, April 26, 2019.

²⁶ Deep South Petition for Intervention and Inclusion on Service List, Docket UD-19-01, May 1, 2019.

²⁷ Sierra Club Late-Filed Petition to Intervene and for Inclusion on Service List, Docket NO. UD-19-01, June 3, 2019. Petition was granted by the Hearing Officer by Order issued June 11, 2019.

²⁸ See Letter to the Council for the City of New Orleans on behalf of Entergy New Orleans, LLC, Third Way Climate and Energy Program, U.S. Business Council for Sustainable Development, Jensen Companies, South Coast Solar, Center for Climate Solutions, Joule Energy, Tulane Energy Institute/A.B. Freeman School of Business, and

Scientists, Greater New Orleans Housing Alliance, Climate Reality Project, Climate Reality New Orleans, New Orleans Chapter, Greater New Orleans Interfaith Climate Coalition, The Justice Alliance, and Center for Sustainable Engagement and Development commented generally in favor of a 100% renewables standard.²⁹ Various groupings of the Intervenor and other entities filed pleadings as the Energy Future New Orleans (“EFNO”) Coalition; and

WHEREAS, ENO proposed a voluntary Clean Energy Standard (“CES”) that would pursue the goal of decarbonization and reducing carbon emissions.³⁰ The EFNO parties, on the other hand, proposed a Resilient and Renewable Portfolio Standard (“R-RPS”) with stated purposes to (1) strengthen New Orleans through a focus on energy resilience and local energy resources, (2) ensure that the benefits of renewable energy are equitable, accessible, and affordable for all residents; (3) providing new economic opportunities to underserved communities by expanding and diversifying the energy workforce and enabling programs that reduce energy cost burdens on low-income residents; and (4) attract and retain companies and industries that value ready access to renewable energy resources;³¹ and

STEM NOLA Energy, filed with the Clerk of Council on December 2, 2020 (“Dec. 2, 2020 letter”); and Letter to the Clerk of Council on behalf of American Association of Blacks in Energy, filed November 18, 2020 (“Nov. 18, 2020 letter”); Letter to the Council for the City of New Orleans on behalf of the Edison Electric Institute, filed with the Clerk of Council on April 23, 2021 (“April 23, 2021 Letter”); Letter to the Council for the City of New Orleans on behalf of the Alliance for Transportation Electrification, filed with the Clerk of Council on April 26, 2021 (“April 26, 2021 Letter”).

²⁹ Energy Future New Orleans Coalition (“EFNO”) filings: Joint Reply of EFNO Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans, dated July 15, 2019, Docket No. UD-19-01 (“EFNO Reply Comments”); EFNO Comments on Advisors’ Report, dated October 15, 2019, Docket No. UD-19-01 (“EFNO Comments on Advisors’ Report”); Letter to Lora Johnson, Clerk of Council, dated May 11, 2020 (“May 11, 2020 Letter”); Letter to Councilmembers for the City of New Orleans, dated August 27, 2020 (“August 27, 2020 Letter”); EFNO Reply Comments and Redline of the Advisors Comments, dated September 28, 2020, Docket No. UD-19-01, (“EFNO RCPS Comments”); and, EFNO Final Reply Comments Pursuant to Resolution R-20-104, dated October 13, 2020, Docket No. UD-19-01, (“EFNO RCPS Reply Comments”) Comments of the Energy Future New Orleans Coalition, dated April 26, 2021, Docket No. UD-19-01, (“EFNO Comments”).

³⁰ Advisors’ Report at 32.

³¹ Joint Reply of the Energy Future New Orleans Coalition Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans, filed July 15, 2020, Docket No. UD-19-01, EFNO Reply Comments, Appendix A, Section 1. Purpose.

WHEREAS, the Advisors did not support either the CES as proposed by ENO or the R-RPS as proposed by the EFNO coalition; however, in an Appendix to the Advisors' Report, the Advisors included three different potential RPS standards: Alternative 1: a traditional renewable portfolio with a long-term clean energy goal; Alternative 2: a Renewable and Clean Portfolio Standard ("RCPS"), a more aggressive alternative to ENO's proposed CES; and Alternative 3: a Renewable and Resilient Portfolio Standard designed around the same general principles set forth in the EFNO Coalition's R-RPS;³² and

WHEREAS, each of the alternatives in the Advisors Report included a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues; and

WHEREAS, after carefully considering the comments of the parties submitted in the earlier phase of this proceeding, on April 16, 2020, the Council issued Resolution No. R-20-104 providing its guidance as to the further development of a Renewable and Clean Portfolio Standard ("RCPS") for New Orleans; and

WHEREAS, in Resolution R-20-104, the Council instructed the parties that it was most interested in gaining more information on an RCPS based on Alternative 2 in Appendix A of the Advisors' Report with (1) a mandatory requirement that ENO achieve 100% net zero emissions by 2040; (2) reliance on RECs purchased without the associated energy for compliance with the standard being phased out over the ten-year period from 2040 to 2050; (3) ENO has no carbon-emitting resources in the portfolio of resources it uses to serve New Orleans by 2050; and (4) a

³² Advisors' Report at 32.

mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues;³³ and

WHEREAS, Resolution No. R-20-104 further set forth a procedural schedule, including technical conferences and opportunities for comments and reply comments on proposed regulations, for interested parties to work with the Advisors in developing detailed regulations that, if approved, would implement an RCPS consistent with the Council's guidance; and

WHEREAS, upon completion of the technical conferences, the Advisors submitted Proposed RCPS Regulations based on Alternative 2 to the Council on August 28, 2020; and

WHEREAS, comments on the Advisors' August 28, 2020 Proposed RCPS Regulations were submitted on September 28, 2020; and

WHEREAS, on October 13, 2020, reply comments were filed by the parties and the Advisors; and

WHEREAS, in the Advisors' October 13, 2020 reply comments, the Advisors included in Appendix A their Final Draft Proposed Regulations ("Advisors' Final Proposed RCPS Regulations"); and

WHEREAS, the arguments made by the parties regarding the specific questions posed by the Council as well as additional issues raised by the parties, all of which were carefully considered by the Council, and the Council's rationale for making the findings in this Resolution are fully set forth in Appendix C to this Resolution which is incorporated in its entirety herein by reference; and

³³ Resolution No. R-20-104 at 13-14.

Proposed Standards and Alternatives

The Three Different Models Presented to the Council in the Advisor Report

The Models Proposed

WHEREAS, in Alternative 1: traditional RPS model, the Advisors set forth targets based on the Advisors' assessment of what would be reasonably achievable under a 1% expenditure cap on total retail revenues using data and assumptions from ENO's renewables resource portfolio cost benefit analysis modeling in Docket No. UD-18-06 (the 90 MW renewables portfolio case) to project costs and rate impacts and using relevant load projections and resource data from ENO's 2018 IRP,³⁴ and

WHEREAS, in the Alternative 2: RCPS model, the Advisors set forth a RCPS that would aggressively pursue deep decarbonization and emissions reductions, particularly within the City.³⁵ It would have the goal of rapid decarbonization while ensuring that the City has a safe and reliable power supply at a reasonable cost and with as much flexibility as possible.³⁶ Rather than requiring ENO to acquire a specific percentage of renewables, it would require ENO to convert its entire portfolio to zero-emissions resources.³⁷ A wide range of currently known and yet to be developed zero-emissions energy technologies would be employed with priority given to measures that reduce emissions within Orleans Parish and measures that are sited within Orleans Parish.³⁸ Under the Alternative 2: RCPS model, in addition to zero-emissions sources of generation, the Advisors included energy efficiency, DSM, and Beneficial Electrification as resources,³⁹ and

³⁴ Advisors' Report at 33.

³⁵ Advisors' Report at 36.

³⁶ Advisors' Report at 36.

³⁷ Advisors' Report at 36.

³⁸ Advisors' Report at 36.

³⁹ Advisors' Report at 36-37.

WHEREAS, the Alternative 3: R-RPS model was a standard prioritizing resiliency and economic development of the renewables industry in New Orleans, consistent with the stated purposes of the EFNO coalition's R-RPS proposal.⁴⁰ This model retained the renewables targets of the R-RPS and the three tiers of resources proposed by EFNO with minor changes.⁴¹ Tier 1 was a separately-metered resilient energy resource operating as part of a dispatchable microgrid, Tier 2 was a renewable distributed generation resource located in Orleans Parish as well as any utility DSM or conservation program, net energy metering, community solar and programs directly benefiting low-income customers and Tier 3 would be any renewable energy resource not located in Orleans Parish that is located in MISO or deliverable to the MISO region;⁴² and

WHEREAS, the Alternative 3: R-RPS model incorporated the RPS expenditure cap of 1% of utility total retail sales.⁴³ The Advisors stated they did not have sufficient data regarding the anticipated costs of the Tier 1 and Tier 2 resources under this standard to project the likelihood of success of this design in meeting the targets while remaining within the compliance expenditure cost cap.⁴⁴ The Advisors stated that the success of the program may be significantly hampered by the application of that cap;⁴⁵ and

Parties' Comments on the Three Models

WHEREAS, several responded with comments on the proposals and options set forth in the Advisors' report.⁴⁶ However, six of the eight members of the EFNO coalition continued to support the EFNO coalition's R-RPS proposal as proposed;⁴⁷ and

⁴⁰ Advisors' Report at 39.

⁴¹ Advisors' Report at 39.

⁴² Advisors' Report at 39.

⁴³ Advisors' Report at 40.

⁴⁴ Advisors' Report at 40.

⁴⁵ Advisors' Report at 40.

⁴⁶ Advisors' Reply Comments at 4.

⁴⁷ Intervenor Group Comments on Advisors' Report at 4 and 6.

WHEREAS, ENO argued that the record established in this proceeding to date provided adequate support for the Council to (i) clarify that its desired policy objective is to combat climate change; (ii) reject the call of those who would use the climate crisis as a pretext for subsidizing the local rooftop solar installation sector at a significant, unacceptably high cost to ENO's customers, (iii) establish a near-term, potentially mandatory CES target that is specifically tailored to New Orleans' energy needs, and (iv) establish an aspirational long-term objective for further decarbonizing ENO's resource portfolio,⁴⁸ and

WHEREAS, the Advisors stated that while a clean energy standard would permit the use of nuclear, natural gas, and other fossil resources with a truly effective carbon capture mechanism, the Alternative 2: RCPS model would allow other emissions-free resources to be considered on an equal footing.⁴⁹ This has the advantage of giving the utility the flexibility to acquire the resources most closely matched to the needs of ENO's load at the lowest reasonable cost. The Advisors stated that if, as many parties comment, renewables are truly cost-effective as compared to other resources, they should succeed under a clean energy standard,⁵⁰ and

WHEREAS, in the Alternative 2: RCPS model, the Advisors proposed a standard that is more aggressive on carbon emissions reductions and has stricter compliance requirements than ENO's proposed CES, but which, in the Advisors' opinion, would still have a reasonable chance of success.⁵¹ This alternative model would require ENO to achieve a 100% net zero-emissions portfolio of resources by 2040, with no more than 20% being met through RECs purchased without

⁴⁸ Entergy New Orleans, LLC's Comments in Response to the Advisors' Report and Proposed Alternative Frameworks Concerning Renewable Portfolio Standards, filed October 15, 2019, Docket No. UD-19-01, ("ENO Comments on Advisors' Report"), at 3.

⁴⁹ Advisors' Report at 36.

⁵⁰ Advisors' Report at 36.

⁵¹ Advisors' Report at 37.

the associated energy.⁵² The RCPS model included in this Report would then phase out the use of RECs between 2040 and 2050, requiring ENO to serve New Orleans with only zero-emissions resources,⁵³ and

WHEREAS, ENO argued that the three alternatives set forth in the Advisors' Report would, as proposed, result in higher customer rates than ENO's proposed CES Target with Alternatives 1 and 2 having notably lower cost impacts than Alternative 3.⁵⁴ ENO's analysis showed that the total system average rate impact from 2021-2040 of Alternative 1 would be in the 1%-7% range, of Alternative 2 would be in the 1%-6% range and Alternative 3 in the 4%-16% range;⁵⁵ and

WHEREAS, six of the eight original EFNO Coalition parties joined to file a set of comments.⁵⁶ In addition, PosiGen Solar filed comments separately, clarifying that any comments in their separate pleading that are inconsistent with the Intervenor Group Pleading should be considered to prevail over the position taken in the Intervenor Group Pleading.⁵⁷ 350 New Orleans and the Alliance for Affordable Energy also filed stand-alone comments in addition to participating in the Intervenor Group Pleading;⁵⁸ and

WHEREAS, PosiGen filed a letter on September 23, clarifying its position in its initial reply comments, and another group consisting of both Intervenor and parties who have not intervened in the case, filed a letter in support of the two specific issues raised in PosiGen's

⁵² Advisors' Report at 37.

⁵³ Advisors' Report at 37.

⁵⁴ ENO Comments on Advisors' Report at 18-19.

⁵⁵ ENO Comments on Advisors' Report at 19 and Appendix C.

⁵⁶ Advisors Reply Comments at 11.

⁵⁷ Reply Comments of PosiGen Solar ("PosiGen Comments on Advisors' Report") at 1, UD-19-01, Oct. 15, 2019.

⁵⁸ 350 New Orleans Reply Comments ("350 NO Comments on Advisors' Report"), UD-19-01, Oct. 14, 2019; and Comments of the Alliance for Affordable Energy, October 15, 2019 Docket No. UD-19-01, ("AAE Comments on Advisors Report").

September 23 letter, consideration of a rooftop solar carve-out for low-income residents, and evaluation of generation resources using a full analysis and accounting of the total cost of each resource, including spillover costs like climate impacts, air pollution, water use, and others;⁵⁹ and

WHEREAS, SREA, having previously participated in the EFNO Coalition, stated that it would prefer a version of Alternative 1 presented in the Advisors' Report, modified to be more aggressive and to simplify the Tier system to a two-tier system, with Tier 1 resources being inside New Orleans and Tier 2 being resources located outside the city.⁶⁰ SREA recommended that the Council establish a 20%+ by 2023 RPS, ramping up to 60% by 2030 for renewable energy only, and a longer-term goal of 100% clean (zero carbon) energy, create a competitive bidding process for fulfilling the RPS, allow for modest carve-outs for local generation, and require ENO to move beyond capacity-only planning;⁶¹ and

WHEREAS, Air Products supported a standard that allows ENO to pursue generation resources (via acquisition or contract) that use clean energy (including renewables and other clean energy resources) when there is a need for additional generation and the proposed resource is the lowest reasonable cost resource to meet the need and provide reliability of service.⁶² Based on the alternatives provided in the Advisors' Report, Air Products recommends that if the Council decides to adopt an energy standard for New Orleans, that it adopt Alternative 2, RCPS, with the following modifications: (1) include the Alternative 1 cap for large customers; (2) state the multiplier for Tier 3 resources as 1; (3) separate the compliance and procurement plan annual reports, provide intervention and comment for each; (4) clarify how compliance costs are to be estimated relative

⁵⁹ Comments Supporting Consideration of Issues Raised by PosiGen, UD-19-01, Oct. 15, 2019.

⁶⁰ Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard, filed October 15, 2019, Docket No. UD-19-01, ("SREA Comments on Advisors' Report") at 4.

⁶¹ SREA Comments on Advisors' Report at 2.

⁶² Air Products and Chemicals, Inc. Comments on Advisors Report, filed October 15, 2019, Docket No. UD-19-01, ("Air Products Comments on Advisors' Report"), at 1-2.

to the cap similar to Alternative 1, Section 5.b; (5) clarify Alternative Compliance Payment language (specific language proposed); (6) clarify how cost recovery and bill impact cap carries forward (language proposed); and (7) add stronger language that the CleanNOLA Fund can only be used for RCPS compliance.⁶³ While ENO argued that the proposed large customer cap would harm the vast majority of ENO's customers for the exclusive benefit of two customers by shifting a portion of the costs above the cap to other customers;⁶⁴ and

WHEREAS, in the June 22, 2020 EFNO Comments filed with the Council, the EFNO Coalition made several additional comments regarding the Alternative 2 model included in the Advisors' Report after the Council's October 1, 2019 deadline for comments and the Council's October 15, 2019 deadline for reply comments on the Advisors' Report.⁶⁵ The EFNO Coalition argued that energy storage resources should have been included in the Alternative 2: RCPS model and are "absolutely critical to enabling cost-effective deployment of distributed generation, electric vehicles (which are themselves a kind of energy storage), demand response, load management, and other DERs" and that "energy storage is a fundamental tool for improving reliability, especially on the outage-prone ENO system, and is an essential resource for improving system resilience;"⁶⁶ and

WHEREAS, the Advisors and the parties agreed with the general sentiment that once the Council chose a policy direction, and given the parties guidance as to the purpose and goals the RPS should meet, further work would be needed to develop a comprehensive set of regulations to implement the Council's chosen RPS model;⁶⁷ and

⁶³ Air Products Comments on Advisors' Report at 2-9.

⁶⁴ ENO Comments on Advisors' Report at 26.

⁶⁵ Resolution No. R-19-109.

⁶⁶ June 22, 2020 EFNO Coalition Comments at 4.

⁶⁷ Advisor Reply Comments at 3.

The Council's Guidance

WHEREAS, after thorough review of the comments filed by the parties in the initial phase of this proceeding, the Council determined that it appeared that the parties were moving farther apart from each other on the design of an appropriate standard for New Orleans and would benefit from the Council providing guidance to the parties on the Council's preferred design;⁶⁸ and

WHEREAS, the Council wished for all parties to have the opportunity to review and comment upon the details of Council's preferred model, prior to the Council rendering a final decision on the design of an RCPS for New Orleans. To that end, in Resolution R-20-104, the Council informed the parties that it was most interested in gaining further information on an RCPS based on Alternative 2 in Appendix A of the Advisors' Report with (1) a mandatory requirement that ENO achieve 100% net zero emissions by 2040; (2) reliance on Renewable Energy Credits ("RECs") purchased without the associated energy for compliance with the standard being phased out over the ten-year period from 2040 to 2050; (3) ENO has no carbon-emitting resources in the portfolio of resources it uses to serve New Orleans by 2050; and (4) a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues.⁶⁹ The Council set forth a further procedural schedule instructing the Advisors to develop a set of regulations based on the Alternative 2 model and setting forth technical conferences for the Advisors to obtain informal input from the parties on the proposed design of the regulations prior to submitting the Advisors' proposal to the Council and opportunities for the parties to submit formal written comments to the Council regarding the proposal filed by the Advisors;⁷⁰ and

The EFNO Coalition's Final Proposed RCPS Regulation

⁶⁸ Resolution No. R-20-104 at 6.

⁶⁹ Resolution No. R-20-104 at 13-14.

⁷⁰ Resolution No. R-20-104 at 13-14.

Model Proposed

WHEREAS, prior to the Advisors' filing of the Proposed RCPS Regulations, the EFNO Coalition wrote that "After a great deal of discussion and not without a strong measure of internal compromise, EFNO has identified a potential Council action that could resolve many of the concerns raised in this docket."⁷¹ EFNO proposed that rather than adopt comprehensive RCPS regulations, "the Council vote on a resolution that confirms the performance objectives and guidelines of the Council's mandate and allow a robust IRP analytical and engagement process to guide and inform implementation;"⁷² and

WHEREAS, in its RCPS Comments regarding the Advisors' Proposed RCPS Regulations, the EFNO Coalition urged the Council to disregard the proposal the Advisors submitted to the Council and instead to adopt a set of regulations that the EFNO Coalition argued "the Council should feel confident in approving to meet their decarbonization goals;"⁷³ and

Parties' Comments on Model

WHEREAS, ENO argued that EFNO's filing seeks to reopen and rehash issues that the Council has already decided.⁷⁴ ENO also argued that EFNO's proposed RCPS regulations deviate from the Council's directives by eliminating the Customer Protection Cost Cap and that they are not even internally consistent with each other and at odds with the ends EFNO claims it is trying to achieve.⁷⁵ ENO argues that while the EFNO Coalition argues in favor of incentivizing local economic development, it removed the Tiers that provide such incentives, and that while it

⁷¹ August 27, 2020 EFNO Letter at 2.

⁷² August 27, 2020 EFNO Letter at 2.

⁷³ Energy Future New Orleans' Reply Comments and Redline of the Advisors Comments, filed September 28, 2020, ("EFNO RCPS Comments"), at 1.

⁷⁴ Entergy New Orleans, LLC's Reply Comments in Response to Parties' Comments Concerning the Advisors' Final Proposed RCPS Rules, filed October 13, 2020, Docket No. UD-19-01, ("ENO RCPS Reply Comments") at 1, 5.

⁷⁵ ENO RCPS Reply Comments at 7.

emphasizes equity and addressing energy burdens in its comments EFNO's proposed regulations removed the Customer Protection Cost Cap, and that there are several other internal inconsistencies of note;⁷⁶ and

WHEREAS, Air Products objected to EFNO's proposed changes to the RCPS Regulations and requested that the Council disregard their comments completely.⁷⁷ Air Products argued that the EFNO redline edits are not supported by explanation or reasoning and would result in significant cost impacts to customers of ENO.⁷⁸ It also argued that EFNO's changes are inconsistent with the Council's objective in this proceeding;⁷⁹ and

Council Determination

WHEREAS, for the reasons stated by ENO and Air Products, the Council declines to adopt the EFNO Coalition's proposed RCPS Regulations; and

The Advisors' Final Proposed Regulation

Model Proposed

WHEREAS, on August 28, 2020, the Advisors submitted to the Council Proposed RCPS Regulations with the following basic characteristics: (1) a statement of intent and provision for periodic review; (2) a renewable and clean portfolio standard requiring the utility to reach net zero carbon emissions in 2040 and to phase out the use of RECs without the associated sale of electricity for compliance from the initially permitted amount of 25% of compliance to zero percent of compliance no later than 2050; (3) a Tier 1 multiplier of 1.5 until 2040 for measures reducing carbon emissions from existing sources within Orleans Parish, a Tier 2 multiplier of 1.25 for

⁷⁶ ENO RCPS Reply Comments at 7.

⁷⁷ Air Products and Chemicals, Inc. Reply Comments on Advisors' Proposed RCPS Regulations, filed October 13, 2020, Docket No. UD-19-01 ("Air Products RCPS Reply Comments"), at 3.

⁷⁸ Air Products RCPS Reply to EFNO and ENO Comments at 3.

⁷⁹ Air Products RCPS Reply to EFNO and ENO Comments at 3.

renewables, zero carbon resources, DERs or incremental DSM located in Orleans Parish until 2040, and a Tier 3 multiplier of 1.0 for all other eligible resources; (4) energy storage resources will be approved for compliance on a case-by-case basis; (5) a detailed methodology for calculating compliance with the RCPS; (6) a process for developing three-year compliance plans informed by the Triennial Integrated Resource Planning process; (7) the requirement of an annual compliance report; (8) the requirement that the utility make public copies of all reports and documents related to the RCPS available on an easy-to-find and user-friendly website; (9) a provision allowing the utility to bank RECs for compliance for up to three years; (10) an enforcement provision establishing an Alternative Compliance Payment to be made into a CleanNOLA Fund in the event that the utility is unable to comply in a given year through reasonable measures; (11) a cost recovery provision; (12) a Customer Protection Cost Cap of one percent (1%) of plan year total utility retail sales revenues; and (13) the establishment of the CleanNOLA Fund;⁸⁰ and

WHEREAS, the Advisors explained that under the Advisors' Proposed RCPS, a wide range of technologies, whether owned by the Utility, by a utility customer, or by a third party, may be used to get to a carbon emissions-free energy portfolio, including renewable energy, energy efficiency and conservation, demand-side management, distributed energy resources, nuclear energy, energy storage resources, beneficial electrification, and carbon capture, utilization and storage ("CCUS") as well as any other carbon emissions-free technology that may emerge as a commercially viable and cost-effective resource between now and 2050;⁸¹ and

⁸⁰ Advisors' RCPS Proposal at Appendix A.

⁸¹ Advisors' RCPS Reply Comments at 3.

WHEREAS, the Advisors explained that the primary changes made to the Proposed RCPS Regulations from the original Alternative 2 model based on the input the Advisors received from the parties in the stakeholder process were:

- To expand the Overview section to make the intent of the RCPS clearer and to add a provision for periodic review of the RCPS by the Council;
- To add definitions to better explain how the compliance mechanisms work and to clarify how different types of resources are treated under the RCPS;
- To adjust the phase-out of the reliance upon RECs purchased without the associated energy in order to alleviate concerns of the parties regarding “cliffs”;
- To clarify several aspects of how the Tier multipliers function in calculating compliance credits;
- To clarify that Energy Storage Resources may be used for RCPS compliance, but must be considered on a case-by-case basis;
- To add a new section detailing the process for calculating and demonstrating compliance with the RCPS;
- To add a process for the Utility to file a compliance plan with the Council for approval every three years, similar to the process currently utilized for Energy Smart;
- To add a provision requiring ENO to keep its relevant reports and filings on a web page easily accessible by the public;
- To add a Banking and Compliance Reserve provision specifying how ENO may use RECs for up to three years after the REC was created in order to hedge against unexpected issues;
- To clarify the determination of the alternative compliance payment; and
- To clarify cost recovery and the Customer Protection Cost Cap;⁸² and

Parties' Comments on Model

WHEREAS, ENO noted that its comments on the Advisors' Proposed RCPS largely focused on achieving additional clarity around certain elements of the Proposed Rules, including,

⁸² Advisors RCPS Proposal at 5-6.

but not limited to, beneficial electrification, distributed energy resources, interaction with the IRP, cost recovery, and the reporting and monitoring of compliance with interim targets;⁸³ and

WHEREAS, Air Products supported the proposed RCPS Regulations and submitted limited comments regarding the triennial Compliance Plan, certain language clarifications, and the usage of the CleanNOLA Fund;⁸⁴ and

WHEREAS, the EFNO Coalition urged the Council to reject the Advisors' Proposed RCPS and instead adopt EFNO's proposed RCPS discussed above;⁸⁵ and

WHEREAS, ENO, Third Way, the United States Business Council for Sustainable Development, Jensen Companies, South Coast Solar, C2ES, STEM Nola, Joule and Professors Smith and Connor of the Tulane Energy Institute filed a letter with the Council supporting a technology-neutral RCPS and explaining that it will facilitate the continued decarbonization of the electric service provided by ENO, as well as other major sectors of the New Orleans economy, which include transportation, tourism and industry.⁸⁶ The Letter argued that the Council's directives in R-20-104 not only seek to aggressively reduce emissions through a technology-neutral policy, they also encourage reduction of emissions from all sectors of New Orleans' economy by including Beneficial Electrification and DSM as compliance tools.⁸⁷ It also argues that the Council's directives keep equity at the forefront of RCPS policy goals by capping compliance costs and encouraging the siting of resources, and the corresponding economic

⁸³ Entergy New Orleans, LLC's Reply Comments Concerning the Advisors' Proposed RCPS Regulations, ("ENO RCPS Comments"), at 2.

⁸⁴ Air Products and Chemicals, Inc. Comments on Advisors' Proposed RCPS Regulations, ("Air Products RCPS Comments"), at 2.

⁸⁵ EFNO RCPS Comments at 1.

⁸⁶ Dec. 2, 2020 letter at 1.

⁸⁷ Dec. 2, 2020 Letter at 2.

development, in New Orleans and that it exemplifies sustainable, equitable, progressive, and achievable climate policy;⁸⁸ and

WHEREAS, ENO's RCPS Comments regarding Beneficial Electrification focused on the minimum level of net emissions reduction for a Beneficial Electrification project to qualify for a Tier 1 multiplier in the RCPS compliance calculations. Specifically, ENO's concern is that the draft RCPS Regulations precluded electrification projects producing net emissions reductions of less than 1,500 pounds ("lbs.") of CO₂ per MWh from qualifying as a Beneficial Electrification measure, with two consequences (i) precluding these projects from earning Clean Energy Credits ("CECs"), and (ii) eliminating the deduction of their associated sales from Retail Compliance Load.⁸⁹ ENO argued that setting a minimum threshold that precludes such measures from qualifying as a Beneficial Electrification project under the Proposed Rules would operate as a disincentive for ENO to pursue emissions-reducing electrification measures.⁹⁰ ENO's proposed solution to the disincentive issue was to apply the threshold only to the application of the Tier 1 multiplier, while allowing all other Beneficial Electrification measures to receive a 1.0 Tier 3 credit,⁹¹ and

WHEREAS, Air Products supported ENO's proposed approach;⁹² and

WHEREAS, the Advisors argued that under ENO's proposed language, a Beneficial Electrification project that has a net emissions reduction of 1,499 lbs. of CO₂ per MWh would be credited at the same level as a Beneficial Electrification project that only has a net emissions reduction of 7 lbs. of CO₂ per MWh.⁹³ Accordingly, ENO's proposal would not address the

⁸⁸ Dec. 2, 2020 Letter at 2.

⁸⁹ ENO RCPS Reply Comments at 4, ENO Reply to Others' RCPS Reply Comments at 4.

⁹⁰ ENO RCPS Reply Comments at 3, ENO Reply to Others' RCPS Reply Comments at 4.

⁹¹ ENO RCPS Comments at 7, ENO RCPS Reply Comments at 4.

⁹² Air Products Reply RCPS Reply Comments at 2.

⁹³ Advisors' RCPS Reply Comments at 9-10.

Advisors' intent to avoid a situation where the utility receives a large compliance credit for only a minimal or nominal reduction in net carbon emissions from a Beneficial Electrification project;⁹⁴ and

WHEREAS, to address the concern expressed by ENO regarding the recognition of potential Beneficial Electrification projects that do not meet the minimum threshold of emission reductions in coordination with the Advisors' concern that ENO not receive a large compliance credit for only a minimal or nominal reduction in net carbon emissions from a Beneficial Electrification project, the Advisors proposed that Beneficial Electrification projects that do not meet the minimum net reduction of 1,500 lbs. of CO₂ per MWh threshold be: (i) incorporated in the RCPS Regulations as a Tier 2 resource and, (ii) be credited CEC's per MWh in proportion to the project's net CO₂ emission reductions per MWh divided by 1,500 lbs. of CO₂ per MWh, the minimum threshold for Beneficial Electrification projects in Tier 1.⁹⁵ The Advisors explained that this would properly account for the proportionate value provided by a Beneficial Electrification project based on its level of emissions reductions;⁹⁶ and

WHEREAS, the EFNO Coalition opposed the blanket exemption in the Section 1 definition of Tier 1 Resource that would allow any EV charging station located in Orleans Parish to qualify as a Tier 1 Resource without having to demonstrate that the charging station would achieve a net reduction of emissions greater than 1,500 pounds CO₂/MWh.⁹⁷ The EFNO Coalition argued that an analysis should be performed to assess impacts in order to optimize a transportation electrification solution because "while transportation electrification is generally a good thing, it can produce peak demand increases and generally builds load, and electrification of buses and

⁹⁴ Advisors' RCPS Reply Comments at 10, citing Advisors' RCPS Proposal at 14.

⁹⁵ Advisors' RCPS Reply Comments at 10.

⁹⁶ Advisors' RCPS Reply Comments at 10-11.

⁹⁷ EFNO RCPS Comments at 3.

service vehicle[sic] can result in targeted emissions reduction[sic] in dense urban and environmentally disadvantaged neighborhoods. . .”⁹⁸ The Advisors argued that the installation of EV charging station infrastructure in New Orleans in order to support the adoption of EVs by New Orleans residents and businesses is a significant public policy goal of the Council and that providing the exemption would facilitate the advancement of this goal,⁹⁹ and

WHEREAS, the Advisors disagreed with ENO’s contention that the draft RCPS Regulations disincentivizes the pursuit of electrification of buses in New Orleans, because electric vehicle charging stations located in Orleans Parish are exempt from the minimum criteria required for the Tier 1 multiplier, in recognition of the critical role that build-out of charging station infrastructure throughout a City plays in encouraging large-scale adoption of EVs by residents and businesses.¹⁰⁰ The Advisors explain that as a Tier 1 resource under the Advisors proposal, EV charging stations both receive the compliance credit and the load of the EV charging stations should be deducted from Retail Compliance Load, which should mean that if ENO installs EV charging infrastructure for a bus fleet, the kWhs consumed by the buses at the EV chargers should not result in an increase in ENO’s Retail Compliance Load.¹⁰¹ Therefore, the Advisors argued, ENO should have no disincentive to participate in a bus electrification project,¹⁰² and

WHEREAS, further, the Advisors noted that to the extent that ENO proposes a Beneficial Electrification project for buses in New Orleans that it does not believe would qualify for the Tier 1 electric vehicle charging station exemption, the Advisors’ revised proposal, discussed herein, with respect to Beneficial Electrification should appropriately credit the project as a Tier 2

⁹⁸ EFNO RCPS Comments at 3.

⁹⁹ Advisors’ RCPS Reply Comments at 35.

¹⁰⁰ Advisors’ RCPS Reply Comments at 11.

¹⁰¹ Advisors’ RCPS Reply Comments at 11.

¹⁰² Advisors’ RCPS Reply Comments at 11.

Beneficial Electrification Project.¹⁰³ Finally, the Advisors argued, if ENO believes that the credits that would be provided for a particular bus electrification project under the Proposed RCPS Regulations would not properly reflect the benefits to ratepayers that would result from the project, ENO would have the ability to propose an exception to the rules in accordance with Section 1(a)(2) to the Council for its consideration, and if the Council is satisfied that the proposed project would create sufficient benefits to warrant a higher level of credit, it may grant such an exception;¹⁰⁴ and

WHEREAS, after voicing concern that ENO's RCPS Comments indicated there may be confusion regarding compliance costs associated with Beneficial Electrification projects, the Advisors recommended clarifying language to Section 4(d) of the Draft RCPS Regulations to accommodate ENO's concern regarding the net costs associated with Beneficial Electrification projects and ENO's request for clarification on the use of the term "revenue requirements" in lieu of "cost of service";¹⁰⁵ and

WHEREAS, ENO proposed a modification to the definition of DERs to ensure that it did not exclude certain configurations of DERs from being qualified as such under the Proposed Rules.¹⁰⁶ The Advisors agreed that ENO's proposed change to this definition is reasonable and consistent with the intent of the Advisors in their Proposed Rules to include all DER resources, and recommend that ENO's proposed change be adopted,¹⁰⁷ as did Air Products,¹⁰⁸ and the EFNO Coalition did not oppose the proposal;¹⁰⁹ and

WHEREAS, ENO also suggested a minor modification to Section 6(a)(2), which ENO argues would be consistent with the Prudent Investment Rule that governs utilities under Louisiana

¹⁰³ Advisors' RCPS Reply Comments at 11.

¹⁰⁴ Advisors' RCPS Reply Comments at 12.

¹⁰⁵ Advisors' RCPS Reply Comments at 14-15.

¹⁰⁶ ENO RCPS Comments at 7.

¹⁰⁷ Advisors' RCPS Reply Comments at 13.

¹⁰⁸ Air Products RCPS Reply Comments at 2.

¹⁰⁹ EFNO RCPS Reply Comments at 6.

Law.¹¹⁰ The Advisors had no objection to this proposed change, and found it is consistent with the intent of the Advisors in drafting their Proposed Rules;¹¹¹ and

WHEREAS, ENO also sought a change to clarify that the costs of RECs purchased and banked for subsequent use will be recovered and count against the cost cap in the compliance year in which they are retired and that the acquisition costs of purchased RECs that are banked for subsequent use be treated as part of working capital for ratemaking purposes.¹¹² ENO argues that to apply the costs of purchasing RECs to the compliance cost cap in the year that the banked RECs are acquired could inhibit ENO's ability to develop its compliance bank.¹¹³ The Advisors stated that this proposal is reasonable, particularly because ENO must submit its three-year Banking and Compliance Reserve provision for Council review and approval as part of its three-year compliance plan under Section 4(e), the Council will have an opportunity to review and approve these costs as part of the Compliance Plan prior to ENO incurring such costs and can ensure that they remain prudent;¹¹⁴ and

WHEREAS, the Council finds that the various minor, unopposed clarifications are reasonable and should be accepted; and

WHEREAS, 350 New Orleans argued that "It could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing a more economical, and strategically deployed renewable energy infrastructure;"¹¹⁵ and

¹¹⁰ ENO RCPS Comments at 9, citing *Gulf States Utils. Co. v. La. Pub. Serv. Comm'n*, 578 So. 2d 71, (La. 1991); *So. Cent. Bell Tel. Co. v. La. Pub. Serv. Comm'n*, 594 So. 2d 357, (La. 1992); *Central Louisiana Electric Co. v. LPSC*, 508 So. 2d 1361 (La. 1987).

¹¹¹ Advisors' RCPS Reply Comments at 16.

¹¹² ENO RCPS Comments at 10.

¹¹³ ENO RCPS Comments at 10.

¹¹⁴ Advisors' RCPS Reply Comments at 16-17.

¹¹⁵ 350 New Orleans Comments on Advisors' Report at 5.

WHEREAS, the Advisors noted, no party in the case has suggested that the Council officially mandate a CCUS. The Advisors took the position that an RPS should leave room for effective and economical CCUS technology that might develop in the future, not that the Council should require ENO to acquire CCUS instead of investing in renewables;¹¹⁶ and

WHEREAS, ENO argues that the Advisors' research, along with the evidence submitted by ENO, establishes that electric-sector decarbonization at a reasonable cost requires (i) utilization of all zero-emitting and emission-reducing technologies, (ii) near-term goals that take technological limitations into account, and (iii) long-term goals that are flexible and have been carefully analyzed considering a utility's specific circumstances;¹¹⁷ and

WHEREAS, 350 New Orleans argued that "In terms of technological viability, CCUS remains largely unproven, while renewables have consistently broken records in terms of capacity and generation, as well as facilitated lower energy costs for ratepayers when provided with a positive regulatory environment;¹¹⁸ and

WHEREAS, AAE commented that in 2018, the Institute for Energy Economics and Financial Analysis (IEEFA) examined four CCS projects and concluded that carbon capture technologies, after 15 years of research and development, remain expensive and technologically challenged and are rapidly being priced-out by renewable energy generation and natural gas;¹¹⁹ and

WHEREAS, the EFNO Coalition criticized the Advisors for creating an approach to energy storage that the EFNO Coalition believes to be "unworkable and incomplete;"¹²⁰ and

¹¹⁶ Advisors' Reply Comments at 28.

¹¹⁷ ENO Comments on Advisors' Report at 8.

¹¹⁸ 350 NO Comments on Advisors' Report at 5.

¹¹⁹ AAE Comments on Advisors Report (CCS as used here means carbon capture and storage technology)

¹²⁰ EFNO RCPS Comments at 6.

WHEREAS, under the Advisors' Proposed RCPS, all resources included in the definition of Distributed Energy Resource would automatically be given Tier 2 credit.¹²¹ However, the Advisors argued that whether or not energy storage actually reduces carbon emissions and thus, deserved RCPS credit, depends upon the manner in which the energy storage resource is deployed, so providing it with an automatic Tier 2 credit would be inappropriate.¹²² After extensive discussion with the parties regarding energy storage in the technical conferences, the Advisors recommended that the Council allow energy storage to be used for RCPS compliance where the Utility can make a showing to the Council that the energy storage resource is, in fact, being used to reduce carbon emissions, rather than having energy storage automatically included in one of the compliance tiers;¹²³ and

WHEREAS, the Advisors explained that it is not a requirement of the Proposed RCPS that the Energy Storage Resource be owned by the utility.¹²⁴ The Advisors clarified that the utility may use energy storage resources it does not own for RCPS Compliance, and under the proposed RCPS Regulations could, for example, design a program for customer-owned, behind-the-meter storage that would qualify for RCPS Compliance Credits, or it could enter into an arrangement with a third party aggregator of customer-owned storage resources to purchase Energy Storage Resource services that would qualify.¹²⁵ However, the Advisors explained, since the utility is the only entity required to comply with the RCPS, it is appropriate that the utility bear the responsibility of proposing a Compliance Credit treatment for the resources it intends to use for RCPS Compliance,

¹²¹ Advisors' RCPS Proposal, Appendix D at 76.

¹²² Advisors' RCPS Proposal, Appendix D at 76.

¹²³ Advisors' RCPS Proposal, Appendix D at 76.

¹²⁴ Advisors' RCPS Reply Comments at 25.

¹²⁵ Advisors' RCPS Reply Comments at 25-26.

whether the resources are utility-owned, customer-owned, third party-owned, utility-scale, distribution-scale, or in front of or behind the meter;¹²⁶ and

WHEREAS, the Council agrees that because the extent to which energy storage reduced carbon emissions is dependent upon the manner in which the energy storage is utilized, the most appropriate manner of including energy storage in the RCPS at this time is on a case-by-case basis; and

WHEREAS, in response to comments filed with respect to the August 28, 2020 Proposed RCPS Regulations, on October 13, 2020 the Advisors included in Appendix A to their reply comments the Advisors' Final Proposed RCPS Regulations; and

WHEREAS, on March 25, 2021 the Council approved Resolution No. R-21-109 finding that the Advisors' Final Proposed RCPS Regulations require modifications that (1) exclude the deployment of carbon dioxide capture and storage ("CCS") and carbon capture, utilization, and storage ("CCUS") technologies on generating resources and beneficial electrification as eligible methods for compliance with the RCPS and (2) restructure the tier system to reflect these changes. In Resolution No. R-21-109 the Council set forth a redline of the Advisors' Final Proposed RCPS reflecting these modifications for comment by the parties; and

WHEREAS, SREA submitted comments in support of the Council's proposed modifications in Resolution No. R-21-109.¹²⁷ SREA states that with the exclusion of CCS and CCUS technologies the proposed RCPS ensures that New Orleans will adopt low-cost, reliable, and commercially proven renewable energy resources.¹²⁸ SREA also supports the exclusion of beneficial electrification as a Tier 1 resource at this time because it would have directly reduced

¹²⁶ Advisors' RCPS Reply Comments at 26.

¹²⁷ Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard, filed April 19, 2021, Docket No. UD-19-01, ("SREA Comments on R-21-109") at 2.

¹²⁸ SREA Comments on R-21-109 at 2.

the amount of renewable energy procurement required to reduce the electric power sector's carbon emissions, while not actually requiring reducing power generation emissions.¹²⁹ SREA argues that by excluding beneficial electrification, the Council will ensure that electrification efforts will not hamper renewable energy development,¹³⁰ and

WHEREAS, EEI submitted comments emphasizing the need for regulatory flexibility to achieve emissions reductions targets and supporting the inclusion of CCS, CCUS and beneficial electrification as eligible resources under the RCPS, arguing that removing them from the RCPS will slow Entergy's ability to meet the carbon-free compliance targets and require customers to pay for other, potentially more expensive, opportunities to meet compliance goals and avoid alternative compliance payments.¹³¹ EEI also supported the inclusion of electric vehicle charging infrastructure as an eligible resource due to its significant community benefits;¹³² and

WHEREAS, ATE submitted comments emphasizing that transportation electrification is one of the effective and verifiable ways of reducing greenhouse gases as well as criteria air pollutants, especially in metropolitan areas such as New Orleans.¹³³ ATE argued that in recent years, the transportation sector has become the leading source of greenhouse gas pollution in most states, and electrification of both light-duty and medium-heavy duty vehicles provides one of the most significant means of meeting the goals for which the RPS is designed over the next decade and beyond.¹³⁴ ATE emphasizes that the electric vehicle industry is rapidly approaching an inflection point in terms of market transformation and the utility needs to have a robust role in this market transformation process, and especially be at the center of integrating the distributed loads

¹²⁹ SREA Comments on R-21-109 at 2.

¹³⁰ SREA Comments on R-21-109 at 2.

¹³¹ April 23, 2021 Letter at 3.

¹³² *Id* at 4.

¹³³ April 26, 2021 Letter at 1.

¹³⁴ April 26, 2021 Letter at 1.

reliability in the distribution grid.¹³⁵ ATE argues that the Council should not be selective in its regulatory treatment of the different types of DERs, and afford preferential treatment, through the tiered RPS compliance system, to one type of zero-carbon distributed resource over another.¹³⁶ ATE supported the Advisors Final Proposed RCPS Regulations and opposed the amendments set forth in R-21-109.¹³⁷ Specifically, ATE requested that the definition of Beneficial Electrification be restored, that the same multiplier be used for any DER, and that the language struck from Section 4(a) and (d) be restored;¹³⁸ and

WHEREAS, the EFNO Coalition, consisting of 350 NO, AAE, Climate Reality New Orleans, DSCEJ, Audubon, and Sierra Club, argued that the redline version of the proposed regulations set forth in R-21-109 finally put local renewable energy resources and energy efficiency as the most encouraged resources in the Council's RCPS.¹³⁹ EFNO states that beneficial electrification has no place in a renewable portfolio standard as an offset for polluting generation, because this would enable the continued use of fossil fuels, which is counter to the guidance in Resolution R-20-104.¹⁴⁰ The EFNO Coalition urges the Council to require that all resources to be considered in the IRP, which is currently underway, are optimized according to economics.¹⁴¹ The EFNO Coalition also strongly recommends that the Council remove nuclear energy as a resource in the renewable portfolio standard, because the operation of the Grand Gulf Nuclear Station and other nuclear plants and extension of the operating life of these assets is both risky and unaffordable.¹⁴² EFNO also encourages the Council to engage in transmission planning that leads

¹³⁵ April 26, 2021 Letter at 2.

¹³⁶ April 26, 2021 Letter at 2.

¹³⁷ April 26, 2021 Letter at 3.

¹³⁸ April 26, 2021 Letter at 3-4.

¹³⁹ EFNO Comments at 2.

¹⁴⁰ EFNO Comments at 2.

¹⁴¹ EFNO Comments at 2.

¹⁴² EFNO Comments at 3.

to better access to a competitive wholesale market to ensure that ratepayers will not be confronted with efforts by Entergy to invest in new polluting resources.¹⁴³ EFNO also encourages the Council to broaden the RCPS to include all greenhouse gases, not just carbon emissions;¹⁴⁴ and

WHEREAS, the EFNO Coalition argues that beneficial electrification “has no place in a renewable portfolio standard as an offset for polluting generation because this would enable the continued use of fossil fuels, which is counter to the guidance in Resolution R-20-104, Indeed, it is for this very reason that no state has established a renewable portfolio standard to allow beneficial electrification.”¹⁴⁵ With respect to clean energy programs, however, ENO reports that five states, Vermont, Washington, New York, Massachusetts, and California do include beneficial electrification in their clean energy programs in one form or another;¹⁴⁶ and

WHEREAS, Air Products opposed the Council’s proposed modifications to the Advisors’ Final Proposed RCPS Regulations and urged the Council to adopt the Advisors’ Final Proposed RCPS Regulations without modification.¹⁴⁷ Air Products argues that the Council’s proposed modifications depart from the objectives of rapid decarbonization and instead promote renewables over clean energy resources, eliminating the ability for integrated resource planning processes to determine the lowest cost resources to achieve compliance with the RCPS goals while providing reliable service for customers of ENO.¹⁴⁸ Air Products states that the proposed modifications would essentially create a renewables and nuclear portfolio standard, with some energy efficiency

¹⁴³ EFNO Comments at 4.

¹⁴⁴ EFNO Comments at 5.

¹⁴⁵ EFNO Comments at 2.

¹⁴⁶ Entergy New Orleans, LLC’s Reply Comments to Council Resolution R-21-109, filed April 26, 2021 (“ENO Comments on R-21-109”) at 7, citing Vermont Public Service Department, RES Tier III Verification Report - 2019, at 6, Washington State Senate Bill 5116, at 4, 7, and 9, NYSERDA New Efficiency: New York, April 2018 at 3, 64, MA DER, Massachusetts Comprehensive Energy Plan at xiv, and CA EPA, Overview of ARB Emissions Trading Program.

¹⁴⁷ Air Products and Chemicals, Inc. Response to Council’s Request for Comments on Proposed Modifications to RCPS Rules, filed April 26, 2021 (“Air Products Comments on R-21-109”) at 1.

¹⁴⁸ Air Products Comments on R-21-109 at 2.

and demand-side management, which is simply not practical economically or for reliability purposes and is not technology-neutral;¹⁴⁹ and

WHEREAS, Air Products also opposes the proposed changes to the Tier System, namely, the reduction of the Multiplier for Tier 1 from 1.5 to 1.25 and the reduction of the Tier 2 multiplier from 1.25 to 1.0, because these changes will magnify the impact of the proposed technology-specific exclusion of the Council with respect to the cost and difficulty of compliance;¹⁵⁰ and

WHEREAS, ENO argues that the Council's proposed revisions to the Advisors Final Proposed RCPS Rules represent a step in the wrong direction.¹⁵¹ ENO argues that the record in the proceeding, and the consensus of climate scientists supports the adoption of the originally proposed rules, but has also offered proposed edits to the Council's proposed revisions that would avoid penalizing beneficial electrification in the event that the Council does not return to the originally proposed rules;¹⁵² and

Council Determination

WHEREAS, having reviewed and carefully considered the Advisors' Final Proposed RCPS Regulations and the Parties' comments, including those in response to Resolution R-21-109, the Council finds that the Advisors' Final Proposed RCPS Regulations should be adopted with modifications, consistent with this Resolution, that exclude the deployment of CCS and CCUS technologies on generating resources as an eligible method for compliance with the RCPS, eliminate the Tier 1 credit for beneficial electrification and restructure the Tier system. These modifications are identified in a redline to the Advisors' Final Proposed RCPS Regulations, attached hereto as Appendix A, and the resulting Rules, as set forth in Appendix B; and

¹⁴⁹ Air Products Comments on R-21-109 at 2.

¹⁵⁰ Air Products Comments on R-21-109 at 8.

¹⁵¹ ENO Comments on R-21-109 at 1.

¹⁵² ENO Comments on R-21-109 at 3, 19-20.

WHEREAS, the Council agrees that technological limitations should be taken into account and that the viability of CCS and CCUS technologies have not been sufficiently demonstrated at this time. Accordingly, the Council will not include CCS, CCUS, or other carbon dioxide removal technologies on generating resources as an eligible method for compliance with the RCPS. This finding does not preclude a party from presenting such evidence in a future RCPS periodic review proceeding as is necessary to demonstrate to the Council's satisfaction that the environmental safety of and the cost-effectiveness of CCS or CCUS measures have advanced sufficiently that such measures would satisfy the intent of the RCPS; and

WHEREAS, while the Council notes that Beneficial Electrification could bring substantial benefits to New Orleans by reducing local carbon emissions, the Council finds that the primary purpose of the RCPS will be to eliminate carbon emissions from the Utility's generation portfolio, and that Beneficial Electrification has the potential to prolong the extent to which the Utility may keep carbon emitting resources in its portfolio. The Council therefore will not include Beneficial Electrification in the RCPS as a Tier 1 resource as proposed by the Advisors, and will not accept the proposed changes to Section 4(d), but finds that discussions about the relative merits or inclusion of beneficial electrification should continue without an integration into the RCPS rules at this time; and

WHEREAS, other arguments made by the parties and issues raised by the parties were examined by the Council and to the extent they are not discussed herein, the Council determined them to be either duplicative of arguments and issues discussed fully herein, unsupported by any credible evidence or citation to the record, purely speculative in nature (including various speculative arguments about the intentions, desires, and motivations of parties), or otherwise not relevant to the Council's determinations on the issues in controversy. **NOW, THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That
the RCPS Regulations attached hereto as Appendix B are adopted.

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

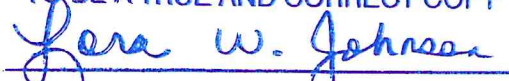
YEAS: Banks, Brossett, Giarrusso, Gisleson Palmer, Glapion, Moreno, Nguyen - 7

NAYS: 0

ABSENT: 0

AND THE RESOLUTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY


CLERK OF COUNCIL

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Appendix A

Redline of Advisors' Renewable and Clean Portfolio Standard ("RCPS")

SECTION 1: OVERVIEW

- a) **Intent:** It is the intent of the Renewable and Clean Portfolio Standard ("RCPS") to:
1. Aggressively pursue reductions to carbon emissions to improve the health and quality of life of the citizens of New Orleans and to reduce the City's impact on climate change, which is an existential threat to the City's security with a goal to eliminate carbon emissions in 2050 and reach "net-zero" emissions in 2040.
 2. Ensure that the City has a safe and reliable power supply at a reasonable cost and retain as much flexibility as possible to employ a wide range of currently known and yet to be developed zero carbon-emissions energy technologies.

This RCPS is intended to promote and foster these goals, and does not in any way limit the Council's authority to pursue these intentions through additional measures. The Council may waive any provision of these rules in advance upon a showing of good cause under the circumstances and upon a demonstration that such waiver serves the intent of this RCPS and may deem the Utility to be in compliance. In particular, this RCPS does not prevent parties from proposing and the Council from considering and approving projects consistent with the intent of this RCPS that do not conform precisely to the interim goals, Customer Protection Cost Cap, or other requirements set forth herein if the party(ies) proposing the project are able to successfully demonstrate to the Council that the project is nevertheless consistent with the intent of the RCPS, would benefit the Utility's customers, and meets any other Council standards or requirements applicable to that project (such as, for example, a project where interim goals and budget numbers are averaged and achieved over a block of years rather than strictly as provided in this RCPS). All proposals to modify or request to waive the goals or requirements of the RCPS shall be filed at the Council and served on parties to Docket No. UD-19-01, with opportunity for parties to issue discovery and provide comment.

- b) **Periodic Review:** In order to ensure that this RCPS continues to meet the Council's intent as set forth in Section 1(a), it is the Council's intention to conduct a review of this RCPS at least every five years. Such review shall consider a wide array of relevant factors, including, but not limited to: progress toward ultimate and interim goals, developments in climate science, impacts on customers, technological developments, market developments, and progress on actual emissions reductions of the Utility's portfolio.¹ At the end of such

¹ Because the most significant of the utility's generation-related emissions is carbon dioxide, and the most urgent climate problems at the time of the adoption of this RCPS are being caused by carbon dioxide, this RCPS focuses specifically upon reductions in carbon dioxide emissions. The Council recognizes that other forms of air emissions and pollution can also be harmful to the environment and human health, and does expect that this RCPS will also

review, the Council will make a determination as to whether the RCPS remains appropriate for the City or whether it requires modification. Nothing in this provision prevents the Council from conducting a more immediate or frequent review of the RCPS than set forth in this provision should the Council determine that circumstances warrant more frequent or immediate review. Projects undertaken prior to any change in the RCPS would be grandfathered, such that they continue to receive the RCPS Compliance Credit they were entitled to receive prior to the change in RCPS.

SECTION 2: DEFINITIONS

“Alternative Compliance Payment” or “ACP”: The ACP is a payment to be made by the utility when it is unable to comply with the RCPS through reasonable measures, but still has funding available to it under the cap set by the Customer Protection Cost Cap set forth in the rules. The ACPs (unit cost per MWh) shall be calculated in accordance with Section 5 of this RCPS, and will be placed in the CleanNOLA Fund established in Section 7 of this RCPS.

~~“Beneficial Electrification” means any program or process that replaces direct fossil fuel use as a source of power and/or heat with electricity in a way that — when the electric utility’s emissions are accounted for — reduces overall emissions, including, but not limited to, charging infrastructure supporting electrification of motor vehicles, electrification of home and commercial appliances that use natural gas, and electrification of municipal and commercial operations that currently rely on fossil fuel use to power equipment. To qualify as a Beneficial Electrification resource in Tier 1 under this RCPS, the measure must reduce net carbon emissions by the Beneficial Electrification Tier 1 Minimum Threshold. Beneficial Electrification measures that create net reductions of carbon emissions of less than the Beneficial Electrification Tier 1 Minimum Threshold can qualify as a Beneficial Electrification resource in Tier 2 under this RCPS.~~

~~“Beneficial Electrification Tier 1 Minimum Threshold” is equal to 1,500 pounds of CO₂ per MWh.~~

“Carbon Sequestration” means the fixation of atmospheric carbon dioxide in a carbon sink through biological or physical processes. A carbon sink is a reservoir that absorbs or takes up released carbon from another part of the carbon cycle.

“CCUS” means carbon capture, utilization and sequestration.

“Clean Energy Credit” or “CEC” one Clean Energy Credit results from (1) each MWh of electricity produced by a Zero Carbon Emissions Resource, (2) each MWh reduction in consumption resulting from DSM installed after January 1, 2021, (3) or each MWh

result in reductions of air emissions and pollution beyond carbon dioxide. The Council may consider broadening the focus of this RCPS to other forms of air emissions and pollution in the future.

~~consumed or produced by a Tier 1 Beneficial Electrification measure or a Qualified Measure. For Beneficial Electrification measures that do not qualify for Tier 1, Clean Energy Credits are earned per MWh in proportion to the project's net CO₂ emission reductions per MWh divided by the Beneficial Electrification Tier 1 Minimum Threshold.² each MWh associated with a Tier 3 Resource.~~

"Council" refers to the Council of the City of New Orleans.

"Community Solar Generation Facility" or **"CSG Facility"** means a solar energy facility that meets the definition of a Community Solar Generation Facility under the Council's Community Solar Rules.

"Community Solar Rules" means the Community Solar Rules for the Council of the City of New Orleans adopted by Council Resolution No. R-19-111 (and as modified by any subsequent Council action).

"Conservation Program" means a program, often relying on encouraging customers to reduce energy use, in which a utility company provides energy-saving guidance or provides free or low cost devices for saving energy, such as energy efficient light bulbs, flow restrictors, weather stripping, and water heater insulation. To be applicable to RCPS compliance, the kWh reduction from a conservation program must be a deemed savings or prescriptive measure approved by the Council, such as with the Energy Smart program.

"Cost of Compliance" the cost of compliance with the RCPS shall be the incremental costs incurred by ENO over and above the costs to serve its load that are attributable solely to the compliance with the RCPS policy, as calculated in Section 4(d) of this RCPS.

"Customer" means a retail electric customer account holder of the Utility.

"CURO" means the Council Utilities Regulatory Office.

"Demand-Side Management" or **"DSM"** means an action, usually under a utility-managed program, that reduces or curtails the load associated with end-use equipment or processes, often used to reduce customer load during peak demand and/or in times of supply constraint. DSM is the management of customer loads through programs such as energy efficiency and conservation measures, which actively reduce energy use, or demand response, which shifts customer loads from peak periods.

"Distributed Energy Resource" or **"DER"** means a resource sited close to customers that:

- (i) is interconnected to or on the distribution system, or

² For example, at the outset of this RCPS, the Beneficial Electrification Tier 1 Minimum Threshold is equal to a net reduction of 1,500 lbs. of CO₂ per MWh, so a project with a net emissions reduction of 750 lbs. per CO₂ per MWh would receive 0.5 CECs per MWh.

- (ii) can provide all or some of the immediate electric and power needs of retail customers and/or can also be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the grid. The resources, if providing electricity or thermal energy, are small in scale and close to load. Examples of different types of DER include solar photovoltaic, wind, combined heat and power, demand response, electric vehicles, microgrids, and energy efficiency.

“Energy Efficiency Programs” or **“EE”** means programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

“Energy Storage Resource” means a resource that stores and manages energy and customer loads. Such resources may include chemical energy storage resources such as batteries, flow batteries, and fuel cells or mechanical energy storage resources such as pumped storage hydropower, flywheels, and pressurized gas storage systems.

“Green-e” means the formal certification of RECs provided by the Center for Resource Solutions' Green-e® certification program, distinct from the tracking of RECs.

“Incremental DSM” costs and corresponding kWh would include the Energy Smart program budgets and cumulative kWh in excess of the Council’s existing 2% goal.

“Low-Income Customer” means a Customer whose gross annual household income is at or below 50 percent of Area Median Income for the relevant period or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 50 percent of Area Median Income.

“M-RETS” means the Midwest Renewable Energy Tracking System, a web-based system used by power generators, utilities, marketers, and qualified reporting entities. M-RETS registers projects in all states and provinces across North America. M-RETS tracks Renewable Energy Certificates (“RECs”) and facilitates REC transactions by issuing a unique, traceable digital certificate for every megawatt-hour (“MWh”) of renewable energy generated by registered units or imported into its system.

“Microgrid” means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode.

“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO-Connected Renewable Energy Resource” means a renewable energy resource that is interconnected to transmission-level voltage within the MISO’s footprint.

“NEM Rules” means the New Orleans Net Energy Metering Rules adopted by Council Resolution No. R-07-132 (and as modified by any subsequent Council action).

“Net Zero Emissions” refers to the state in which the Utility has fully offset the carbon emissions associated with the resources serving its Retail Compliance Load through the acquisition of clean energy resources, as demonstrated by producing or purchasing enough RECs or CECs such that the resulting RCPS Compliance Credits offset 100% of the utility’s Retail Compliance Load. RECs utilized to reach Net Zero Emissions may be purchased by the utility without the purchase of the associated energy to the extent permitted in Section 3 of this RCPS.

“Qualified Measure” means a project, program or measure ~~within Orleans Parish~~ which produces a measurable net reduction in carbon emissions in Orleans Parish, is cost-effective from the utility perspective, and is approved by the Council for purposes of RCPS compliance.

“RCPS” means the Renewable and Clean Portfolio Standard.

“RCPS Compliance Credits” means the sum of RECs and CECs multiplied by the applicable tier multiplier.

“Renewable Energy Credit” or **“REC”** means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWh of electric energy generated from a renewable energy resource. To qualify for compliance purposes, RECs must meet the following conditions: (1) they were generated from a Renewable Energy Resource in MISO, the Electric Reliability Council of Texas, or elsewhere that are deliverable into the MISO region; (2) they are Green-e certified at the time of their creation and are subsequently tracked with M-RETS or an equivalent; and (3) they are retired against the compliance requirements in the compliance year in which they were utilized for compliance.

“Renewable Energy Resource” means a facility that generates electricity using solar thermal, photovoltaic, wind, geothermal, fuel cell using renewable fuels, hydroelectric generation, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

“Retail Compliance Load” means the total jurisdictional retail sales, measured in kWh, for an electric utility during an annual period, as adjusted in Section 4(a) of this RCPS.

“Tier 1 Resource” ~~means any resource or Qualified Measure that reduces carbon emissions from existing sources within Orleans Parish, including, but not limited to,~~

~~new/additional CCUS on existing fossil fired generation resources inside Orleans Parish and Beneficial Electrification of sources of emissions inside Orleans Parish. A measure qualifies as a Tier 1 Resource by producing a net reduction in existing carbon emissions in Orleans Parish of no less than the Beneficial Electrification Tier 1 Minimum Threshold. In order to receive compliance credits as a Tier 1 Resource, irrespective of whether the default tier multiplier is used, the Utility must submit to the Council either (1) a certified engineering calculation demonstrating the net reduction in emissions, or (2) data demonstrating the measured emissions of the resource prior to the implementation of the measure and after the implementation of the measure. Electric Vehicle charging stations located in Orleans Parish shall qualify as a Tier 1 Resource regardless of the level of emissions reductions achieved, but the Utility must still provide the Council with either the certified engineering calculation demonstrating the net reduction or the data demonstrating measured emissions. To the extent that a proposed measure that would otherwise qualify for a different Tier can be demonstrated to have reduced net emissions from an existing source of emissions in Orleans Parish by not less than the Beneficial Electrification Tier 1 Minimum Threshold.~~ means any Renewable Energy Resource, Zero Carbon Emissions Resource or DER, directly connected to the Utility's transmission or distribution system. Tier 1 resources include the cumulative MWh savings of DSM programs installed after January 1, 2021.

~~“Tier 2 Resource” means any Renewable Energy Resource, Zero Carbon Emissions Resource, Beneficial Electrification Resource not eligible for Tier 1, or DER in Orleans Parish, including Incremental DSM.~~

~~“Tier 2 Resource” means any Renewable Energy Resource or Zero Carbon Emissions Resource not eligible for Tier 1 or Tier 2, but that is in MISO or that is deliverable into the MISO region. This includes non-Incremental DSM installed after January 1, 2021.~~

“Tier 3 Resource” means any Qualified Measure or electric vehicle charging infrastructure directly connected to the Utility's transmission or distribution system. For Tier 3 Resources, the Utility must provide the Council with either a certified engineering calculation demonstrating the net reduction in carbon emissions or data demonstrating measured emissions reductions. The Utility must also propose the annual amount of CECs in MWh associated with each proposed Tier 3 Resource for Council consideration.

~~“Utility” refers to any utility providing electric service to customers in the City of New Orleans and regulated by the Council.~~

~~“Zero Carbon Emissions Resource” means any resource that generates electricity without producing carbon emissions and that does not qualify as a Renewable Energy Resource under this RCPS, including, but not limited to nuclear, and fossil-fueled generators where 100% of carbon emissions are captured through resources. The deployment of CCUS on a generating resource that produces energy from fossil fuels is excluded from eligibility as a Zero Carbon Emissions Resource.~~

SECTION 3: RENEWABLE AND CLEAN PORTFOLIO STANDARD

- a) The Utility must meet the specified percentages of Retail Compliance Load with a combination of Tier 1, 2 and 3 resources as follows:
1. 2022: 64% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 2. 2023: 66% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 3. 2024: 68% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 4. 2025: 70% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
 5. 2026: 72% of Retail Compliance Load, with not more than 24% compliance through RECs purchased without the associated energy.
 6. 2027: 74% of Retail Compliance Load, with not more than 23% compliance through RECs purchased without the associated energy.
 7. 2028: 76% of Retail Compliance Load, with not more than 22% compliance through RECs purchased without the associated energy.
 8. 2029: 78% of Retail Compliance Load, with not more than 21% compliance through RECs purchased without the associated energy.
 9. 2030: 80% of Retail Compliance Load, with not more than 20% compliance through RECs purchased without the associated energy.
 10. 2031: 82% of Retail Compliance Load , with not more than 19% compliance through RECs purchased without the associated energy.
 11. 2032: 84% of Retail Compliance Load, with not more than 18% compliance through RECs purchased without the associated energy.
 12. 2033: 86% of Retail Compliance Load, with not more than 17% compliance through RECs purchased without the associated energy.
 13. 2034: 88% of Retail Compliance Load, with not more than 16% compliance through RECs purchased without the associated energy.
 14. 2035: 90% of Retail Compliance Load, with not more than 15% compliance through RECs purchased without the associated energy.
 15. 2036: 92% of Retail Compliance Load, with not more than 14% compliance through RECs purchased without the associated energy.
 16. 2037: 94% of Retail Compliance Load, with not more than 13% compliance through RECs purchased without the associated energy.
 17. 2038: 96% of Retail Compliance Load, with not more than 12% compliance through RECs purchased without the associated energy.

18. 2039: 98% of Retail Compliance Load, with not more than 11% compliance through RECs purchased without the associated energy.
 19. 2040: 100% of Retail Compliance Load, with not more than 10% compliance through RECs purchased without the associated energy.
 20. 2041: 100% of Retail Compliance Load, with not more than 9% compliance through RECs purchased without the associated energy.
 21. 2042: 100% of Retail Compliance Load, with not more than 8% compliance through RECs purchased without the associated energy.
 22. 2043: 100% of Retail Compliance Load, with not more than 7% compliance through RECs purchased without the associated energy.
 23. 2044: 100% of Retail Compliance Load, with not more than 6% compliance through RECs purchased without the associated energy.
 24. 2045: 100% of Retail Compliance Load, with not more than 5% compliance through RECs purchased without the associated energy.
 25. 2046: 100% of Retail Compliance Load, with not more than 4% compliance through RECs purchased without the associated energy.
 26. 2047: 100% of Retail Compliance Load, with not more than 3% compliance through RECs purchased without the associated energy.
 27. 2048: 100% of Retail Compliance Load, with not more than 2% compliance through RECs purchased without the associated energy.
 28. 2049: 100% of Retail Compliance Load, with not more than 1% compliance through RECs purchased without the associated energy.
 29. 2050: 100% of Retail Compliance Load, with 0% compliance through RECs purchased without the associated energy.
- b) **RCPS Tier Multipliers:** For years 2021 through 2040, RECs or CECs from Tier 1 Resources shall be credited at a multiplier of ~~1.5~~ 1.25; Tier 2 Resources at a multiplier of ~~1.25~~ 1.0; and Tier 3 Resources at a multiplier of 1.0 for compliance purposes. After 2040, the tier multiplier for all tiers shall be 1.0. These tier multipliers shall be applied as default multipliers for determining compliance RECs or CECs unless the Utility can provide workpapers that support a different multiplier for a specific measure that can be evaluated and accepted by the Council. A resource shall only receive RCPS compliance credits in one Tier; to the extent a resource is eligible to be included in more than one Tier, it should receive the highest tier multiplier for which it is eligible. The Council shall specifically evaluate the continued appropriateness of the Tiers and applicable tier multipliers, and the years in which tier multipliers should be applied in each Periodic Review of this RCPS.
- c) **Credit Related to Energy Storage Resource:** Depending upon the manner in which an Energy Storage Resource is utilized, it may or may not be eligible for RCPS Compliance Credits. Council approval of the RCPS Compliance Crediting mechanism applicable to any specific Energy Storage Resource will be required prior to the inclusion of any Energy Storage Resource in the Utility's RCPS Compliance and will be based upon the proposed application of the Energy Storage Resource. To the extent that the Utility intends to utilize

an Energy Storage Resource for RCPS Compliance, it should propose the project to the Council for the Council's consideration, with an explanation as to how the project specifically serves the goals of the RCPS and what RCPS Compliance Credit the Utility proposes be earned by the project. Nothing in this provision alters any other requirement for Council approval for the Utility to acquire or construct a resource or to include the costs of a resource in rates.

SECTION 4: COMPLIANCE AND REPORTING

a) Calculation of Retail Compliance Load

~~0.1.~~ 1. Retail Compliance Load is the reported annual MWh sales for each compliance year, increased by the cumulative MWh savings of DSM programs installed after January 1, 2021, and decreased by the additional MWh sales in that year related to a Beneficial Electrification measure 2021.

e)b) Calculation of RCPS Compliance Credits

1. RCPS Compliance Credits for each compliance year are calculated by adding: (i) the RECs and the CECs associated with the compliance year, multiplied by the applicable tier multiplier; (ii) RECs as allowed through the Banking and Compliance Reserve provision that are applied in that year.
2. CECs associated with ~~Beneficial Electrification~~ Tier 3 Resources can be applied as RCPS Compliance Credits until 2040.

e)c) Calculation of Percentage of Retail Compliance Load

1. RCPS Compliance Credits (MWh) are divided by Retail Compliance Load (MWh), and expressed as a percentage.

e)d) Calculation of RCPS Compliance Costs

1. The RCPS Cost of Compliance is calculated as all incremental costs prudently incurred by the Utility in complying with RCPS Section 3, including, but not limited to, the incremental costs of new resources for compliance, ~~the Utility's net fixed costs related to Beneficial Electrification,~~ the Incremental DSM costs, and other costs related to RCPS compliance. ~~The costs~~ cost of RECs as allowed through the Banking and Compliance Reserve provision that are applied in the compliance year shall be included in the RCPS Cost of Compliance for that year. The cost of RECs acquired for the Banking and Compliance Reserve provision but not applied in that year shall be treated as working capital and shall not be included in the RCPS Compliance Cost for the compliance year.
2. Incremental costs are the total electric utility revenue requirements associated with the Utility's operations in compliance with the RCPS, ~~net of costs due to any Beneficial Electrification project that are directly allocated or assigned to and collected from the Beneficial Electrification customer,~~ less the total electric utility revenue requirements associated with the optimized resource portfolio that may have been in place absent the requirements of the RCPS. The Utility's most recently filed Integrated Resource Plan shall inform the calculation of incremental costs as to the optimized resource portfolio that may have been in place absent the requirements of the RCPS.

¶e) Upon the Utility's submission of its final Integrated Resource Plan ("IRP") Report for each triennial IRP cycle, the utility shall develop a three-year prospective RCPS Compliance Plan, including a three-year Banking and Compliance Reserve provision for RECs, and the Utility's calculation of the ACP. The RCPS Compliance Plan shall be filed at the Council and served upon both the parties to the relevant IRP docket and the parties to Docket No. UD-19-01, with the opportunity for stakeholder comment prior to the Council's review and approval. Within 90 days of the adoption of this RCPS, the Utility shall file at the Council and serve on the parties to Docket No. UD-19-01, with opportunity for stakeholder comment, a proposed Initial RCPS Compliance Plan for the interim prior to the conclusion of the next triennial IRP cycle. Once the Council has approved an RCPS Compliance Plan for a particular time period, if the Utility wishes to add any resources for compliance that are not contemplated in the RCPS Compliance Plan, the Utility should file at the Council and serve upon the parties to the relevant IRP Docket and Docket No. UD-19-01, with opportunity for stakeholder comment, a request to include such resource for RCPS Compliance prior to executing plans to implement such resource.

¶f) By May 1 of each calendar year, the Utility shall file a Compliance Demonstration Report with the Council regarding its achievement of the RCPS goal for the prior calendar year and its plan for achieving the goal in the current calendar year as part of the three-year RCPS Compliance Plan. The report shall be served on parties to Docket No. UD-19-01, with an opportunity for comment prior to the Council's issuance of a determination as to whether the Utility has achieved the RCPS targets listed in Section 3 and remained within the Customer Protection Cost Cap of Section 6 for the prior calendar year. The Council's approval of the RCPS Compliance Demonstration Report would not eliminate the need for any other Council review and approval of resource costs otherwise required under the Council's Regulations. The report should include the following clear and concise information that:

1. Either (a) demonstrates that the Utility has complied with Section 3; or (b) explains the reason the Utility was unable to comply, the magnitude of the shortfall expressed in kWh, and the Utility's calculation of the applicable ACP.
2. A calculation of the incremental cost (if any) of compliance with the RCPS over and above costs ENO would have otherwise incurred to serve its load in the preceding calendar year.
3. An energy portfolio report for the preceding compliance year which shall identify the MWh hours produced by each supply and demand-side resource comprising the utility's total resource portfolio. RECs purchased and utilized by the utility and their associated MWh, including RECs that can be associated with net metering, and incremental MWh associated with DSM and other eligible resources should also be included in the energy portfolio report. For each resource in the portfolio, the utility shall identify the resource name, MWh, fuel type, the average per MWh energy-related cost associated with that resource, and the average per MWh energy-related revenue received from MISO for that resource.
4. A carbon emissions report that details the carbon emissions resulting from the production of the electricity used by the Utility to serve its Retail Compliance Load, whether or not each generator is owned by the Utility.

5. A draft bill insert to be included in customer bills with an easy-to-understand explanation of the Utility's compliance status for Council review and approval.

~~h)g)~~ g) The Utility shall maintain an easy-to-find web page with a user-friendly interface where it makes available to the public copies of all reports and documents related to the RCPS and the Utility's carbon emissions that it submits to the Council or any other relevant government agency or public body.

~~i)h)~~ h) Banking and Compliance Reserve Provision

The utility may use RECs produced and Green-e certified in one compliance year for compliance in either of the two subsequent compliance years, subject to a review of the accounting for the banking and compliance reserve, and provided that the utility was in compliance for the compliance year in which the RECs were created. In addition, the utility shall demonstrate to the satisfaction of the Council that such Compliance Credits:

- 1) were in excess of the Compliance Credits needed for compliance in the compliance year in which they were generated;
- 2) do not exceed the REC limitation specified in Section 3 for compliance with the RCPS in the year they were used for compliance and retired; and
- 3) have not otherwise been, nor will be, sold, retired, claimed or represented as part of clean energy output or sales, or used to satisfy obligations in other jurisdictions.

SECTION 5: ENFORCEMENT

- a) In the event that the Utility is unable to comply with the RCPS standard using reasonable measures for the applicable calendar year, the Utility shall make an Alternative Compliance Payment ("ACP") into a CleanNOLA Fund established by the Council for the purposes of fostering efforts to reduce carbon emissions within Orleans Parish. The ACP shall be structured as \$/MWh of shortfall.
 1. The ACP (\$ per MWh) will be determined by the Council in the Council's Resolution approving the Utility's RCPS Compliance Plan, and the ACP will be applicable for the prospective three calendar years.
 2. The ACP shall be based on the highest market value of RECs in MISO over the prior three years, multiplied by a 1.15 multiplier.
 3. The ACP, when combined with the RCPS compliance cost that is incurred in any calendar year, shall not exceed the Customer Protection Cost Cap set forth in Section 6.
- b) Nothing in this section limits the Council's authority to impose penalties for the violation of the Council's regulations.

SECTION 6: COST RECOVERY AND CUSTOMER PROTECTION COST CAP

- a) The Utility shall be allowed cost recovery for RCPS compliance as follows:
 1. The Utility shall be allowed the opportunity to recover prudently incurred costs in complying with a mandated renewable and clean portfolio standard.

2. The Utility shall be allowed to recover the ACP unless it is demonstrated to the Council and the Council finds that the Utility's failure to comply with the RCPS was unreasonable, in which case, ENO shall not recover the cost of the ACP from Customers.
- b) As a mechanism to provide customer protection from unreasonable rate increases, the Council hereby establishes an RCPS Customer Protection Cost Cap that the Utility shall not exceed to acquire RCPS Compliance Credits. The Customer Protection Cost Cap in any RCPS plan year is one percent (1%) of plan year total utility retail sales revenues, beginning in 2022.
1. If the Utility can support its finding that, in any given year, the cost of RCPS compliance through all reasonable measures is projected to be greater than the Customer Protection Cost Cap as established by the Council's RCPS, the Utility shall not be required to incur costs in excess of the Customer Protection Cost Cap, and will be deemed to have complied with that year's target as set forth in Section 3, once it has expended up to the Customer Protection Cost Cap (including any ACP).
 2. The existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the RCPS in subsequent years. When the utility can generate or procure RCPS Compliance Credits at or below the Customer Protection Cost Cap in order to comply with the RCPS, it shall be required to add such resources.
 3. For rate classes with fewer than 3 customers, the Council will review and adjust rates through the Utility's decoupling mechanism, or by other means, such that the increase in the allocated total cost of service related solely to RCPS Cost of Compliance for those rate classes is no greater than 1%.

SECTION 7: CLEANNOLA FUND

The Council shall establish a CleanNOLA Fund ("Fund") for the purposes of fostering the reduction of carbon emissions in Orleans Parish. The Fund shall prioritize projects designed to reduce carbon emissions from existing sources of such emissions in Orleans Parish. Grants made from any portion of CleanNOLA Fund funding received from ratepayers must go to projects that would meet the definition of one of the resources eligible for inclusion in the RCPS and all environmental attributes (RECs or CECs) generated by such projects must be transferred to ENO and used by ENO for RCPS Compliance. The Fund shall not at any time be transferred to, or lapse into, or be comingled with the General Fund of the City of New Orleans and it shall be administered in accordance with the Council's directives.

Appendix B

Renewable and Clean Portfolio Standard (“RCPS”)

SECTION 1: OVERVIEW

- a) **Intent:** It is the intent of the Renewable and Clean Portfolio Standard (“RCPS”) to:
1. Aggressively pursue reductions to carbon emissions to improve the health and quality of life of the citizens of New Orleans and to reduce the City’s impact on climate change, which is an existential threat to the City’s security with a goal to eliminate carbon emissions in 2050 and reach “net-zero” emissions in 2040.
 2. Ensure that the City has a safe and reliable power supply at a reasonable cost and retain as much flexibility as possible to employ a wide range of currently known and yet to be developed zero carbon-emissions energy technologies.

This RCPS is intended to promote and foster these goals, and does not in any way limit the Council’s authority to pursue these intentions through additional measures. The Council may waive any provision of these rules in advance upon a showing of good cause under the circumstances and upon a demonstration that such waiver serves the intent of this RCPS and may deem the Utility to be in compliance. In particular, this RCPS does not prevent parties from proposing and the Council from considering and approving projects consistent with the intent of this RCPS that do not conform precisely to the interim goals, Customer Protection Cost Cap, or other requirements set forth herein if the party(ies) proposing the project are able to successfully demonstrate to the Council that the project is nevertheless consistent with the intent of the RCPS, would benefit the Utility’s customers, and meets any other Council standards or requirements applicable to that project (such as, for example, a project where interim goals and budget numbers are averaged and achieved over a block of years rather than strictly as provided in this RCPS). All proposals to modify or request to waive the goals or requirements of the RCPS shall be filed at the Council and served on parties to Docket No. UD-19-01, with opportunity for parties to issue discovery and provide comment.

- b) **Periodic Review:** In order to ensure that this RCPS continues to meet the Council’s intent as set forth in Section 1(a), it is the Council’s intention to conduct a review of this RCPS at least every five years. Such review shall consider a wide array of relevant factors, including, but not limited to: progress toward ultimate and interim goals, developments in climate science, impacts on customers, technological developments, market developments, and progress on actual emissions reductions of the Utility’s portfolio.¹ At the end of such

¹ Because the most significant of the utility’s generation-related emissions is carbon dioxide, and the most urgent climate problems at the time of the adoption of this RCPS are being caused by carbon dioxide, this RCPS focuses specifically upon reductions in carbon dioxide emissions. The Council recognizes that other forms of air emissions and pollution can also be harmful to the environment and human health, and does expect that this RCPS will also result in reductions of air emissions and pollution beyond carbon dioxide. The Council may consider broadening the focus of this RCPS to other forms of air emissions and pollution in the future.

review, the Council will make a determination as to whether the RCPS remains appropriate for the City or whether it requires modification. Nothing in this provision prevents the Council from conducting a more immediate or frequent review of the RCPS than set forth in this provision should the Council determine that circumstances warrant more frequent or immediate review. Projects undertaken prior to any change in the RCPS would be grandfathered, such that they continue to receive the RCPS Compliance Credit they were entitled to receive prior to the change in RCPS.

SECTION 2: DEFINITIONS

“Alternative Compliance Payment” or “ACP”: The ACP is a payment to be made by the utility when it is unable to comply with the RCPS through reasonable measures, but still has funding available to it under the cap set by the Customer Protection Cost Cap set forth in the rules. The ACPs (unit cost per MWh) shall be calculated in accordance with Section 5 of this RCPS, and will be placed in the CleanNOLA Fund established in Section 7 of this RCPS.

“Carbon Sequestration” means the fixation of atmospheric carbon dioxide in a carbon sink through biological or physical processes. A carbon sink is a reservoir that absorbs or takes up released carbon from another part of the carbon cycle.

“CCUS” means carbon capture, utilization and sequestration.

“Clean Energy Credit” or “CEC” one Clean Energy Credit results from (1) each MWh of electricity produced by a Zero Carbon Emissions Resource, (2) each MWh reduction in consumption resulting from DSM installed after January 1, 2021, (3) or each MWh associated with a Tier 3 Resource.

“Council” refers to the Council of the City of New Orleans.

“Community Solar Generation Facility” or “CSG Facility” means a solar energy facility that meets the definition of a Community Solar Generation Facility under the Council’s Community Solar Rules.

“Community Solar Rules” means the Community Solar Rules for the Council of the City of New Orleans adopted by Council Resolution No. R-19-111 (and as modified by any subsequent Council action).

“Conservation Program” means a program, often relying on encouraging customers to reduce energy use, in which a utility company provides energy-saving guidance or provides free or low cost devices for saving energy, such as energy efficient light bulbs, flow restrictors, weather stripping, and water heater insulation. To be applicable to RCPS compliance, the kWh reduction from a conservation program must be a deemed savings or prescriptive measure approved by the Council, such as with the Energy Smart program.

“Cost of Compliance” the cost of compliance with the RCPS shall be the incremental costs incurred by ENO over and above the costs to serve its load that are attributable solely to the compliance with the RCPS policy, as calculated in Section 4(d) of this RCPS.

“Customer” means a retail electric customer account holder of the Utility.

“CURO” means the Council Utilities Regulatory Office.

“Demand-Side Management” or **“DSM”** means an action, usually under a utility-managed program, that reduces or curtails the load associated with end-use equipment or processes, often used to reduce customer load during peak demand and/or in times of supply constraint. DSM is the management of customer loads through programs such as energy efficiency and conservation measures, which actively reduce energy use, or demand response, which shifts customer loads from peak periods.

“Distributed Energy Resource” or **“DER”** means a resource sited close to customers that:

- (i) is interconnected to or on the distribution system, or
- (ii) can provide all or some of the immediate electric and power needs of retail customers and/or can also be used by the system to either reduce demand (such as energy efficiency) or provide supply to satisfy the energy, capacity, or ancillary service needs of the grid. The resources, if providing electricity or thermal energy, are small in scale and close to load. Examples of different types of DER include solar photovoltaic, wind, combined heat and power, demand response, electric vehicles, microgrids, and energy efficiency.

“Energy Efficiency Programs” or **“EE”** means programs that are aimed at reducing the energy used by specific end-use devices and systems, typically without affecting the services provided. Examples include high-efficiency appliances, efficient lighting programs, high-efficiency heating, ventilating and air conditioning (HVAC) systems or control modifications, efficient building design, advanced electric motor drives, and heat recovery systems.

“Energy Storage Resource” means a resource that stores and manages energy and customer loads. Such resources may include chemical energy storage resources such as batteries, flow batteries, and fuel cells or mechanical energy storage resources such as pumped storage hydropower, flywheels, and pressurized gas storage systems.

“Green-e” means the formal certification of RECs provided by the Center for Resource Solutions' Green-e® certification program, distinct from the tracking of RECs.

“Incremental DSM” costs and corresponding kWh would include the Energy Smart program budgets and cumulative kWh in excess of the Council's existing 2% goal.

“Low-Income Customer” means a Customer whose gross annual household income is at or below 50 percent of Area Median Income for the relevant period or who is certified as eligible for any federal, state, or local assistance program that limits participation to households whose income is at or below 50 percent of Area Median Income.

“M-RETS” means the Midwest Renewable Energy Tracking System, a web-based system used by power generators, utilities, marketers, and qualified reporting entities. M-RETS registers projects in all states and provinces across North America. M-RETS tracks Renewable Energy Certificates (“RECs”) and facilitates REC transactions by issuing a unique, traceable digital certificate for every megawatt-hour (“MWh”) of renewable energy generated by registered units or imported into its system.

“Microgrid” means a group of interconnected loads and distributed energy resources within clearly defined electrical boundaries that acts as a single controllable entity with respect to the grid. A microgrid can connect and disconnect from the grid to enable it to operate in both grid-connected or island mode.

“MISO” means the Midcontinent Independent System Operator, Inc., or its successor.

“MISO-Connected Renewable Energy Resource” means a renewable energy resource that is interconnected to transmission-level voltage within the MISO’s footprint.

“NEM Rules” means the New Orleans Net Energy Metering Rules adopted by Council Resolution No. R-07-132 (and as modified by any subsequent Council action).

“Net Zero Emissions” refers to the state in which the Utility has fully offset the carbon emissions associated with the resources serving its Retail Compliance Load through the acquisition of clean energy resources, as demonstrated by producing or purchasing enough RECs or CECs such that the resulting RCPS Compliance Credits offset 100% of the utility’s Retail Compliance Load. RECs utilized to reach Net Zero Emissions may be purchased by the utility without the purchase of the associated energy to the extent permitted in Section 3 of this RCPS.

“Qualified Measure” means a project, program or measure which produces a measurable net reduction in carbon emissions in Orleans Parish, is cost-effective from the utility perspective, and is approved by the Council for purposes of RCPS compliance.

“RCPS” means the Renewable and Clean Portfolio Standard.

“RCPS Compliance Credits” means the sum of RECs and CECs multiplied by the applicable tier multiplier.

“Renewable Energy Credit” or **“REC”** means a contractual right to the full set of non-energy attributes, including any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to a specific amount of electric energy generated from a renewable energy resource. One REC results from one MWh of electric energy generated from a renewable energy resource. To qualify for compliance purposes,

RECs must meet the following conditions: (1) they were generated from a Renewable Energy Resource in MISO, the Electric Reliability Council of Texas, or elsewhere that are deliverable into the MISO region; (2) they are Green-e certified at the time of their creation and are subsequently tracked with M-RETS or an equivalent; and (3) they are retired against the compliance requirements in the compliance year in which they were utilized for compliance.

“Renewable Energy Resource” means a facility that generates electricity using solar thermal, photovoltaic, wind, geothermal, fuel cell using renewable fuels, hydroelectric generation, ocean wave, ocean thermal, or tidal current, and any additions or enhancements to the facility using that technology.

“Retail Compliance Load” means the total jurisdictional retail sales, measured in kWh, for an electric utility during an annual period, as adjusted in Section 4(a) of this RCPS.

“Tier 1 Resource” means any Renewable Energy Resource, Zero Carbon Emissions Resource or DER, directly connected to the Utility’s transmission or distribution system. Tier 1 resources include the cumulative MWh savings of DSM programs installed after January 1, 2021.

“Tier 2 Resource” means any Renewable Energy Resource or Zero Carbon Emissions Resource not eligible for Tier 1, but that is in MISO or that is deliverable into the MISO region.

“Tier 3 Resource” means any Qualified Measure or electric vehicle charging infrastructure directly connected to the Utility’s transmission or distribution system. For Tier 3 Resources, the Utility must provide the Council with either a certified engineering calculation demonstrating the net reduction in carbon emissions or data demonstrating measured emissions reductions. The Utility must also propose the annual amount of CECs in MWh associated with each proposed Tier 3 Resource for Council consideration.

“Utility” refers to any utility providing electric service to customers in the City of New Orleans and regulated by the Council.

“Zero Carbon Emissions Resource” means any resource that generates electricity without producing carbon emissions and that does not qualify as a Renewable Energy Resource under this RCPS, including, but not limited to nuclear-fueled resources. The deployment of CCUS on a generating resource that produces energy from fossil fuels is excluded from eligibility as a Zero Carbon Emissions Resource.

SECTION 3: RENEWABLE AND CLEAN PORTFOLIO STANDARD

- a) The Utility must meet the specified percentages of Retail Compliance Load with a combination of Tier 1, 2 and 3 resources as follows:
 1. 2022: 64% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.

2. 2023: 66% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
3. 2024: 68% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
4. 2025: 70% of Retail Compliance Load, with not more than 25% compliance through RECs purchased without the associated energy.
5. 2026: 72% of Retail Compliance Load, with not more than 24% compliance through RECs purchased without the associated energy.
6. 2027: 74% of Retail Compliance Load, with not more than 23% compliance through RECs purchased without the associated energy.
7. 2028: 76% of Retail Compliance Load, with not more than 22% compliance through RECs purchased without the associated energy.
8. 2029: 78% of Retail Compliance Load, with not more than 21% compliance through RECs purchased without the associated energy.
9. 2030: 80% of Retail Compliance Load, with not more than 20% compliance through RECs purchased without the associated energy.
10. 2031: 82% of Retail Compliance Load , with not more than 19% compliance through RECs purchased without the associated energy.
11. 2032: 84% of Retail Compliance Load, with not more than 18% compliance through RECs purchased without the associated energy.
12. 2033: 86% of Retail Compliance Load, with not more than 17% compliance through RECs purchased without the associated energy.
13. 2034: 88% of Retail Compliance Load, with not more than 16% compliance through RECs purchased without the associated energy.
14. 2035: 90% of Retail Compliance Load, with not more than 15% compliance through RECs purchased without the associated energy.
15. 2036: 92% of Retail Compliance Load, with not more than 14% compliance through RECs purchased without the associated energy.
16. 2037: 94% of Retail Compliance Load, with not more than 13% compliance through RECs purchased without the associated energy.
17. 2038: 96% of Retail Compliance Load, with not more than 12% compliance through RECs purchased without the associated energy.
18. 2039: 98% of Retail Compliance Load, with not more than 11% compliance through RECs purchased without the associated energy.
19. 2040: 100% of Retail Compliance Load, with not more than 10% compliance through RECs purchased without the associated energy.
20. 2041: 100% of Retail Compliance Load, with not more than 9% compliance through RECs purchased without the associated energy.

21. 2042: 100% of Retail Compliance Load, with not more than 8% compliance through RECs purchased without the associated energy.
 22. 2043: 100% of Retail Compliance Load, with not more than 7% compliance through RECs purchased without the associated energy.
 23. 2044: 100% of Retail Compliance Load, with not more than 6% compliance through RECs purchased without the associated energy.
 24. 2045: 100% of Retail Compliance Load, with not more than 5% compliance through RECs purchased without the associated energy.
 25. 2046: 100% of Retail Compliance Load, with not more than 4% compliance through RECs purchased without the associated energy.
 26. 2047: 100% of Retail Compliance Load, with not more than 3% compliance through RECs purchased without the associated energy.
 27. 2048: 100% of Retail Compliance Load, with not more than 2% compliance through RECs purchased without the associated energy.
 28. 2049: 100% of Retail Compliance Load, with not more than 1% compliance through RECs purchased without the associated energy.
 29. 2050: 100% of Retail Compliance Load, with 0% compliance through RECs purchased without the associated energy.
- b) **RCPS Tier Multipliers:** For years 2021 through 2040, RECs or CECs from Tier 1 Resources shall be credited at a multiplier of 1.25; Tier 2 Resources at a multiplier of 1.0; and Tier 3 Resources at a multiplier of 1.0 for compliance purposes. After 2040, the tier multiplier for all tiers shall be 1.0. These tier multipliers shall be applied as default multipliers for determining compliance RECs or CECs unless the Utility can provide workpapers that support a different multiplier for a specific measure that can be evaluated and accepted by the Council. A resource shall only receive RCPS compliance credits in one Tier; to the extent a resource is eligible to be included in more than one Tier, it should receive the highest tier multiplier for which it is eligible. The Council shall specifically evaluate the continued appropriateness of the Tiers and applicable tier multipliers, and the years in which tier multipliers should be applied in each Periodic Review of this RCPS.
- c) **Credit Related to Energy Storage Resource:** Depending upon the manner in which an Energy Storage Resource is utilized, it may or may not be eligible for RCPS Compliance Credits. Council approval of the RCPS Compliance Crediting mechanism applicable to any specific Energy Storage Resource will be required prior to the inclusion of any Energy Storage Resource in the Utility's RCPS Compliance and will be based upon the proposed application of the Energy Storage Resource. To the extent that the Utility intends to utilize an Energy Storage Resource for RCPS Compliance, it should propose the project to the Council for the Council's consideration, with an explanation as to how the project specifically serves the goals of the RCPS and what RCPS Compliance Credit the Utility proposes be earned by the project. Nothing in this provision alters any other requirement for Council approval for the Utility to acquire or construct a resource or to include the costs of a resource in rates.

SECTION 4: COMPLIANCE AND REPORTING

- a) Calculation of Retail Compliance Load
 - 1. Retail Compliance Load is the reported annual MWh sales for each compliance year, increased by the cumulative MWh savings of DSM programs installed after January 1, 2021.
- b) Calculation of RCPS Compliance Credits
 - 1. RCPS Compliance Credits for each compliance year are calculated by adding: (i) the RECs and the CECs associated with the compliance year, multiplied by the applicable tier multiplier; (ii) RECs as allowed through the Banking and Compliance Reserve provision that are applied in that year.
 - 2. CECs associated with Tier 3 Resources can be applied as RCPS Compliance Credits until 2040.
- c) Calculation of Percentage of Retail Compliance Load
 - 1. RCPS Compliance Credits (MWh) are divided by Retail Compliance Load (MWh), and expressed as a percentage.
- d) Calculation of RCPS Compliance Costs
 - 1. The RCPS Cost of Compliance is calculated as all incremental costs prudently incurred by the Utility in complying with RCPS Section 3, including, but not limited to, the incremental costs of new resources for compliance, the Incremental DSM costs, and other costs related to RCPS compliance. The cost of RECs as allowed through the Banking and Compliance Reserve provision that are applied in the compliance year shall be included in the RCPS Cost of Compliance for that year. The cost of RECs acquired for the Banking and Compliance Reserve provision but not applied in that year shall be treated as working capital and shall not be included in the RCPS Compliance Cost for the compliance year.
 - 2. Incremental costs are the total electric utility revenue requirements associated with the Utility's operations in compliance with the RCPS, less the total electric utility revenue requirements associated with the optimized resource portfolio that may have been in place absent the requirements of the RCPS. The Utility's most recently filed Integrated Resource Plan shall inform the calculation of incremental costs as to the optimized resource portfolio that may have been in place absent the requirements of the RCPS.
- e) Upon the Utility's submission of its final Integrated Resource Plan ("IRP") Report for each triennial IRP cycle, the utility shall develop a three-year prospective RCPS Compliance Plan, including a three-year Banking and Compliance Reserve provision for RECs, and the Utility's calculation of the ACP. The RCPS Compliance Plan shall be filed at the Council and served upon both the parties to the relevant IRP docket and the parties to Docket No. UD-19-01, with the opportunity for stakeholder comment prior to the Council's review and approval. Within 90 days of the adoption of this RCPS, the Utility shall file at the Council and serve on the parties to Docket No. UD-19-01, with opportunity for stakeholder comment, a proposed Initial RCPS Compliance Plan for the interim prior to the conclusion of the next triennial IRP cycle. Once the Council has approved an RCPS Compliance Plan for a particular time period, if the Utility wishes to add any resources for compliance that

are not contemplated in the RCPS Compliance Plan, the Utility should file at the Council and serve upon the parties to the relevant IRP Docket and Docket No. UD-19-01, with opportunity for stakeholder comment, a request to include such resource for RCPS Compliance prior to executing plans to implement such resource.

- f) By May 1 of each calendar year, the Utility shall file a Compliance Demonstration Report with the Council regarding its achievement of the RCPS goal for the prior calendar year and its plan for achieving the goal in the current calendar year as part of the three-year RCPS Compliance Plan. The report shall be served on parties to Docket No. UD-19-01, with an opportunity for comment prior to the Council's issuance of a determination as to whether the Utility has achieved the RCPS targets listed in Section 3 and remained within the Customer Protection Cost Cap of Section 6 for the prior calendar year. The Council's approval of the RCPS Compliance Demonstration Report would not eliminate the need for any other Council review and approval of resource costs otherwise required under the Council's Regulations. The report should include the following clear and concise information that:
1. Either (a) demonstrates that the Utility has complied with Section 3; or (b) explains the reason the Utility was unable to comply, the magnitude of the shortfall expressed in kWh, and the Utility's calculation of the applicable ACP.
 2. A calculation of the incremental cost (if any) of compliance with the RCPS over and above costs ENO would have otherwise incurred to serve its load in the preceding calendar year.
 3. An energy portfolio report for the preceding compliance year which shall identify the MWh hours produced by each supply and demand-side resource comprising the utility's total resource portfolio. RECs purchased and utilized by the utility and their associated MWh, including RECs that can be associated with net metering, and incremental MWh associated with DSM and other eligible resources should also be included in the energy portfolio report. For each resource in the portfolio, the utility shall identify the resource name, MWh, fuel type, the average per MWh energy-related cost associated with that resource, and the average per MWh energy-related revenue received from MISO for that resource.
 4. A carbon emissions report that details the carbon emissions resulting from the production of the electricity used by the Utility to serve its Retail Compliance Load, whether or not each generator is owned by the Utility.
 5. A draft bill insert to be included in customer bills with an easy-to-understand explanation of the Utility's compliance status for Council review and approval.
- g) The Utility shall maintain an easy-to-find web page with a user-friendly interface where it makes available to the public copies of all reports and documents related to the RCPS and the Utility's carbon emissions that it submits to the Council or any other relevant government agency or public body.
- h) Banking and Compliance Reserve Provision

The utility may use RECs produced and Green-e certified in one compliance year for compliance in either of the two subsequent compliance years, subject to a review of the accounting for the banking and compliance reserve, and provided that the utility was in

compliance for the compliance year in which the RECs were created. In addition, the utility shall demonstrate to the satisfaction of the Council that such Compliance Credits:

- 1) were in excess of the Compliance Credits needed for compliance in the compliance year in which they were generated;
- 2) do not exceed the REC limitation specified in Section 3 for compliance with the RCPS in the year they were used for compliance and retired; and
- 3) have not otherwise been, nor will be, sold, retired, claimed or represented as part of clean energy output or sales, or used to satisfy obligations in other jurisdictions.

SECTION 5: ENFORCEMENT

- a) In the event that the Utility is unable to comply with the RCPS standard using reasonable measures for the applicable calendar year, the Utility shall make an Alternative Compliance Payment (“ACP”) into a CleanNOLA Fund established by the Council for the purposes of fostering efforts to reduce carbon emissions within Orleans Parish. The ACP shall be structured as \$/MWh of shortfall.
 1. The ACP (\$ per MWh) will be determined by the Council in the Council’s Resolution approving the Utility’s RCPS Compliance Plan, and the ACP will be applicable for the prospective three calendar years.
 2. The ACP shall be based on the highest market value of RECs in MISO over the prior three years, multiplied by a 1.15 multiplier.
 3. The ACP, when combined with the RCPS compliance cost that is incurred in any calendar year, shall not exceed the Customer Protection Cost Cap set forth in Section 6.
- b) Nothing in this section limits the Council’s authority to impose penalties for the violation of the Council’s regulations.

SECTION 6: COST RECOVERY AND CUSTOMER PROTECTION COST CAP

- a) The Utility shall be allowed cost recovery for RCPS compliance as follows:
 1. The Utility shall be allowed the opportunity to recover prudently incurred costs in complying with a mandated renewable and clean portfolio standard.
 2. The Utility shall be allowed to recover the ACP unless it is demonstrated to the Council and the Council finds that the Utility’s failure to comply with the RCPS was unreasonable, in which case, ENO shall not recover the cost of the ACP from Customers.
- b) As a mechanism to provide customer protection from unreasonable rate increases, the Council hereby establishes an RCPS Customer Protection Cost Cap that the Utility shall not exceed to acquire RCPS Compliance Credits. The Customer Protection Cost Cap in any RCPS plan year is one percent (1%) of plan year total utility retail sales revenues, beginning in 2022.
 1. If the Utility can support its finding that, in any given year, the cost of RCPS compliance through all reasonable measures is projected to be greater than the Customer Protection Cost Cap as established by the Council’s RCPS, the Utility

shall not be required to incur costs in excess of the Customer Protection Cost Cap, and will be deemed to have complied with that year's target as set forth in Section 3, once it has expended up to the Customer Protection Cost Cap (including any ACP).

2. The existence of this condition excusing performance in any given year shall not operate to delay the annual increases in the RCPS in subsequent years. When the utility can generate or procure RCPS Compliance Credits at or below the Customer Protection Cost Cap in order to comply with the RCPS, it shall be required to add such resources.
3. For rate classes with fewer than 3 customers, the Council will review and adjust rates through the Utility's decoupling mechanism, or by other means, such that the increase in the allocated total cost of service related solely to RCPS Cost of Compliance for those rate classes is no greater than 1%.

SECTION 7: CLEANNOLA FUND

The Council shall establish a CleanNOLA Fund ("Fund") for the purposes of fostering the reduction of carbon emissions in Orleans Parish. The Fund shall prioritize projects designed to reduce carbon emissions from existing sources of such emissions in Orleans Parish. Grants made from any portion of CleanNOLA Fund funding received from ratepayers must go to projects that would meet the definition of one of the resources eligible for inclusion in the RCPS and all environmental attributes (RECs or CECs) generated by such projects must be transferred to ENO and used by ENO for RCPS Compliance. The Fund shall not at any time be transferred to, or lapse into, or be comingled with the General Fund of the City of New Orleans and it shall be administered in accordance with the Council's directives.

Appendix C

Discussion of the Issues and

Reasons for Decision

A. Background and Procedural History

The Council has repeatedly expressed support for the efficient use of clean sustainable technology to improve the quality of life for our citizens and businesses.

As a result of the Council's regulation of Entergy New Orleans, LLC ("ENO") and the programs already put in place by the Council, ENO's emissions are nearly 50% below the national average¹ with coal-fired generation currently only approximately 2% of ENO's portfolio² and its electricity rates have also stayed more than 20% below the national average rate.³

This rulemaking builds on over a decade of prior initiatives by the Council, that have either directly increased or strongly encouraged energy efficiency, which include the adoption of Net Energy Metering ("NEM") Rules for rooftop solar in 2007,⁴ the establishment of the award-winning Energy Smart energy efficiency and conservation program in 2009,⁵ the issuance of guidance on the creation of a decoupling rate structure in 2016,⁶ the revision of the Council's Integrated Resource Plan ("IRP") rules in 2017 to expressly require the consideration of renewable resources, demand-side resources, and distributed energy resources in the IRP,⁷ the approval of

¹ Entergy New Orleans, LLC's Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards, June 3, 2019, Docket No. UD-19-01, at 4

² Entergy New Orleans, LLC, 2018 Integrated Resource Plan, July 19, 2019, Docket No. UD-17-03, at 11.

³ See *Advisors' Reply Comments Regarding Proposed RCPS Regulations*, UD-19-01, Oct. 13, 2020 ("Advisors' RCPS Reply Comments") at 2 citing https://www.eia.gov/electricity/sales_revenue_price/; https://www.eia.gov/electricity/sales_revenue_price/pdf/table5_a.pdf; and https://www.eia.gov/electricity/sales_revenue_price/pdf/table6.pdf

⁴ See Resolution No. R-07-132.

⁵ See, Resolution No. R-09-136.

⁶ See, Resolution No. R-16-103.

⁷ See, Resolution Nos. R-17-332 and R-17-429.

full implementation of Advanced Metering Infrastructure (“AMI”) across the ENO service territory in 2018,⁸ the approval of ENO’s project to build 5 MW of distributed-generation scale solar within New Orleans in 2018,⁹ the modification of the Council’s Customer Service Regulations to allow the release of aggregated whole building energy use data to building owners for benchmarking and energy efficiency purposes in 2018,¹⁰ the adoption of Community Solar Rules,¹¹ and the approval of ENO’s 90 MW portfolio of renewable resources.¹²

The *Climate Action for a Resilient New Orleans* issued by New Orleans Mayor Mitchell J. Landrieu in July 2017 noted that the per capita pollution rate for Orleans Parish is relatively low compared to other U.S. cities “largely due to the high amount of low-carbon energy already in our electricity mix compared to other cities.”¹³

To further this progress, on March 28, 2019, the Council adopted Resolution No. R-19-109 establishing a docket and opening this rulemaking proceeding to establish renewable portfolio standards for the City of New Orleans.

In Resolution No. R-19-109, the Council welcomed comment from the public and ENO on any aspect of a potential RPS for New Orleans, and specifically requested comments and input on the certain questions. The Council also set forth a procedural schedule that provided for the intervention of interested parties, comments and reply comments on the particular questions set forth by the Council, an Advisors’ Report responding to those comments and setting forth a recommendation with a draft renewable portfolio standard (“RPS”) requirement, and comments and reply comments on the Advisors’ Report.

⁸ See, Resolution No. R-18-37.

⁹ See, Resolution No. R-18-222.

¹⁰ See, Resolution No. R-18-539.

¹¹ See, Resolution No. R-19-111.

¹² See, Resolution No. R-19-293.

¹³ City of New Orleans, *Climate Action for a Resilient New Orleans*, July 2017 (“Climate Action Plan”) at 18.

The following parties intervened in these proceedings: the Alliance for Affordable Energy (“AAE”),¹⁴ Air Products and Chemicals, Inc. (“Air Products”),¹⁵ Center for Climate and Energy Solutions (“C2ES”),¹⁶ Gulf States Renewable Energy Industries Association (“GSREIA”),¹⁷ National Audubon Society (“Audubon”),¹⁸ Southern Renewable Energy Association (“SREA”),¹⁹ and 350 New Orleans (“350 NO”),²⁰ New Orleans Chamber²¹, PosiGen Solar (“PosiGen”),²² Vote Solar,²³ Deep South Center for Environmental Justice (“DSCEJ”),²⁴ and the Sierra Club.²⁵ Several additional entities submitted comments or joined comments filed by a party without intervening.

Many of the parties to the case filed multiple rounds of comments and reply comments regarding an RPS for New Orleans.²⁶

¹⁴ The Alliance for Affordable Energy Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 2, 2019.

¹⁵ Air Products and Chemicals, Inc. Motion for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 30, 2019.

¹⁶ Center for Climate and Energy Solutions’ Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 24, 2019.

¹⁷ Gulf States Renewable Energy Industries Association, Motion of Intervention, Docket No. UD-19-01, Apr. 25, 2019.

¹⁸ The National Audubon Society (dba Audubon Louisiana) Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, May 1, 2019.

¹⁹ Southern Renewable Energy Association Petition for Intervention and inclusion on Service List, Docket NO. UD-19-01, May 1, 2019.

²⁰ 350 New Orleans Petition for Intervention and Inclusion on Service List, Docket No. UD-19-01, Apr. 10, 2019.

²¹ New Orleans Chamber Petition for Intervention and Inclusion on Service List, Docket UD-19-01, April 30, 2019.

²² PosiGen Solar Motion to Intervene, Docket UD-19-01, April 29, 2019.

²³ Vote Solar Motion to Intervene, Docket UD-19-01, April 26, 2019.

²⁴ Deep South Petition for Intervention and Inclusion on Service List, Docket UD-19-01, May 1, 2019.

²⁵ Sierra Club Late-Filed Petition to Intervene and for Inclusion on Service List, Docket NO. UD-19-01, June 3, 2019. Petition was granted by the Hearing Officer by Order issued June 11, 2019.

²⁶ *Entergy New Orleans, LLC’s Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards*, June 3, 2019, Docket No. UD-19-01 (“ENO Comments”); *Entergy New Orleans, LLC’s Reply Comments in Response to Council Resolution R-19-109 Concerning the Establishment of Renewable Portfolio Standards*, July 15, 2019, Docket No. UD-19-01 (“ENO Reply Comments”); *Entergy New Orleans, LLC’s Comments in Response to the Advisors’ Report and Proposed Alternative Frameworks Concerning Renewable Portfolio Standards*, Oct. 15, 2019, Docket No. UD-19-01 (“ENO Comments on Advisors’ Report”); *Entergy New Orleans, LLC’s Reply Comments Concerning the October 15, 2019 Filings of Various Parties*, Nov. 19, 2019, Docket No. UD-19-01 (“ENO Reply Comments on Advisors’ Report”) and a letter filed jointly with Air Products on August 21, 2020 in UD-19-01 (“ENO/AP Letter”). *Air Products and Chemicals, Inc. Response to Request for Comment*, June 3, 2019, Docket No. UD-19-01 (“Air Products Comments”); *Air Products and Chemicals, Inc. Reply Comments*, July 15, 2019, Docket No. UD-19-01 (“Air Products Reply Comments”); *Air Products and Chemicals, Inc. Comments on Advisors Report*, Oct. 15, 2019, Docket No. UD-19-01 (“Air Products Comments on Advisors’ Report”); *Air Products and Chemicals, Inc. Reply Comments on Advisors Report*, Nov. 19,

2019, Docket No. UD-19-01 (“Air Products Reply Comments on Advisors’ Report”); and the ENO/AP Letter. *The Alliance for Affordable Energy’s First Comments Responsive to Resolution R-19-109*, June 3, 2019, Docket No. UD-19-01 (“AAE Comments”); *Alliance for Affordable Energy’s Reply Comments*, July 15, 2019, Docket No. UD-19-01 (“AAE Reply Comments”); and *Comments of the Alliance for Affordable Energy*, Oct. 15, 2019, Docket No. UD-19-01 (“AAE Comments on Advisors’ Report”); *Joint Reply of 350 New Orleans, Alliance for Affordable Energy, National Audubon Society, Deep South Center for Environmental Justice, PosiGen Solar, Sierra Club, Southern Renewable Energy Association, and Vote Solar (Collectively the “Energy Future New Orleans” Coalition or “EFNO”)* *Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans*, July 15, 2019, Docket No. UD-19-01 (“EFNO Reply Comments”); *Comments Supporting Consideration of Issues Raised by PosiGen*, Oct. 15, 2019, Docket No. UD-19-01 (“Intervenor Group Comments Supporting PosiGen”); the *Comments of Audubon Louisiana, Vote Solar, 350 New Orleans, PosiGen Solar, Sierra Club, and Alliance for Affordable Energy on Advisors’ Report on Renewable Portfolio Standard*, Oct. 15, 2019, Docket No. UD-19-01 (“Intervenor Group Comments on Advisors’ Report”); *Comments of Audubon Louisiana, Vote Solar, 350 New Orleans, and Alliance for Affordable Energy on Replies to Advisors’ Report on Renewable Portfolio Standards*, Nov. 19, 2019, Docket No. UD-19-01 (“Intervenor Group Reply Comments on Advisors’ Report”); *Comments of Alliance for Affordable Energy and 350 New Orleans on Replies to the Advisors’ Report on UD-19-01*, Nov. 19, 2019, Docket No. UD-19-01 (“AAE + 350 NO Reply Comments on Advisors’ Report”); a letter enclosing comments from the EFNO Coalition on May 11, 2020 in Docket No. UD-19-01 (“May 11, 2020 EFNO Letter”); *Issues of Concern Raised during the First Technical Conference of June 5, 2020 Pursuant to the Resolution and Order Providing the Council’s Guidance Regarding the Development of Renewable Portfolio Standards, R-20-104, Comments by Energy Future New Orleans to the Council of the City of New Orleans and Parties to Docket UD-19-01*, June 22, 2020 (“June 22, 2020 EFNO Comments”) (This filing states that the EFNO Coalition consists of 350 NO, AAE, Audubon, DSCEJ, Sierra Club and Vote Solar, see p. 1, n. 1.); and an August 27, 2020 letter from the EFNO Coalition to the City Councilmembers in UD-19-01 (“August 27, 2020 EFNO Letter:”) (This filing states that the EFNO Coalition consists of 350 NO, AAE, Audubon, Greater New Orleans Housing Alliance, Union of Concerned Scientists, and Vote Solar.) *Comments of Audubon Louisiana*, June 3, 2019, Docket No. UD-19-01 (“Audubon Comments”) and the *Reply Comments of National Audubon Society/Audubon Louisiana*, July 15, 2019, Docket No. UD-19-01 (“Audubon Reply Comments”). Audubon participated in the EFNO Reply Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Comments Supporting PosiGen Comments, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments, and the August 27, 2020 EFNO Letter. *Comments of Audubon Louisiana*, June 3, 2019, Docket No. UD-19-01 (“Audubon Comments”) and the *Reply Comments of National Audubon Society/Audubon Louisiana*, July 15, 2019, Docket No. UD-19-01 (“Audubon Reply Comments”). Audubon participated in the EFNO Reply Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Comments Supporting PosiGen Comments, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments, and the August 27, 2020 EFNO Letter. Letter from C2ES to the Council dated May 30, 2019 in Docket No. UD-19-01 (“C2ES Comments”). *Gulf States Renewable Energy Industries Association Response to Request for Reply Comments* June 12, 2019, Docket No. UD-19-01 (“GSREIA Reply Comments”). PosiGen filed the *Comments of PosiGen Solar*, June 3, 2019, Docket No. UD-19-01 (“PosiGen Comments”); the *Reply Comments of PosiGen Solar*, July 15, 2019, Docket No. UD-19-01 (“PosiGen Reply Comments”); *Letter to City Council Clarifying Position from Joint Statement*, Sept. 23, 2019, Docket No. UD-19-01 (“PosiGen Letter”); *Reply Comments of PosiGen Solar*, Oct. 15, 2019, Docket No. UD-19-01 (“PosiGen Comments on Advisors’ Report”); and *Reply Comments of PosiGen on Advisors’ Report on Renewable Portfolio Standards*, Nov. 19, 2019, Docket No. UD-19-01 (“PosiGen Reply Comments on Advisors’ Report”). PosiGen participated in the EFNO Reply Comments, the Intervenor Group Comments on Advisors’ Report, and the May 11, 2020 EFNO Letter. Southern Renewable Energy Association Comments Regarding a New Orleans Renewable Portfolio Standard, June 3, 2019, Docket No. UD-19-01 (“SREA Comments”); Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard, July 15, 2019, Docket No. UD-19-01 (“SREA Reply Comments”); and Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard, Oct. 15, 2019, Docket No. UD-19-01 (“SREA Comments on Advisors’ Report”). SREA also participated in the EFNO Reply Comments. Opening Comments of Vote Solar and 350 New Orleans on Establishment of a Resilient and Renewable Portfolio Standard (R-RPS), June 3, 2019, Docket No. UD-19-01 (“Vote Solar + 350 NO Comments”); the EFNO Reply Comments, the Intervenor Group Comments

The comments and reply comments of the parties in the first phase of the proceeding were wide-ranging and set forth additional models beyond the traditional RPS structure the Council had contemplated in Resolution No. R-19-109.

ENO proposed a voluntary clean energy standard (“CES”) that would pursue the goal of decarbonization and reducing carbon emissions.²⁷ The EFNO parties, on the other hand, proposed a Resilient and Renewable Portfolio Standard (“R-RPS”) with stated purposes to (1) strengthen New Orleans through a focus on energy resilience and local energy resources, (2) ensure that the benefits of renewable energy are equitable, accessible, and affordable for all residents; (3) provide new economic opportunities to underserved communities by expanding and diversifying the energy workforce and enabling programs that reduce energy cost burdens on low-income residents; and (4) attract and retain companies and industries that value ready access to renewable energy resources.²⁸

In response to the alternative models submitted by the parties, the Advisors in their Advisors’ Report provided for comment three examples of potentially workable standards for discussion by the parties: Alternative 1: a traditional RPS with a long-term clean energy goal; Alternative 2: a renewable and clean portfolio standard (“RCPS”) which is a more aggressive

Supporting PosiGen Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments, and the August 27, 2020 EFNO Letter. 350 New Orleans Reply Comments, July 15, 2019, Docket No. UD-19-01 (“350 NO Reply Comments”) and 350 New Orleans Reply Comments, Oct. 14, 2019, Docket No. UD-19-01 (“350 NO Comments on Advisors’ Report”). 350 NO participated in the Vote Solar + 350 NO Comments, the AAE + 350 NO Reply Comments on Advisors’ Report, the EFNO Reply Comments, the Intervenor Group Comments Supporting PosiGen Comments, the Intervenor Group Comments on Advisors’ Report, the Intervenor Group Reply Comments on Advisors’ Report, the May 11, 2020 EFNO Letter, the June 22, 2020 EFNO Comments and the August 27, 2020 EFNO Letter. American Association of Blacks in Energy Comment, July 1, 2020.

²⁷ Advisors’ Report at 32.

²⁸ EFNO Reply Comments Appendix A, Section 1. Purpose.

alternative to ENO's proposed CES; and Alternative 3: a Renewable and Resilient Portfolio Standard designed around the same general principles set forth in the EFNO Coalition's R-RPS.²⁹

Each of the alternatives in the Advisors Report included a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues.³⁰

One of the concepts included in the Advisors Report was a CleanNOLA Fund to be funded, in part, by funds that may be received from the Utility in the form of an alternative compliance payment.³¹

The alternatives presented in the Advisors' Report were designed to elicit comment on the proposed standards and to stimulate dialog in hopes that parties might be able to develop a consensus model by combining features of the different models and/or introducing potential additional methods of accomplishing a particular goal.³²

Several of the parties responded to the Advisors' Report with comments regarding the merits of the various proposals and options set forth in the Report.³³

After reviewing the comments submitted by the parties and the Advisors, the Council determined that the parties appeared to be moving farther apart from each other on the design of an appropriate RPS for New Orleans rather than moving toward consensus, and would benefit from the Council providing guidance to the parties on the Council's preferred design for an RPS for New Orleans.

²⁹ Advisors' Report at 33-40.

³⁰ *Id.* at 40-41.

³¹ *Id.* at 41.

³² Advisor Reply Comments at 3.

³³ Advisor Reply Comments at 4.

After carefully considering the comments of the parties submitted in the earlier phase of this proceeding, on April 16, 2020, the Council issued Resolution No. R-20-104 providing its guidance as to the further development of an RCPS for New Orleans.

In Resolution No. R-20-104, the Council further instructed the parties that it is most interested in gaining more information on an RCPS based on Alternative 2 in Appendix A of the Advisors' Report with (1) a mandatory requirement that ENO achieve 100% net zero emissions by 2040; (2) reliance on Renewable Energy Credits ("RECs") purchased without the associated energy for compliance with the standard being phased out over the ten-year period from 2040 to 2050; (3) ENO has no carbon-emitting resources in the portfolio of resources it uses to serve New Orleans by 2050; and (4) a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues.³⁴

Resolution No. R-20-104 further set forth a procedural schedule for interested parties to work with the Advisors in developing detailed regulations that, if approved, would implement an RCPS consistent with the Council's guidance. Pursuant to that procedural schedule, the Advisors conducted a 4-hour technical conference with the parties via WebEx on June 5, 2020, circulated a revised version of the Alternative 2 RCPS standard for discussion to the parties by email on July 6, 2020, and held a 5-hour technical conference with the parties to discuss the revised draft via Zoom on July 29, 2020. On August 28, 2020, the Advisors then filed for the Council's review and consideration proposed regulations to implement an RCPS consistent with the Council's guidance.³⁵

³⁴ Resolution No. R-20-104 at 13-14.

³⁵ *Advisors' Proposed RCPS Regulations*, Aug. 28, 2020, Docket No. UD-19-01 ("Advisors' Proposal").

Comments on the Advisors' August 28, 2020 Proposal were submitted on September 28, 2020 by ENO,³⁶ Air Products,³⁷ and the EFNO Coalition,³⁸ which in that filing consisted of 350 NO, Audubon, AAE, and the Greater New Orleans Housing Alliance ("GNOHA").³⁹

On October 13, 2020, reply comments were filed by ENO,⁴⁰ Air Products,⁴¹ the EFNO Coalition,⁴² consisting of 350 NO, AAE, Audubon, Climate Reality Project: New Orleans, LA Chapter, and the Greater New Orleans Interfaith Climate Coalition,⁴³ and by the Advisors.⁴⁴

In the Advisors' October 13, 2020 reply comments, the Advisors included Final Draft Proposed Regulations in Appendix A.

On November 18, 2020, the Council received a letter from the American Association of Blacks in Energy with further comments.

On March 25, 2021 the Council issued Resolution No. R-21-109 finding that the Advisors' Final Proposed RCPS Regulations require modifications that (1) exclude the deployment of carbon dioxide capture and storage ("CCS") and carbon capture, utilization, and storage ("CCUS") technologies on generating resources and beneficial electrification as eligible methods for compliance with the RCPS and (2) restructure the tier system to reflect these changes. In

³⁶ *Entergy New Orleans, LLC's Reply Comments Concerning the Advisors' Proposed RCPS Regulations*, Docket No. UD-19-01, Sept. 28, 2020 ("ENO RCPS Comments").

³⁷ *Air Products and Chemicals, Inc. Comments on Advisors' Proposed RCPS Regulations*, Docket No. UD-19-01, Sept. 28, 2020 ("Air Products RCPS Comments").

³⁸ *Energy Future New Orleans's (EFNO) Reply Comments and Redline of the Advisors Comments*, Docket No. UD-19-01, Sept. 28, 2020 ("EFNO RCPS Comments").

³⁹ EFNO RCPS Comments at 6.

⁴⁰ *Entergy New Orleans, LLC's Reply in Response to Parties' Comments Concerning the Advisors' Final Proposed RCPS Rules*, UD-19-01, Oct. 13, 2020 ("ENO Final Comments").

⁴¹ *Air Products and Chemicals, Inc. Reply Comments on Advisors' Proposed RCPS Regulations*, UD-19-01, Oct. 13, 2020 ("Air Products Final Comments").

⁴² *Energy Future New Orleans Coalition's Final Reply Comments Pursuant to Resolution R-20-104*, UD-19-01, Oct. 13, 2020 ("EFNO Final Comments").

⁴³ EFNO Final Comments at 8.

⁴⁴ Advisors' Final Reply Comments.

Resolution No. R-21-109 the Council set forth a redline of the Advisors' Final Proposed RCPS reflecting these modifications for comment by the Parties.

On April 19, 2021, the Southern Renewable Energy Association ("SREA") filed responsive comments.⁴⁵ On April 23, 2021 The Edison Electric Institute ("EEI") filed responsive comments,⁴⁶ and further responsive comments were filed on April 26, 2021 by the Alliance for Transportation Electrification ("ATE"),⁴⁷ EFNO (this time consisting of 350 NO, AAE, Climate Reality New Orleans, DSCEJ, Audubon and Sierra Club),⁴⁸ Air Products⁴⁹ and ENO.⁵⁰

In this proceeding, the Council has received fifty-one sets of comments from over twenty-five parties and other interested organizations.

B. Discussion of the Comments of the Parties on the Specific Questions Posed by the Council

The Council in Resolution No. R-19-109 set forth specific questions to the parties to facilitate the Council's consideration of an RPS design. The questions and the parties' comments in response or relevant to those questions are as follows.

The Council observes that the positions of some of the parties regarding certain issues evolved or changed over the course of these proceedings.

⁴⁵ Letter to the Council for the City of New Orleans on behalf of the Southern Renewable Energy Association, filed with the Clerk of Council on April 19, 2021.

⁴⁶ Letter to the Council for the City of New Orleans on behalf of the Edison Electric Institute, filed with the Clerk of Council on April 23, 2021 ("April 23, 2021 Letter").

⁴⁷ Letter to the Council for the City of New Orleans on behalf of the Alliance for Transportation Electrification, filed with the Clerk of Council on April 26, 2021 ("April 26, 2021 Letter").

⁴⁸ Comments of the Energy Future New Orleans Coalition, dated April 26, 2021, Docket No. UD-19-01, ("EFNO Comments").

⁴⁹ Air Products and Chemicals, Inc. Response to Council's Request for Comments on Proposed Modifications to RCPS Rules, filed April 26, 2021 ("Air Products Comments on R-21-109").

⁵⁰ Entergy New Orleans, LLC's Reply Comments to Council Resolution R-21-109, filed April 26, 2021 ("ENO Comments on R-21-109").

1. What would an appropriate RPS target for New Orleans be, and should it be a requirement or a goal?

ENO advocated for a voluntary goals-based clean energy standard for New Orleans.⁵¹

ENO argued that the unintended consequences of a mandatory renewables-only RPS could harm customers by raising costs and compromising reliability.⁵² Air Products argued that there should be no RPS requirement at all, but if there is one, it should be voluntary.⁵³

C2ES argued that given the urgency of addressing climate change, voluntary goals would not be sufficient in reducing emissions on a timeline consistent with avoiding the worst impacts of climate change.⁵⁴ C2ES recommended that New Orleans consider establishing an economy-wide greenhouse gas reduction target as part of a multi-sectoral framework to tackle the climate challenge.⁵⁵

The Advisors supported a mandatory standard.⁵⁶ The Advisors argued that voluntary standards leave too much discretion to the utility on whether or not to comply and provide the Council with no method to enforce the goals it has set.⁵⁷

PosiGen argued that ENO's troubling track record of poor reliability, delayed and costly renewables investment, and misleading the public and Council has seriously eroded public trust in the utility and that a legally binding standard is necessary to ensure ENO takes its obligations seriously and attains the Council's objectives.⁵⁸

⁵¹ ENO Comments at 2.

⁵² ENO Comments at 11.

⁵³ Air Products Comments at 1; Air Products Reply Comments at 1.

⁵⁴ C2ES Comments at 2, citing a recent report from the Intergovernmental Panel on Climate Change, IPCC Special Report: Global Warming of 1.5°C, (2018), <https://www.ipcc.ch/sr15/chapter/summary-for-policy-makers/>.

⁵⁵ C2ES Comments at 2.

⁵⁶ Advisors' Report at 14.

⁵⁷ *Id.* 11 at 14.

⁵⁸ PosiGen Reply Comments on Advisors' Report at 2.

Vote Solar and 350 New Orleans urged the Council to adopt a mandatory renewable energy standard, rather than a voluntary goal.⁵⁹

AAE and 350 New Orleans speculated that without a firm RPS, ENO would recommend excessively expensive nuclear license extensions or replacements for the retiring nuclear power with additional fossil-fueled capacity, and they asserted that nuclear reactors are both costly and time-intensive assets to build.⁶⁰

The Council is persuaded that a mandatory standard would give the Council the ability to ensure that its climate goals are achieved. The Council does share concerns regarding costs and reliability impacts of a mandatory standard, but as is discussed further herein, the Council prefers to address these concerns through a Customer Protection Cost Cap and a compliance planning process rather than by making the standard voluntary in nature. The Council therefore finds that a mandatory standard should be adopted.

a. What percentage of ENO's load should be met through renewable resources, and what data or other information exists indicating that the target is achievable in New Orleans?

and

b. In what year should ENO be required to meet this target, and should ENO have specific, incremental targets to meet?

ENO argued that the Council should (i) make reducing emissions and addressing climate change the primary focus of this proceeding, and as such (ii) adopt a technology-neutral CES.⁶¹ ENO stated as far as a long-term goal, ENO would work with the Council towards a net-zero carbon emissions by 2050 if the Council chose to adopt that policy, but it should not be mandatory

⁵⁹ Vote Solar + 350 NO Comments at 4.

⁶⁰ AAE + 350 NO Reply Comments on Advisors' Report at 3.

⁶¹ ENO Comments on Advisors' Report at 2.

or a cause for penalizing ENO.⁶² ENO argued that penalizing ENO for failing to meet an impossible goal would not be viable or enforceable under Louisiana law.⁶³

ENO proposed that the Council (i) adopt a near-term 70% CES for 2030, requiring that ENO plan to serve 70% of its customer load with zero-emitting resources by 2030, and (ii) use its existing IRP process to monitor technology, costs, resource diversity, and system reliability as ENO and the Council chart the course to net-zero emissions by 2050.⁶⁴ ENO argued that this would reduce carbon emissions by 605,000 tons and allow for beneficial electrification projects to be encouraged in New Orleans and for solar resources, energy efficiency, and DSM to continue to grow.⁶⁵

Air Products argued any RPS should only encourage ENO to acquire clean resources when there is a need for additional generation and the proposed resource is the lowest reasonable cost resource to meet the need and provide reliability of service.⁶⁶

C2ES argued for an RPS with 30% of electricity sales coming from renewable resources and 90% from clean energy resources by 2030 with 60% from renewables and 100% from clean energy sources by 2050.⁶⁷ C2ES explained that while New Orleans is starting from a very low level of deployed renewable electricity sources, an RPS mandatory target of 30% by 2030 and 60% by 2050 should be achievable and recommends that the Council consider expanding the RPS to a CES, which would ensure that the city could expand the amount of clean energy it procures sooner, allowing the city to achieve a nearly 90% clean target by 2030 and a 100% clean electricity target by 2050.⁶⁸

⁶² ENO Comments on Advisors' Report at 2.

⁶³ ENO Comments on Advisors' Report at 2.

⁶⁴ ENO Comments at 19; ENO Comments on Advisors' Report at 8.

⁶⁵ ENO Comments at 20.

⁶⁶ Air Products Comments at 1; Air Products Reply Comments at 1.

⁶⁷ C2ES Comments at 1.

⁶⁸ C2ES Comments at 2.

SREA recommended that the Council establish a 20%+ by 2023 RPS, ramping up to 60% by 2030 for renewable energy only, and a longer-term goal of 100% clean (zero carbon) energy, create a competitive bidding process for fulfilling the RPS, allow for modest carve-outs for local generation, and require ENO to move beyond capacity-only planning.⁶⁹

PosiGen supported a mandate requiring ENO to meet 15% of its retail electricity sales (in MWh) with renewable energy resources by 2022, 25% of 2025, 40% by 2029, 55% by 2033, and 100% by 2040.⁷⁰ PosiGen argued that a more ambitious RPS than the 70% CES proposed by ENO is appropriate.⁷¹ PosiGen argued that since almost all of ENO's proposed CES would be met with existing nuclear generation, it would only create a miniscule opportunity for new renewable energy resources and energy efficiency solutions.⁷² PosiGen argued that even states that have recently established a 100% CES also have in place specific renewable energy targets to incentivize the construction of new renewable resources.⁷³

Audubon supported a goal of 100% decarbonization and a 100% RPS goal by 2040.⁷⁴ Vote Solar and 350 New Orleans supported an RPS requirement of 55% renewable energy by 2033 to coincide with the retirement of Union Power Station in 2033.⁷⁵

AAE argued that there is potential for ENO to meet a 100% RPS, and recommends that the Council set a goal of 100% renewable energy by 2040.⁷⁶ AAE based its conclusion on its review of "publicly available data" and on Google Project Sunroof data indicating that 94% of rooftops in the city are suitable for rooftop solar.⁷⁷ AAE also argued that ENO's expected retirement of the

⁶⁹ SREA Comments at 11; SREA Comments on Advisors' Report at 2.

⁷⁰ PosiGen Comments at 3, 11.

⁷¹ PosiGen Reply Comments on Advisors' Report at 1.

⁷² PosiGen Reply Comments on Advisors' Report at 2.

⁷³ PosiGen Reply Comments on Advisors' Report at 2.

⁷⁴ Audubon Comments at 3-4, Audubon Reply Comments at 2.

⁷⁵ Vote Solar + 350 New Orleans Comments at 5-6.

⁷⁶ AAE Comments at 4.

⁷⁷ AAE Comments at 4-5.

Union Power Block 1 unit in approximately 2032 and the potential for ENO to terminate its PPAs early also speak in support of this target being achievable.⁷⁸ AAE supported a proposed deadline of 55% by 2033 and 100% by 2040 based upon its conclusion that the climate science strongly indicates the need to get to net-zero carbon emissions by mid-century.⁷⁹ AAE also recommended that there be further, straight-line incremental targets for ENO to meet.⁸⁰

Sierra Club supported AAE's assessment that there is potential for ENO to meet a 100% RPS and that the Council should set a goal to meet that mandate by 2040 with an interim target of 55% by 2033.⁸¹

The EFNO coalition and its members argued for the adoption of a Resilient and Renewable Portfolio Standard ("R-RPS") that would require 55% of ENO's retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040.⁸² GSREIA supported this position.⁸³

ENO argued that to its knowledge and understanding, providing enough generation to meet 55%, let alone 100% of customer load with renewable-only technologies with 50% of the resources located within Orleans Parish is a physical impossibility.⁸⁴ ENO also noted that such resources would not meet ENO's load shape, meaning that if ENO were to add solar PV generation to meet a 55% RPS, approximately 70% of that generation would be in excess of ENO's needs at the time it is generated, and would be sold into the MISO market instead of used by ENO customers.⁸⁵ ENO also argued that this proposal would also result in massive rate increases.⁸⁶ ENO estimated

⁷⁸ AAE Comments at 5-6.

⁷⁹ AAE Comments at 6.

⁸⁰ AAE Comments at 7.

⁸¹ Sierra Club's Intervention at 6.

⁸² EFNO Reply Comments at 8.

⁸³ GSREIA Reply Comments at 1.

⁸⁴ ENO Reply Comments at 6.

⁸⁵ ENO Reply Comments at 6.

⁸⁶ ENO Reply Comments at 8.

the cost of complying with such a mandate would raise ENO's system average rate by 30% or more, even before incorporating the cost of adequate battery storage capacity.⁸⁷ ENO also argues that the use of Google Project Sunroof data as proof that 94% of roofs in New Orleans could host an aggregate of 2.7 GW of solar PV is a "superficial and unsound approach to resource planning that withers under the slightest scrutiny."⁸⁸ ENO noted that its own study of rooftop solar potential, conducted in connection with its 5MW rooftop solar project, which was a much more refined study performed by Brightergy Louisiana, LLC, identified only approximately 200 MW of potential rooftop solar capacity in New Orleans, a mere 7.4% of the EFNO coalition's estimate.⁸⁹

The Advisors agreed that current climate science strongly indicates the need to get to net-zero carbon emissions by mid-century.⁹⁰ For that reason, the Advisors supported at a minimum a target of not less than 100% clean energy by 2050.⁹¹ The Advisors note that the concept of 100% clean energy does not exclude the concept of 100% renewable energy.⁹² The Advisors opined that the midcentury target likely can be met with only reasonable bill impacts to customers through the use of a clean energy standard.⁹³ The Advisors stated they have not seen convincing proof that the 100% clean energy by 2050 target can be met at a reasonable cost using only renewables.⁹⁴

The Advisors noted that the most recent IRP analysis, the 2018 Triennial IRP, demonstrated that ENO will not need to add any new capacity to serve its peak load until approximately 2032.⁹⁵

⁸⁷ ENO Reply Comments at 8.

⁸⁸ ENO Reply Comments at 20.

⁸⁹ ENO Reply Comments at 20.

⁹⁰ Advisors' Report at 15.

⁹¹ Advisors' Report at 15.

⁹² Advisors' Report at 15.

⁹³ Advisors' Report at 15.

⁹⁴ Advisors' Report at 15.

⁹⁵ *Entergy New Orleans 2018 Integrated Resource Plan*, filed July 19, 2019 in Docket No. UD-17-03 at 20.

The Advisors stated they are encouraged by ENO's commitment to reducing carbon emissions, and accept that 70% clean energy by 2030 is what ENO believes upon informed analysis that it can do within its business plan with an acceptable bill impact to customers,⁹⁶ but does not require ENO to stretch.⁹⁷ The Advisors stated they would like to see a target that is more ambitious, but still has at least a reasonable possibility for success.⁹⁸ The Advisors stated they believe that the EFNO coalition's estimates of the potential of its plan for success are based on incomplete and potentially faulty data because the studies upon which they base their estimates do not take all relevant factors into account.⁹⁹

The Advisors explained that based on their calculations, a renewables goal of 10% by 2025, 15% by 2030, 23% by 2035 and 35% by 2040 should be reasonably achievable under an expenditure cap of 1% of total utility retail revenues.¹⁰⁰ If the renewables only replace resources that are currently producing carbon emissions, a 35% renewables goal by 2040 would have ENO at approximately 95% carbon-free in 2040.¹⁰¹

The Advisors noted that ramping up to 60% renewable energy by 2030 would require ENO to retire several plants early, likely leaving customers to absorb significant stranded costs.¹⁰² They stated it would also require ENO to replace some of its existing zero-emissions nuclear capacity with renewables.¹⁰³ The Advisors expressed concern that the economic impacts of forcing the early retirement of existing resources and/or early termination of contracts to satisfy an RPS could

⁹⁶ Advisors' Report at 15.

⁹⁷ Advisors' Report at 37.

⁹⁸ Advisors' Report at 15.

⁹⁹ Advisors' Report at 16, Advisors' Reply Comments at 25-28. The Advisors explain that both the Google Project Sunroof data relied upon by the EFNO coalition and the NREL study relied upon by PosiGen take into account factors that would likely reduce the deployment of solar in New Orleans from Google and NREL's projections, such as zoning restrictions, historical designations and known limitations on the distribution system. *Id.*

¹⁰⁰ Advisors' Report at 33.

¹⁰¹ Advisors' Report at 33.

¹⁰² Advisors' Reply Comments at 29-30.

¹⁰³ Advisors' Reply Comments at 29-30.

be significant.¹⁰⁴ The Advisors explained that for many such ENO resources, the Federal Energy Regulatory Commission (“FERC”), and not the Council, would determine the extent to which ENO would be permitted to escape its commitments to the resources and what price New Orleans customers would be required to pay for it.¹⁰⁵ Given the likely lifespan of ENO’s plants, the Advisors argued that there is a reasonable opportunity for ENO to exceed mid-century emissions reductions goals without the need to retire resources early and incur significant stranded costs.¹⁰⁶

SREA recommended that the Advisors’ suggested target of “not less than 100% clean energy by 2050” be mandated.¹⁰⁷

ENO further argued that any targets adopted should pursue decarbonization in a responsible, realistically achievable manner.¹⁰⁸ ENO argued that setting a technology-neutral CES target alone is not enough to maintain low rates and preserve reliability, the specific targets for such a standard must be tailored to New Orleans’ unique circumstances and ENO’s existing (and approved) least-cost resource portfolio.¹⁰⁹ ENO also argued that it does not have the same access to resources as utilities in other regions.¹¹⁰

ENO argued there is some thought that current goals of carbon free electricity by 2045 or net-zero-emission resource portfolios by 2050 cannot be reached with currently viable technologies and further research and development, along with relying on existing dispatchable generation, will be necessary.¹¹¹ ENO stated electric sector decarbonization at a reasonable cost requires (i) utilization of all zero-emitting and emission-reducing technologies, (ii) near-term goals

¹⁰⁴ Advisors’ Reply Comments at 29-30.

¹⁰⁵ Advisors’ Reply Comments at 29-30.

¹⁰⁶ Advisors’ Reply Comments at 29-30.

¹⁰⁷ SREA Comments on Advisors’ Report at 2.

¹⁰⁸ ENO Comments on Advisors’ Report at 5.

¹⁰⁹ ENO Comments on Advisors’ Report at 5.

¹¹⁰ ENO Comments on Advisors’ Report at 6.

¹¹¹ ENO Comments on Advisors’ Report at 7.

that take technological limitations into account; and (iii) long-term goals that are flexible and have been carefully analyzed considering a utility's specific circumstances.¹¹² The Advisors noted that RPS standards adopted by other states are regularly adjusted and updated to reflect new market dynamics and achievements. The Advisors proposed adding a provision that the Council would re-examine the RPS goals periodically and adjust them as circumstances warrant.¹¹³

ENO argued that the Advisors' recommendation for a more ambitious target ignores that ENO's target was optimized to make sure that incremental clean energy added to ENO's portfolio is mainly serving ENO's customers, rather than being exported to MISO's markets as surplus.¹¹⁴ ENO argued that going beyond what its analysis supports would not actually result in more clean energy serving New Orleans customers; instead, it would result in ENO "going long" on renewable generation to meet an arbitrarily imposed standard where that long position would result in ENO being a significant seller in the market, subject to the risk inherent in being a significant net-exporter to MISO.¹¹⁵ The Advisors noted that ENO's scenario ignores the possibility of purchasing RECs rather than building capacity to meet the RPS standard.¹¹⁶

Air Products argued in support of granting the utility the ability to average its renewable achievements and emissions reductions over multiple years for compliance upon a showing of economic efficiency.¹¹⁷ The Advisors responded that there may be specific projects for which this might be appropriate, but only requiring a showing of economic efficiency would be too low of a standard. The Advisors proposed including language that would allow averaging over a block of years, but only where the Council grants a waiver of its RCPS in advance based on the

¹¹² ENO Comments on Advisors' Report at 8.

¹¹³ Advisors' Reply Comments at 35.

¹¹⁴ ENO Comments on Advisors' Report at 9.

¹¹⁵ ENO Comments on Advisors' Report at 10.

¹¹⁶ Advisors' Reply Comments at 34.

¹¹⁷ Advisors Proposed RCPS at 7, citing an August 20, 2020 Air Products email to the Advisors.

demonstration that the proposed project is consistent with the intent of the standard and benefits the utility's customers (and also meets any other Council standards or requirements relevant to the proposed project).¹¹⁸

The Advisors suggested that the Council consider pushing ENO to achieve "net zero," the state where they are able to obtain a REC balance sufficient to offset any emissions caused by their portfolio by 2040, but then to spend the next decade phasing out that practice in favor of eliminating the sources of emissions entirely from ENO's portfolio to achieve a true zero-emissions portfolio by 2050.¹¹⁹

Having reviewed and considered the comments of the Advisors and the parties regarding the appropriate target for New Orleans, the Council agrees with the Advisors that given the current composition of ENO's portfolio and currently anticipated asset retirement dates, a standard that requires ENO to achieve net zero carbon emissions by 2040 and 100% clean energy by 2050 is reasonable.

To ensure progress toward achieving net zero carbon emissions by 2040, the Council finds that there should be annual requirements in the standard which approach net zero carbon emissions by 2040 and 100% clean energy by 2050, but that it is appropriate to allow averaging of the progress toward the annual targets where the Council grants a waiver of its RCPS in advance based on the demonstration that the proposed project is consistent with the intent of the standard and benefits the utility's customers (and also meets any other Council standards or requirements relevant to the proposed project).

¹¹⁸ Advisors' Proposed RCPS at 7.

¹¹⁹ Advisors' Reply Comments at 9.

The Council also finds that to ensure that the standard continues to meet the Council's intent, that a periodic review of the standard with the ability of the Council to make adjustments as circumstances warrant is reasonable.

2. How should a New Orleans RPS target be satisfied?

The parties' comments in response to this question fell into roughly three categories: those advocating for all clean (zero-emissions) resources, those advocating for a wide array of renewable resources, and those advocating for giving heavy priority to locally-sited distributed generation renewable resources.¹²⁰

a. Should ENO be allowed to purchase RECs to satisfy the requirement, and if so what, if any limitations should be applied to the use of RECs? If RECs are allowed, how should they be certified or verified?

Nearly all parties initially supported allowing the use of RECs without the purchase of the associated energy for compliance with a standard.¹²¹ Initially, there was also general agreement that RECs used to satisfy the RPS targets must be retired and be subject to verification or certification and tracking by third parties, though there was some debate as how that should be done,¹²² and the EFNO Coalition ultimately advocated against the requirement of certification and tracking.¹²³

AAE initially supported the use of RECs registered with the Midwest Renewable Energy Tracking System ("M-RETS"), which registers and tracks RECs both inside and outside the MISO

¹²⁰ Advisors' Report at 17.

¹²¹ Advisors' Report at 20, citing Air Products Comments at 2, C2ES Comments at 1, and ENO Reply Comments at 14. The EFNO R-RPS proposal also contemplates the use of RECs. *See e.g.* EFNO Reply Comments at Appendix A, Sections 2 and 7.

¹²² Advisors' Report at 20, citing Air Products Comments at 2 and ENO Reply Comments at 14. *See also*, EFNO Reply Comments at Appendix A, Sections 2 and 7.

¹²³ EFNO RCPS Comments at Appendix A, striking the requirement that RECs be certified and tracked from the proposed definition of "REC" ..

system.¹²⁴ However, AAE opposed allowing RECs to be “banked” for use in future years, rather, to the extent ENO has excess RECs, AAE argued ENO should be required to sell them.¹²⁵ AAE was among the members of the EFNO coalition whose comments ultimately advocated against the requirement of certification and tracking for RECs,¹²⁶ therefore, the Council considers AAE’s final position to be in opposition to the requirement for tracking and certification of RECs.

Audubon argued that RECs should be allowed in order to set aggressive and affordable milestones, allowing high REC percentages in early years, while building toward high local distributed generation content as the deadline for 100% renewable resources nears.¹²⁷ Audubon also initially argued that RECs must be Green-e certified and the Council may wish to consider requiring that RECs be tracked through M-RETS.¹²⁸ However, Audubon was among the members of the EFNO coalition whose comments ultimately advocated against the requirement of certification and tracking for RECs.¹²⁹ Therefore, the Council considers Audubon’s final position to be in opposition to the requirement for tracking and certification of RECs.

Sierra Club also opposed allowing ENO to bank RECs arguing ENO should instead sell excess RECs.¹³⁰

SREA argued that RECs do not stabilize energy costs and although low-cost they are additional to existing ratepayer cost structures, and therefore recommends that if RECs are

¹²⁴ AAE Comments at 8-11.

¹²⁵ AAE Comments at 26.

¹²⁶ EFNO RCPS Comments 6, also at Appendix A, striking the requirement that RECs be certified and tracked from the proposed definition of “REC”..

¹²⁷ Audubon Comments at 7.

¹²⁸ Audubon Comments at 7.

¹²⁹ EFNO RCPS Comments 6, also at Appendix A, striking the requirement that RECs be certified and tracked from the proposed definition of “REC”..

¹³⁰ Sierra Club Intervention at 7.

allowed, they should be Green-E certified, subscriptions should be voluntary based on ratepayer opt-in, and should only make up a very small portion of the overall renewable energy portfolio.¹³¹

Vote Solar and 350 NO proposed a three-tier framework through which ENO could satisfy its compliance obligations through customer programs that reduce compliance load (e.g. community solar and net metering) and other renewable energy resources that are registered with M-RETS (Tier 3).¹³² However, 350 NO was among the members of the EFNO coalition whose comments ultimately advocated against the requirement of certification and tracking for RECs.¹³³ Therefore, the Council considers 350 NO's final position to be in opposition to the requirement for tracking and certification of RECs.

The Advisors stated that if the Council chooses deep decarbonization as the public policy to be prioritized, then they recommended that RECs purchased without the associated energy be viewed as a transitional mechanism to allow ENO the flexibility to satisfy the RPS as cost-effectively as possible until such time as ENO begins to see significant deactivations that allow cost-effective opportunities to satisfy the RPS with ENO-owned resources.¹³⁴ To that end, for a carbon emissions reductions goal, the Advisors stated the purpose should be to ensure that ENO is serving its load entirely through zero-carbon resources by 2050, and the use of RECs without the associated energy to satisfy the requirement should be phased out by that date.¹³⁵

The Advisors suggested that New Orleans should work toward having an energy portfolio that is 100% free of carbon emissions, not merely "net zero."¹³⁶ To that end, allowing the utility to purchase RECs without purchasing the associated energy is helpful toward achieving a "net

¹³¹ SREA Comments at 11.

¹³² Vote Solar + 350 NO Comments at 7.

¹³³ EFNO RCPS Comments 6, also at Appendix A, striking the requirement that RECs be certified and tracked from the proposed definition of "REC"..

¹³⁴ Advisors' Report at 20.

¹³⁵ Advisors' Report at 20.

¹³⁶ Advisors' Reply Comments at 8.

zero” status quickly and less expensively, and the use of multipliers for certain high-value resources can help boost earlier adoption of those resources than might otherwise occur.¹³⁷ However the Advisors argued, the practice of using RECs purchased without the associated energy in order to offset emissions from other resources used to provide energy will eventually need to be phased out if the goal is to get to an actual emissions-free portfolio.¹³⁸

The Advisors suggested that the Council consider pushing ENO to achieve “net zero,” the state where they are able to obtain a REC balance sufficient to offset any emissions caused by their portfolio by 2040, but then to spend the next decade phasing out that practice in favor of eliminating the sources of emissions entirely from ENO’s portfolio to achieve a true zero-emissions portfolio by 2050.¹³⁹ RECs would be used as the accounting mechanism to ensure that ENO’s carbon emissions are offset until such time as ENO is able to demonstrate that it has no emissions-producing resources in its portfolio that need to be offset.¹⁴⁰ ENO was correct to note in its comments that this would create a jump-step of compliance requirements that may cause additional costs.¹⁴¹ However, the Advisors noted that 2040 is still 20 years into the future, meaning that (1) the utility, Council and stakeholders would have 20 years to develop a strategy for managing the transition; and (2) if it becomes evident over the next 20 years that phasing out the use of RECs not paired with the associated energy will not be feasible, adjustments can be made to the RPS.¹⁴²

¹³⁷ Advisors’ Reply Comments at 8-9.

¹³⁸ Advisors’ Reply Comments at 9.

¹³⁹ Advisors’ Reply Comments at 9.

¹⁴⁰ Advisors’ Reply Comments at 9.

¹⁴¹ ENO Comments on Advisors’ Report at 29.

¹⁴² Advisors’ Reply Comments at 9.

The Advisors also stated that, to the extent that fostering new growth of the renewable industry is the public policy goal taking priority, however, use of RECs only for resources built after a particular date would foster that goal.¹⁴³

In the June 22, 2020 EFNO Coalition Comments, the EFNO Coalition opposed both banking of RECs and averaging of renewable energy achievements and emissions reductions as being antithetical to long term climate action goals and discouraging over-achieving on the goals.¹⁴⁴

The EFNO Coalition argued that “[b]anking epitomizes the Advisors’ structural approach to incentivizing the minimal level of performance.”¹⁴⁵ The Advisors responded that the EFNO Coalition prefers to ignore that the Council has set forth a goal that is among the most ambitious in the nation for clean energy achievement, and that the monetary impact of the regulations on customers must be taken into account.¹⁴⁶ While the Advisors stated they would be pleased if the utility is able to “over comply” with the Council’s RCPS without exceeding the budget cap, they argued regulations should be drafted to indicate to the utility the Council’s desired level of performance in the first instance and designed in a manner that the utility can comply with the Council’s regulations through reasonable means.¹⁴⁷ Rather than designing regulations to require minimal compliance but encourage “over-compliance” as suggested by the EFNO Coalition’s comments, the Advisors argued it is more effective to design the regulations to require the level of compliance that is desired.¹⁴⁸

¹⁴³ Advisors’ Report at 20-21.

¹⁴⁴ June 22, 2020 EFNO Coalition Comments at 6, see also EFNO RCPS Reply Comments at 6..

¹⁴⁵ June 22, 2020 EFNO Coalition Comments at 6.

¹⁴⁶ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 76-77.

¹⁴⁷ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 76-77.

¹⁴⁸ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 77.

The EFNO Coalition also argued that the Advisors should clarify that unbundled RECs from outside MISO may not be used for compliance purposes.¹⁴⁹ To the contrary, comments received by the Advisors from Air Products at the second technical conference and by email on August 20, 2020, specifically sought clarification that RECs created in the Electric Reliability Council of Texas (“ERCOT”) could qualify under the RCPS.¹⁵⁰ The Advisors argued that in order to best pursue the Council’s goal of reducing carbon emissions associated with ENO’s portfolio of resources used to serve New Orleans as rapidly as possible while keeping electric bills affordable, it would be reasonable to permit certified RECs produced by any generating resource whose electricity would actually be deliverable to New Orleans and be tracked by M-RETS or equivalent to be used for compliance purposes.¹⁵¹ According to the Advisors’ research, resources in ERCOT could be deliverable into MISO, and thus into New Orleans, and ERCOT RECs could be tracked in MISO, and therefore, should be eligible for RCPS compliance.¹⁵²

On July 29, 2020, the Sierra Club communicated by way of email to the Service List in UD-19-01 that it will oppose any use of RECs or similar instruments for RCPS compliance.¹⁵³

The Advisors argued that in the early years of the RCPS, and particularly in years where the utility has no need to add capacity in order to serve its customers, the use of RECs purchased without the associated energy could be one method of keeping the costs of RCPS compliance within the customer protection cost cap required by the Council.¹⁵⁴

In the Advisors’ Proposal, the Advisors explained the difficulty in confirming that RECs associated with customer-cited net energy metering (“NEM”) resources (such as rooftop solar) are

¹⁴⁹ June 22, 2020 EFNO Comments at 7.

¹⁵⁰ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 77.

¹⁵¹ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 77.

¹⁵² Advisors’ Proposed RCPS Regulations Filing, Appendix D at 77.

¹⁵³ July 29, 2020 email submitted in Docket No. UD-19-01 by Sierra Club.

¹⁵⁴ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 81.

legitimate because there is evidence that at least some NEM customers do not own the RECs created by their solar panels (ownership is retained by the solar panel provider rather than transferred to the solar panel lessor), and therefore do not have the right to sell or retire them for RCPS Compliance purposes.¹⁵⁵ The EFNO Coalition suggested that this problem could be solved through the creation of a registry for voluntary REC retirement.¹⁵⁶ However, the Advisors argued, the EFNO Coalition offered no suggestion as to how such a registry should be staffed or funded in order to carry out the work of reviewing each NEM customer contract to ensure that the registrant actually owns the RECs they propose to retire for RCPS Compliance or how the Council could ensure that such RECs are then not subsequently sold for another purpose by the entity that actually owns them.¹⁵⁷ Without such verification, the Advisors argued, there is a risk that a REC could be “voluntarily retired” by the NEM customer and counted for RCPS Compliance through the registry, and then subsequently sold to ENO by the rooftop solar provider or REC aggregator who does own the REC, and counted for RCPS Compliance a second time.¹⁵⁸ The Advisors did not oppose the creation of a local registry, but argued that there are not enough details in the EFNO Coalition’s proposal to include it as part of this proceeding.¹⁵⁹ The Advisors noted that such a registry could be created at a future date, and the RCPS Rules could be modified to permit RECs certified and tracked through the local voluntary registry as well as those that are Green-e certified and tracked through RTO tracking systems.¹⁶⁰

¹⁵⁵ Advisors’ RCPS Proposal at 27.

¹⁵⁶ EFNO RCPS Comments at 3.

¹⁵⁷ Advisors’ RCPS Reply Comments at 23.

¹⁵⁸ Advisors’ RCPS Reply Comments at 23.

¹⁵⁹ Advisors’ RCPS Reply Comments at 23.

¹⁶⁰ Advisors’ RCPS Reply Comments at 23.

The Council notes that ENO's 2018 IRP demonstrated no need for ENO to add new capacity resources until 2032,¹⁶¹ and finds that the use of RECs without the purchase of the associated energy should be permitted for compliance purposes in decreasing amounts until no RECs are included for compliance in 2050. The Council finds that this approach, which will provide a mechanism to offset a portion of ENO's carbon emissions cost-effectively until such time as ENO has need to begin replacing significant amounts of capacity on its system, is reasonable. The Council agrees, however, with SREA that the portion of the energy portfolio that can be offset through RECs should be limited and finds the limits in the Advisors' Final Proposed RCPS Regulations to also be reasonable in this regard. The Council further finds that in light of the more significant opportunities that will arise to replace capacity on the ENO system without the early retirement of assets after the mid-2030s, phasing out reliance upon such RECs without the associated energy by 2050 is reasonable.

The Council expects that a REC would encompass the common definition of a certification that the bearer owns one megawatt-hour (MWh) of electricity generated from a renewable energy resource.

The Council finds that certification and tracking of RECs are necessary to ensure that RECs are used only for the purpose of compliance with the utility's RCPS obligation, and to prevent both inadvertent and fraudulent double-counting of RECs.

¹⁶¹ Entergy New Orleans, LLC, 2018 Integrated Resource Plan, July 19, 2019, Docket No. UD-17-03, ("ENO's 2018 IRP"),

- b. *What resources should be included in the definition of resources that may be used to meet the target (whether through the addition of resources to ENO's system or through the purchase of RECs) -- Solar Water Heat, Solar Space Heat, Geothermal Electric, Solar Thermal Electric, Solar Thermal Process Heat, Solar Photovoltaics, Wind (Large and Small), Biomass, Hydroelectric, Geothermal Heat Pumps, Combined Heat & Power, Landfill Gas, Hydroelectric (Large and Small), Geothermal Direct Use, Anaerobic Digestion, Fuel Cells using Renewable Fuels, other?*

ENO argued for the adoption of a clean energy standard that would allow the inclusion of future renewable resources, emission-free nuclear resources, distributed generation and utility-scale solar PV resources; existing legacy renewable resources like conventional hydropower projects; reductions in kWh sales and kW demand through energy efficiency (Energy Smart) and DSM programs, electrification, assisting key customers like S&WB to help reduce the use of older, legacy assets that use fossil fuel, and customer owned and operated distributed generation-scale renewables like rooftop solar PV and that take advantage of Council policies like NEM.¹⁶² ENO suggested that if Combined Heat and Power or Fuel Cell technologies are permitted, it should be clarified that they only count toward compliance if they are fueled with renewable resources.¹⁶³

CZES recommended that solar water heat, solar space heat, geothermal electric, solar thermal electric, solar thermal process heat, solar photovoltaics, wind (large, small, and offshore), biomass, hydroelectric (large and small), geothermal heat pumps, combined heat and power, municipal solid waste, landfill gas, tidal, wave, ocean thermal, geothermal direct-use, anaerobic digestion, and fuel cells using renewable fuels all be eligible in the definition of resources that may be used to meet the RPS target¹⁶⁴ CZES also argued that to lock in higher levels of clean energy earlier, the city should consider expanding the RPS to a CES.¹⁶⁵

¹⁶² ENO Comments at 21.

¹⁶³ ENO Comments at 21.

¹⁶⁴ CZES Comments at 3-4.

¹⁶⁵ CZES Comments at 4.

In its initial comments, AAE recommended keeping efficiency and/or thermal technologies out of the RPS or to have them in their own tier.¹⁶⁶ However, AAE subsequently joined in the EFNO proposal, which included solar thermal resources and geothermal resources in the definition of Renewable Energy Resource¹⁶⁷ and included energy efficiency measures in Tier 2 along with net energy metering, community solar with virtual net metering, and any non-Tier 1 resource that supports renewables, demand response or energy efficiency for low-income customers.¹⁶⁸ AAE also supported wind (large and small), solar PV, biomass (with strict sustainability criteria), geothermal electric, power produced from landfill gas and anaerobic digesters and fuel cells fueled by renewable power.¹⁶⁹ However, the EFNO proposal subsequently supported by AAE included only solar PV, solar thermal, wind, run-of-river hydroelectric, geothermal and tidal or wave energy resources as renewable energy resources.¹⁷⁰

Vote Solar + 350 New Orleans argued that this list of eligible technologies should be expansive, but should not include any resources that produce local air emissions (biomass, anaerobic digestion) or that require water discharge permits, and all Tier 3 resources (MISO-connected renewables) should exclude carbon-emitting technologies.¹⁷¹

Audubon recommended adoption of an established renewable energy fuels and technologies definition and eligibility standard, such as that promulgated by Green-e;¹⁷² Audubon stated that (1) all electricity generation for all loads served in the City should be fueled by renewable energy, (2) all heat and process loads should be served by renewable natural gas or converted to renewable electricity, (3) all heat, process, and transportation loads served by

¹⁶⁶ AAE Comments at 11.

¹⁶⁷ EFNO Comments at Appendix A, Section 2.

¹⁶⁸ EFNO Comments at Appendix A, Section 5.

¹⁶⁹ AAE Comments at 11-12.

¹⁷⁰ EFNO Reply Comments at Appendix A, Section 2.

¹⁷¹ Vote Solar + 350 NO Comments at 7.

¹⁷² Audubon Comments at 8.

petroleum should be converted to renewable electricity or gas, and (4) all new electric loads, such as those relating to electrified transportation, building electrification, or others should be driven by renewable electricity.¹⁷³ Audubon argued decarbonization should be achieved through the principles of equity, affordability, reliability, resilience, and technological innovation.¹⁷⁴ Audubon argued that achieving the goal would entail (a) ENO's accelerated and complete exit from reliance on coal as a source of electricity for New Orleans, (b) ENO's development of an aggressive plan for an accelerated and complete exit from reliance on methane gas as a fuel for all purposes, (c) ENO's continued reliance on nuclear generation should only be considered as a bridge technology to a 100% renewable energy future, and only if and for so long as nuclear generation is cost-competitive at market rates - even if that period is shorter than the currently expected retirement dates for such generation, and (d) ENO's development of a plan and agenda of action to create non-utility market opportunities to develop and rely upon carbon-free resources for energy services.¹⁷⁵

Sierra Club supported wind (large and small), solar PV, and geothermal electric as renewable resources.¹⁷⁶ Sierra Club stated it does not oppose fuel cells as long as they are using renewable energy and double-counting is avoided.¹⁷⁷ Sierra Club argued that hydro-electric power may be appropriate, depending on site-specific considerations, and does not support biomass or landfill gas resources.¹⁷⁸

The American Association of Blacks in Energy supported the use of all resources available that reduce carbon impact, and stated that the development of a diverse portfolio of low to zero

¹⁷³ Audubon Comments at 5.

¹⁷⁴ Audubon Comments at 304; Audubon Reply Comments at 2.

¹⁷⁵ Audubon Reply Comments at 5-6.

¹⁷⁶ Sierra Club Intervention at 6.

¹⁷⁷ Sierra Club Intervention at 6.

¹⁷⁸ Sierra Club Intervention at 6.

carbon resources is the best strategy to reduce carbon emissions today, and is a recommended approach for the future, particularly with respect to energy as a local, state, and national security asset.¹⁷⁹

Several entities, including ENO, Third Way, the United States Business Council for Sustainable Development, Jensen Companies, South Coast Solar, C2ES, STEM NOLA, Joule, and Professors Smith and Connor of the Tulane Energy Institute filed a letter with the Council supporting the adoption of a technology-neutral RCPS.¹⁸⁰

The EFNO coalition proposed limiting the resources that qualify as renewable resources to solar PV and solar thermal resources, wind resources, run-of-river hydroelectric resources, geothermal resources, and tidal and wave resources, and would include as “resilient” resources those renewable resources plus any enhancements like battery storage that can perform both in “islanded-mode” (standing alone or in a microgrid) and connected to the grid.¹⁸¹ However, as its final position, the EFNO Coalition dropped the definition for resilient resources, and included solar, thermal, photovoltaic, wind, geothermal, fuel cell using renewable fuels, hydroelectric generation, ocean wave, ocean thermal, or tidal current and any additions or enhancements to the facility using that technology.¹⁸²

The EFNO coalition members generally opposed a clean energy resource standard.¹⁸³ In response to ENO’s comments, several EFNO coalition members argued that ENO’s proposal will not result in new renewable generation being built and that relying on nuclear will raise costs to customers because the Grand Gulf plant has been underperforming in recent years, significantly

¹⁷⁹ American Association of Black in Energy November 18, 2020 Letter at 1, citing American Association of Blacks in Energy Comment, July 1, 2019.

¹⁸⁰ December 2, 2020 Letter.

¹⁸¹ EFNO Reply Comments at Appendix A, Section 2.

¹⁸² EFNO RCPS Comments at Appendix A, definition of “Renewable Energy Resource.”

¹⁸³ AAE Reply Comments at 2; SREA Reply Comments at 2-3, 350 NO Reply Comments at 3.

reducing its output and decreasing the amount of ENO load served by zero-emissions resources, and that nuclear is more expensive than renewables.¹⁸⁴

350 New Orleans argued that CCUS is expensive and that it could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing a more economical and strategically deployed renewable energy infrastructure.¹⁸⁵ It also argued that there are serious reliability and cost issues associated with ENO's nuclear fleet.¹⁸⁶

SREA argued that, although it is not inherently opposed to nuclear energy, there are concerns that ENO's units are uneconomic, and that nuclear power is relatively inflexible, both due to its operational requirements and the need to maintain a high capacity factor to justify the capital expense, with little or no ramping services to respond to customer demand or other generation sources.¹⁸⁷ SREA argued that ENO's existing nuclear contracts may be the largest limiting factor in achieving exceptionally high penetration levels of renewable energy resources.¹⁸⁸ SREA argues that ENO affiliates are likely depending on New Orleans residents paying higher-than-market rates to keep those units running, and that if New Orleans stops buying energy from Entergy's nuclear reactors, those facilities would likely be unable to compete in the MISO market and would eventually retire.¹⁸⁹ SREA also pointed out that the costs of renewables and energy storage have been falling over time and that their analysis shows that renewable energy is a lower cost than existing Entergy facilities.¹⁹⁰

The Advisors argued that while the EFNO coalition members point to the problems at Grand Gulf as a reason that only renewable resources should be relied upon to meet the Council's

¹⁸⁴ AAE Reply Comments at 2; SREA Reply Comments at 32; 350 NO Reply Comments at 5-6.

¹⁸⁵ 350 NO Comments on Advisors' Report at 5.

¹⁸⁶ 350 NO Reply Comments at 5-6.

¹⁸⁷ SREA Reply Comments at 3.

¹⁸⁸ SREA Comments at 3.

¹⁸⁹ SREA Reply Comments at 3.

¹⁹⁰ SREA Comments at 5-7.

chosen target, their argument actually speaks in favor of a clean energy standard rather than against it.¹⁹¹ The Advisors pointed out that if, as the EFNO coalition argues, ENO's nuclear resources are unreliable and costly, then it is more likely that to meet a 55% renewables target, ENO would replace its failing nuclear resources with renewables.¹⁹² The Advisors stated that since ENO's current nuclear resources represent approximately 56.9% of its energy resources, ENO could, in theory reach a 55% renewables interim target by replacing its nuclear fleet with renewables while keeping all of its fossil fuel plants on line, resulting in no actual reduction in emissions.¹⁹³ The Advisors argued that a clean energy standard, however, would not permit such backsliding, because it would require ENO to increase its percentage of clean energy every year.¹⁹⁴ The Advisors argued that the EFNO position that only renewables should count does support a public policy purpose of providing economic stimulus to and development of the local renewables industry, but it does not support deep decarbonization as well as a clean energy standard would unless it can be guaranteed that the new renewable resources will only replace resources that emit carbon until such resources are fully replaced.¹⁹⁵

The Advisors recommended that the Council take a technology-neutral approach that will allow any resource that can reduce carbon emissions or provide zero-carbon emission electricity to qualify for inclusion in the utility's portfolio, including the increasingly important resources of energy efficiency, conservation, and demand-side management.¹⁹⁶

¹⁹¹ Advisors' Report at 19.

¹⁹² Advisors' Report at 19.

¹⁹³ Advisors' Report at 19.

¹⁹⁴ Advisors' Report at 19.

¹⁹⁵ Advisors' Report at 19-20.

¹⁹⁶ Advisors' Reply Comments Regarding Proposed RCPS Regulations, filed Oct. 14, 2020 in UD-19-01 ("Advisors' Proposed RCPS Reply Comments") at 3.

GSREIA opposed a clean energy standard but supports the inclusion of energy efficiency and DSM in a RPS target.¹⁹⁷

PosiGen emphasized the need for programs that address ending energy poverty, benefits of solar carve out programs, and comparing the full cost of resources on an even playing field in the RPS.¹⁹⁸ PosiGen recommended a vision statement for the Council to adopt to guide the Advisors and the RPS development process.¹⁹⁹

PosiGen discussed the energy burden in New Orleans. PosiGen argued that Washington, DC and other jurisdictions have proven that carve out solar programs in RPS policies significantly lower energy costs for low-income customers, and that it is much less expensive for rate-payers when these investments are made by a third party, free market provider rather than a monopoly utility. However, the Advisors point out that PosiGen offers no indication of the magnitude of savings occurring for both the low-income customer and the ratepayer or any empirical evidence to support the claim.²⁰⁰ PosiGen provided a table of the cost difference between ENO's 100-home low-income solar program and PosiGen's solar + energy efficiency program, but PosiGen, the Advisors argued, provided no information regarding where the data in the table came from and admitted that it used an assumed cost for ENO's program rather than the actual figures.²⁰¹

The Advisors argued that PosiGen makes several other unsupported claims throughout its Comments without providing adequate support for its conclusions.²⁰²

¹⁹⁷ GSREIA Reply Comments at 1-2.

¹⁹⁸ PosiGen Comments on Advisors' Report at 3.

¹⁹⁹ PosiGen Comments on Advisors' Report at 3.

²⁰⁰ PosiGen Comments on Advisors' Report at 4. Advisors Reply Comments at 22-23.

²⁰¹ PosiGen Comments on Advisors' Report at 4-5. Advisors' Reply Comments at 23.

²⁰² Advisors' Reply Comments at 23-24.

PosiGen argued that “uneconomic” generation is any resource that continues to contribute to our shared destruction and that what is economical must be based on an accurate reflection of total cost, which means incorporating spillover costs into planning and resource modeling.²⁰³

PosiGen argued that ENO’s proposal benefits shareholders and not vulnerable New Orleans residents by trying to earn a healthy profit at captive ratepayers’ expense.²⁰⁴ PosiGen urged the Council to reject ENO’s focus on centralized resources that it owns and to include components focused on benefiting residents dealing with high energy burdens and poor service reliability, such as by establishing a low-income home solar and solar-plus-storage program similar to the Energy Smart program.²⁰⁵

PosiGen argued that a CES would undermine affordability goals because in the past utilities have “foolhardily” pursued construction boondoggles related to nuclear power and CCS.²⁰⁶ PosiGen also argued that ENO’s reliability concerns under an RPS are unpersuasive because under the R-RPS, ENO would not have to run its fleet entirely on clean or renewable resources, rather it could offset its 100% of its annual jurisdictional sales through the use of RECs.²⁰⁷

350 New Orleans argued that “It could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing a more economical, and strategically deployed renewable energy infrastructure.”²⁰⁸ However, as the Advisors noted, no party in the case has suggested that the Council officially mandate a CCUS. The Advisors took the position that an RPS should leave room for effective and economical CCUS technology that might develop

²⁰³ PosiGen Reply Comments at 6.

²⁰⁴ PosiGen Reply Comments on Advisors’ Report at 9.

²⁰⁵ PosiGen Reply Comments on Advisors’ Report at 9.

²⁰⁶ PosiGen Reply Comments on Advisors’ Report at 15.

²⁰⁷ PosiGen Reply Comments on Advisors’ Report at 16.

²⁰⁸ 350 New Orleans Comments on Advisors’ Report at 5.

in the future, not that the Council should require ENO to acquire CCUS instead of investing in renewables.²⁰⁹

ENO stated that it disagrees that subsidizing a small segment of the local economy at the expense of combatting climate change, keeping rates low, and preserving reliability is a legitimate public policy goal.²¹⁰ ENO argued that the only legitimate public policy purpose the Council can pursue in this proceeding is deep decarbonization in a manner that keeps electric rates low and preserves reliability.²¹¹

PosiGen argued that local economic development provides large benefits under an RPS and that the Council has the opportunity to remedy that harm inflicted upon the local rooftop solar industry by the state's decision to terminate the state solar tax credit.²¹²

The Intervenor Group claimed that the Advisors' Report does not fully appreciate, and reflect "the value and character of clean, community energy development."²¹³ They wrote that "CCED resources are an option that provides superior energy economics and economic development."²¹⁴

The Advisors argued that the Intervenor Group has never provided a definition of the term "clean, community energy development" or "CCED" or any analysis or research regarding the energy economics of such resources,²¹⁵ and the Advisors maintained that significantly more information would be needed to make any determination that the energy economics of "CCED" resources are "superior" to any other particular energy resource or whether or not they provide the

²⁰⁹ Advisors' Reply Comments at 28.

²¹⁰ ENO Comments on Advisors' Report at 4.

²¹¹ ENO Comments on Advisors' Report at 4-5.

²¹² PosiGen Reply Comments on Advisors' Report at 18-19.

²¹³ Intervenor Group Comments on Advisors' Report at 5.

²¹⁴ Intervenor Group Comments on Advisors' Report at 5.

²¹⁵ Advisors' Reply Comments at 14.

other local job creation, economic development benefits and energy security claimed in the Intervenor Group Comments.²¹⁶

The Advisors argued that to exclude any zero-emissions resource now on the grounds that it is too uneconomic to be considered at any time over the next 30 years would be premature.²¹⁷ The Advisors argued that ENO should be encouraged to pursue a least-cost planning method of complying with the RPS adopted by the Council.²¹⁸ The Advisors argued that to the extent that there is a credible analysis that supports that “CCED” resources do truly offer superior energy economics, they should prevail in such a process without the need for a carve-out or multipliers.²¹⁹ The Advisors clarified that they are not recommending the exclusion of the resources the EFNO Coalition proposed utilizing for their R-RPS proposal, only that other zero-emission resources be included as well.²²⁰

Audubon took the position that the existing supply arrangements and pricing for ENO affiliate generation must be fully reevaluated to eliminate any above-market pricing that may currently exist, especially for nuclear generation.²²¹

The Advisors explained that whether the Council chooses a clean energy standard or a renewable energy standard should be determined by which public policy goal the Council wishes to prioritize.²²² The Advisors stated that rapid and deep decarbonization and the growth of the renewables industry can complement each other. However, after review of the parties’ comments and recent studies such as the Green Real Deal and the Energy Futures Initiative analysis of the California market, the Advisors expressed concern that prioritizing the growth of the renewables

²¹⁶ Advisors’ Reply Comments at 14.

²¹⁷ Advisors’ Reply Comments at 15.

²¹⁸ Advisors’ Reply Comments at 15.

²¹⁹ Advisors’ Reply Comments at 15.

²²⁰ Advisors’ Reply Comments at 15.

²²¹ Audubon Reply Comments at 3.

²²² Advisors’ Report at 14.

industry over all other carbon dioxide emissions-free resources and rejecting the “all of the tools in the toolbox” method will slow down decarbonization and make it more expensive for ratepayers by narrowing unnecessarily the range of options available to decarbonize.²²³ Thus, the Advisors stated that to the extent that the Council’s preferred public policy goal is to pursue rapid, deep decarbonization, they recommend a Clean Energy Standard.²²⁴ The Advisors clarified, however, that to the extent that the Council would prefer to prioritize economic development, and particularly the development of the local renewables industry in New Orleans (and the Advisors consider local economic development to be a legitimate public policy purpose) then the appropriate goal would be a renewables-only RPS.²²⁵

Air Products objected to the cost of Beneficial Electrification of S&WB facilities being passed through to ratepayers, arguing that the costs should be addressed under ENO’s Schedule EOES-3.²²⁶

AAE and 350 New Orleans argued that the “all zero emissions technology” approach including costly nuclear is less about its merits as a decarbonization strategy, and more about its merits for the vertically integrated utility business model.²²⁷ They argued that the recommendations of the EFNO coalition “hedge against the increasing costs of power from Entergy New Orleans.”²²⁸ They also expressed concern that a CES, as proposed by ENO, undermines cost-effective decarbonization and climate adaptation by propping up nuclear power at the expense of newer, cheaper options.²²⁹

²²³ Advisors’ Report at 14-15.

²²⁴ Advisors’ Report at 15.

²²⁵ Advisors’ Report at 15.

²²⁶ Air Products Reply Comments at 6.

²²⁷ AAE + 350 NO Reply Comments on Advisors’ Report at 3.

²²⁸ AAE + 350 NO Reply Comments on Advisors’ Report at 4.

²²⁹ AAE + 350 NO Reply Comments on Advisors’ Report at 7.

The Advisors noted that there seems to be some consensus that it is appropriate to include energy efficiency, distributed generation, and demand-side management (“DSM”) resources within the RPS, and even a level of consensus that to the extent the Council decides to prioritize certain types of resources over others, that these types of resources should be included among high priority resources.²³⁰

The Advisors also recommended that the standard ultimately adopted by the Council allow considerable flexibility regarding which resources are permitted to be utilized to comply with the standard.²³¹ The Advisors argue that providing as much flexibility as possible increases the likelihood that ENO would be able to achieve compliance with the standard while preserving reliability and keeping electricity rates reasonable.²³² The Advisors stated that getting as much

²³⁰ Advisors’ Reply Comments at 2. At page 12 of its comments, ENO concurs with the Advisors’ definitions of Demand-Side Management, Energy Efficiency Programs, Beneficial Electrification, and Net Energy Metering, and with their inclusion in an RPS and classification as “Tier 1 Resources” that would receive some kind of multiplier credit. Energy New Orleans, LLC’s Comments in Response to the Advisors’ Report and Proposed Alternative Frameworks Concerning Renewable Portfolio Standards (“ENO Comments on Advisors’ Report”) at 12, UD-19-01, Oct. 15, 2019. The Intervenor Group Comments state at page 4 that they continue to urge the Council to adopt a Resilient and Renewable Portfolio Standard (“R-RPS) for New Orleans that would require 55% of ENO’s retail sales to be served by resilient and renewable resources by 2033 and 100% by 2040, and then go on to state at page 6 that the Energy Future New Orleans (“EFNO”) parties had offered the R-RPS proposal as an integrated whole, not as a menu from which portions of the proposal would be selected, or deselected, without an opportunity to consider the implications of such decisions. This leads the reader to conclude that these six parties still support the EFNO R-RPS proposal, which included energy efficiency and at least some net energy metering resources as Tier 2 resources and would require that at least 30% of the compliance portfolio requirements be met with a combination of Tier 1 and Tier 2 resources. Joint Reply of 350 New Orleans, Alliance for Affordable Energy, National Audubon Society, Deep South Center for Environmental Justice, PosiGen Solar, Sierra Club, Southern Renewable Energy Association, and Vote Solar (Collectively the “Energy Future New Orleans” Coalition of “EFNO”) Proposing a Draft Resilient and Renewable Portfolio Standard for the City of New Orleans (“EFNO Proposal”) at Appendix A at 9-10). Air Products supports the Advisors’ Report Alternative 2 (with unrelated modifications), which includes energy efficiency, distributed generation and DSM in Tier 2. Air Products and Chemicals, Inc. Comments on Advisors’ Report (“Air Products’ Comments on Advisors’ Report”) at 2, UD-19-01, Oct. 15, 2019, and Advisors’ Report at Appendix A p. 11. The Southern Renewable Energy Association (“SREA”) supports the Advisors’ Report Alternative 1 (with modifications) which includes energy efficiency, distributed generation and demand-side resources in Tier 1. Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard (“SREA Comments on Advisors’ Report”) at 4, UD-19-01, Oct. 15, 2019, and Advisors’ Report at Appendix A 5. SREA proposes modifications to the Tier structure, but does not appear to be proposing that energy efficiency and demand-side management be excluded. SREA Comments on Advisors’ Report at 4, PosiGen Reply Comments at 1.

²³¹ Advisors’ Reply Comments at 8.

²³² Advisors’ Reply Comments at 8.

clean power into ENO's energy mix at the lowest reasonable cost is the best path forward.²³³ The Advisors also supported the apparent consensus of the parties that energy efficiency, distributed generation, and DSM resources, many of which would be expected to benefit low income customers, should be included in an RPS standard for New Orleans and classified as high priority resources.²³⁴

The Advisors argued that the technology-neutral approach would allow ENO to pursue the broadest range of technologies as in pursuit of the Council's goal to achieve deep decarbonization as quickly as reasonably possible without jeopardizing the provision of safe, affordable, and reliable electricity to New Orleans.²³⁵ The Advisors stated that they proposed regulations for the Council's consideration that offer the greatest likelihood of success in achieving a net zero carbon emissions portfolio by 2040 and a truly zero carbon emissions portfolio by 2050 while protecting ratepayers against unreasonable increases in rates and preserving reliability.²³⁶

The Advisors explained that as of September 2020, five states have adopted Clean Energy Standards and five have Clean Energy Goals,²³⁷ a notable increase in the adoption of Clean Energy Standards and Goals in a little more than over a year - in June 2019, only three states had Clean Energy Standards and two had Clean Energy Goals.²³⁸ Since June 2019, Connecticut, Massachusetts, New York, New Jersey and Wisconsin have joined California, Colorado, Nevada, New Mexico, and Washington State in the adoption of Clean Energy Standards or Goals.²³⁹ Each

²³³ Advisors' Reply Comments at 10.

²³⁴ Advisors' Reply Comments at 10.

²³⁵ Advisors' Proposed RCPS Reply Comments at 3.

²³⁶ Advisors' Proposed RCPS Reply Comments at 3.

²³⁷ Advisors' Proposed RCPS Reply Comments at 3, citing <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>.

²³⁸ Advisors RPS Report, Sept. 3, 2019 at 4, citing <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/20219/07/RPS-CES-June 2019.pdf>.

²³⁹ Advisors' Proposed RCPS Reply Comments at 3-4, citing <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>.

of those states has set a goal of reaching 100% clean energy in either 2040, 2045 or 2050, with the exception of Massachusetts, which has a goal of reaching 80% by 2050.²⁴⁰

The Advisors also informed the Council that proposed U.S. Senate Bill 1359 would impose a national Clean Energy Standard,²⁴¹ as would H.R. 7516 in the House²⁴² and the discussion draft of a bill published by the House Energy and Commerce Committee Democrats.²⁴³ Further, the Biden-Sanders Unity Task Force has committed to eliminating carbon pollution from power plants by 2035 through technology-neutral standards for clean energy and energy efficiency.²⁴⁴

ENO opposed the EFNO Coalition's proposed R-RPS Alternative on several grounds. ENO argues that the R-RPS abandons basic principles of resource planning in favor of an unsubstantiated "Resilience" concept.²⁴⁵ ENO argued it limits the available resources to only five and emphasizes localized requirements for siting a large portion of the renewable generation, both of which undermine reliability.²⁴⁶ ENO argued that intermittent renewables resources tied to small residential battery storage systems do not provide added resilience.²⁴⁷

The EFNO Coalition argues that the assumption by many parties in the docket that a 100% renewable energy grid is impossible is not reflected by many other cities and states and argues that both Austin Energy and Los Angeles Department of Water and Power ("LADWP") have goals of reaching 100% renewable electricity, and the LADWP is executing a study to examine feasibility

²⁴⁰ Advisors' Proposed RCPS Reply Comments at 4, citing <https://s3.amazonaws.com/ncsolarcen-prod/wp-content/uploads/2020/09/RPS-CES-Sept2020.pdf>.

²⁴¹ Advisors' Proposed RCPS Reply Comments at 6, citing <https://www.congress.gov/bill/116th-congress/senate-bill/1359/text>.

²⁴² Advisors' Proposed RCPS Reply Comments at 6, citing <https://www.congress.gov/bill/116th-congress/house-bill/7516/text>.

²⁴³ Advisors' Proposed RCPS Reply Comments at 6, citing <https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/0128%20CLEAN%20Future%20Discussion%20Draft.pdf>.

²⁴⁴ Advisors' Proposed RCPS Reply Comments at 6, citing <https://joebiden.com/wp-content/uploads/2020/08/UNITY-TASK-FORCE-RECOMMENDATIONS.pdf> at 2.

²⁴⁵ ENO Comments on Advisors' Report at 15-16.

²⁴⁶ ENO Comments on Advisors' Report at 15-16.

²⁴⁷ ENO Comments on Advisors' Report at 16.

and cost impacts of a 100% renewable energy grid for the City of Los Angeles that includes an advisory group composed of a diverse group of stakeholders.²⁴⁸

The AAE states that ENO asserts 90% nuclear generating capacity availability in 2022 even though one of the largest of Entergy's nuclear resources will be down for a significant refueling that year.²⁴⁹

The EFNO Coalition objects to the inclusion of Beneficial Electrification that would reduce emissions in Orleans Parish in the RCPS, arguing that the "RPS shouldn't be turned into a perverse program to pay the utility to do load-building."²⁵⁰ The EFNO Coalition opposes decreasing compliance load or applying multipliers for beneficial electrification.²⁵¹ The EFNO Coalition argues that the inclusion of Beneficial Electrification would enable the utility to continue to source electricity from a coal or gas plant annually in perpetuity.²⁵² The EFNO Coalition would prefer that the Council incentivize Beneficial Electrification through time-of-use rates or critical peak pricing.²⁵³

The Council shares the concerns of ENO and the Advisors that ENO may not be able to simply terminate FERC-jurisdictional agreements related to non-renewable resources and retire assets early without considerable costs to New Orleans ratepayers. For this reason, the Council is not inclined to adopt a standard with which ENO would be unable to comply without prematurely retiring resources and terminating contracts. The Council, however, does support the early retirement of fossil-fired generation and termination of such contracts where it could be demonstrated that net benefits would result to ratepayers.

²⁴⁸ EFNO RCPS Reply Comments at 2-3.

²⁴⁹ EFNO RCPS Reply Comments citing ENO RCPS Comments at 11, Table 2 and explaining (without citation) that Grand Gulf is scheduled for refueling outage 23 (RF23) in February 2022.

²⁵⁰ EFNO RCPS Reply Comments, at 5.

²⁵¹ EFNO RCPS Reply Comments at 6.

²⁵² EFNO RCPS Reply Comments at 5 and Appendix A.

²⁵³ EFNO RCPS Reply Comments at 5.

The Council takes notice that Entergy has already agreed to the retirement of the remaining coal plants that serve ENO customers no later than 2030.²⁵⁴ The Council also observes that as the Advisors noted the 2018 Triennial IRP, demonstrated that ENO will not need to add any new capacity to serve its peak load until approximately 2032.²⁵⁵

Having reviewed the comments²⁵⁶ of the Advisors and all parties, the Council finds that zero-carbon emissions resources, including utility-scale and distribution-scale renewable resources, energy efficiency, demand-side management, energy storage and zero-carbon emissions generation such as nuclear power, should be permitted to count toward achievement of the Council's standard.

350 New Orleans argued that "It could be a very risky proposition to officially mandate CCUS as a decarbonization method in lieu of developing a more economical, and strategically deployed renewable energy infrastructure."²⁵⁷ The Advisors noted that no party in the case has suggested that the Council officially mandate a CCUS. The Advisors took the position that an RPS should leave room for effective and economical CCUS technology that might develop in the future, not that the Council should require ENO to acquire CCUS instead of investing in renewables.²⁵⁸ ENO argued that the Advisors' research, along with the evidence submitted by ENO, establishes that electric-sector decarbonization at a reasonable cost requires (i) utilization of all zero-emitting and emission-reducing technologies, (ii) near-term goals that take technological

²⁵⁴ See, *Sierra Club and National Parks Conservation Association v. Entergy Arkansas, Inc., Entergy Power, LLC, Entergy Mississippi, Inc., Settlement Agreement and Consent Judgment*, filed Nov. 16, 2018 in the United States District Court, Eastern District of Arkansas. Under that settlement, Entergy Arkansas agreed to permanently cease the combustion of coal at the White Bluff plant no later than December 31, 2028 and to cease burning coal at the Independence plant no later than December 31, 2030.

²⁵⁵ Entergy New Orleans 2018 Integrated Resource Plan, filed July 19, 2019 in Docket No. UD-17-03 at 20.

²⁵⁶ The filed Comments include the Comments filed in response to Resolution R-21-109, which have also been addressed within the Resolution to which this Appendix is attached.

²⁵⁷ 350 New Orleans Comments on Advisors' Report at 5.

²⁵⁸ Advisors' Reply Comments at 28.

limitations into account, and (iii) long-term goals that are flexible and have been carefully analyzed considering a utility's specific circumstances.²⁵⁹ 350 New Orleans argued that "In terms of technological viability, CCUS remains largely unproven, while renewables have consistently broken records in terms of capacity and generation, as well as facilitated lower energy costs for ratepayers when provided with a positive regulatory environment."²⁶⁰ AAE commented that in 2018, the Institute for Energy Economics and Financial Analysis (IEEFA) examined four CCS projects and concluded that carbon capture technologies, after 15 years of research and development, remain expensive and technologically challenged and are rapidly being priced-out by renewable energy generation and natural gas.²⁶¹

The Edison Electric Institute ("EEI") submitted comments emphasizing the need for regulatory flexibility to achieve emissions reductions targets and supporting the inclusion of CCS, CCUS and beneficial electrification as eligible resources under the RCPS, arguing that removing them from the RCPS will slow Entergy's ability to meet the carbon-free compliance targets and require customers to pay for other, potentially more expensive, opportunities to meet compliance goals and avoid alternative compliance payments.²⁶² EEI also supported the inclusion of electric vehicle charging infrastructure as an eligible resource due to its significant community benefits.²⁶³

ATE submitted comments emphasizing that transportation electrification is one of the effective and verifiable ways of reducing greenhouse gases as well as criteria air pollutants, especially in metropolitan areas such as New Orleans.²⁶⁴ ATE argued that in recent years, the transportation sector has become the leading source of greenhouse gas pollution in most states,

²⁵⁹ ENO Comments on Advisors' Report at 8.

²⁶⁰ 350 NO Comments on Advisors' Report at 5.

²⁶¹ AAE Comments on Advisors Report (CCS as used here means carbon capture and storage technology)

²⁶² April 23, 2021 Letter at 3.

²⁶³ *Id* at 4.

²⁶⁴ April 26, 2021 Letter at 1.

and electrification of both light-duty and medium-heavy duty vehicles provide one of the most significant means of meeting the goals for which the RPS is designed over the next decade and beyond.²⁶⁵ ATE emphasizes that the electric vehicle industry is rapidly approaching an inflection point in terms of market transformation and the utility needs to have a robust role in this market transformation process, and especially be at the center of integrating the distributed loads reliability in the distribution grid.²⁶⁶ ATE argues that the Council should not be selective in its regulatory treatment of the different types of DERs, and afford preferential treatment, through the tiered RPS compliance system, to one type of zero-carbon distributed resource over another.²⁶⁷ ATE supported the Advisors Final Proposed Regulations and opposed the amendments set forth in R-21-109.²⁶⁸ Specifically, ATE requested that the definition of Beneficial Electrification be restored, that the same multiplier be used for any DER, and that the language struck from Section 4(a) and (d) be restored.²⁶⁹ The EFNO Coalition, consisting of 350 NO, AAE, Climate Reality New Orleans, DSCEJ, Audubon and Sierra Club, argued that the redline version of the proposed regulations set forth in R-21-109 finally put local renewable energy resources and energy efficiency as the most encouraged resources in the Council's RCPS.²⁷⁰ EFNO states that beneficial electrification has no place in a renewable portfolio standard as an offset for polluting generation, because this would enable the continued use of fossil fuels, which is counter to the guidance in Resolution R-20-104.²⁷¹ The EFNO Coalition urges the Council to require that all resources to be considered in the IRP, which is currently underway, are optimized according to economics.²⁷² The

²⁶⁵ April 26, 2021 Letter at 1.

²⁶⁶ April 26, 2021 Letter at 2.

²⁶⁷ April 26, 2021 Letter at 2.

²⁶⁸ April 26, 2021 Letter at 3.

²⁶⁹ April 26, 2021 Letter at 3-4.

²⁷⁰ EFNO Comments at 2.

²⁷¹ EFNO Comments at 2.

²⁷² EFNO Comments at 2.

EFNO Coalition also strongly recommends that the Council remove nuclear energy as a resource in the renewable portfolio standard, because the operation of the Grand Gulf Nuclear Station and other nuclear plants and extension of the operating life of these assets is both risky and unaffordable.²⁷³ EFNO also encourages the Council to engage in transmission planning that leads to better access to a competitive wholesale market to ensure that ratepayers will not be confronted with efforts by Entergy to invest in new polluting resources.²⁷⁴ EFNO also encourages the Council to broaden the RCPS to include all greenhouse gases, not just carbon emissions.²⁷⁵

The EFNO Coalition argues that beneficial electrification “has no place in a renewable portfolio standard as an offset for polluting generation because this would enable the continued use of fossil fuels, which is counter to the guidance in Resolution R-20-104, Indeed, it is for this very reason that no state has established a renewable portfolio standard to allow beneficial electrification.”²⁷⁶ With respect to clean energy programs, however, ENO reports that five states, Vermont, Washington, New York, Massachusetts, and California do include beneficial electrification in their clean energy programs in one form or another.²⁷⁷

SREA submitted comments in support of the Council’s proposed modifications in Resolution No. R-21-109.²⁷⁸ SREA states that with the exclusion of CCS and CCUS technologies the proposed RCPS ensures that New Orleans will adopt low-cost, reliable, and commercially

²⁷³ EFNO Comments at 3.

²⁷⁴ EFNO Comments at 4.

²⁷⁵ EFNO Comments at 5.

²⁷⁶ EFNO Comments at 2.

²⁷⁷ Entergy New Orleans, LLC’s Reply Comments to Council Resolution R-21-109, filed April 26, 2021 (“ENO Comments on R-21-109”) at 7, citing Vermont Public Service Department, RES Tier III Verification Report - 2019, at 6, Washington State Senate Bill 5116, at 4, 7, and 9, NYSEDA New Efficiency: New York, April 2018 at 3, 64, MA DER, Massachusetts Comprehensive Energy Plan at xiv, and CA EPA, Overview of ARB Emissions Trading Program.

²⁷⁸ Southern Renewable Energy Association Responses to Comments Regarding a New Orleans Renewable Portfolio Standard, filed April 19, 2021, Docket No. UD-19-01, (“SREA Comments on R-21-109”) at 2.

proven renewable energy resources.²⁷⁹ SREA also supports the exclusion of beneficial electrification as a Tier 1 resource at this time because it would have directly reduced the amount of renewable energy procurement required to reduce the electric power sector's carbon emissions, while not actually requiring reducing power generation emissions.²⁸⁰ SREA argues that by excluding beneficial electrification, the Council will ensure that electrification efforts will not hamper renewable energy development.²⁸¹

Air Products opposed the Council's proposed modifications in R-21-109 to the Advisors' Final Proposed RCPS Rules and urged the Council to adopt the Advisors' Final Proposed RCPS Rules without modification.²⁸² Air Products argued that the Council's proposed modifications depart from the objectives of rapid decarbonization and instead promote renewables over clean energy resources, eliminating the ability for integrated resource planning processes to determine the lowest cost resources to achieve compliance with the RCPS goals while providing reliable service for customers of ENO.²⁸³ Air Products stated that the proposed modifications would essentially create a renewables and nuclear portfolio standard, with some energy efficiency and demand-side management, which is simply not practical economically or for reliability purposes and is not technology-neutral.²⁸⁴

Air Products argued that elimination of CCS/CCUS as eligible resources for RCPS compliance undermines the function of the initial 2040 goal, which is to allow carbon emitting resources to operate until 2040 to prevent uneconomic, early retirements of generation resources, and ignores that CCUS deployment must result in 100% capture of carbon emissions, selectively

²⁷⁹ SREA Comments on R-21-109 at 2.

²⁸⁰ SREA Comments on R-21-109 at 2.

²⁸¹ SREA Comments on R-21-109 at 2.

²⁸² Air Products and Chemicals, Inc. Response to Council's Request for Comments on Proposed Modifications to RCPS Rules, filed April 26, 2021 ("Air Products Comments on R-21-109") at 1.

²⁸³ Air Products Comments on R-21-109 at 2.

²⁸⁴ Air Products Comments on R-21-109 at 2.

excluding a zero-emissions resource from being eligible for RCPS compliance, thereby promoting renewable energy.²⁸⁵ Air Products also argued that rather than promoting certain resources over others (and without any stated basis), all renewable and clean resources should be evaluated in the IRP proceedings to allow the lowest cost resource to be selected that can provide reliable service while complying with the RCPS Rules, subject to the customer cost cap provisions.²⁸⁶ Air Products also opposed the elimination of Beneficial Electrification as a resource under the RCPS, arguing that the elimination of Beneficial Electrification as a resource, when ENO's load is expected to increase from the Sewerage & Water Board work, and likely from the Council's promotion of electric vehicles in the City, will result in it being harder and more expensive for ENO to comply with the RCPS, to the detriment of ENO ratepayers because the Beneficial Electrification will increase ENO's RCPS compliance requirements while ENO loses the use of beneficial electrification as a cost-effective means to comply with the RCPS.²⁸⁷ Air Products also argued that not allowing beneficial electrification to qualify towards RCPS compliance would not allow the residents and businesses of the City to benefit, with respect to the cost of RCPS compliance, from the grants and federal funding, as well as their own dollars, that are being paid for the Sewerage & Water Board improvements.²⁸⁸

ENO argued that the Council's proposed revisions to the Advisors Final Proposed RCPS Rules represent a step in the wrong direction.²⁸⁹ ENO argued that the record in the proceeding, and the consensus of climate scientists supports the adoption of the originally proposed rules, but has also offered proposed edits to the Council's proposed revisions that would avoid penalizing

²⁸⁵ Air Products Comments on R-21-109 at 3.

²⁸⁶ Air Products Comments on R-21-109 at 4.

²⁸⁷ Air Products Comments on R-21-109 at 6, 7.

²⁸⁸ Air Products Comments on R-21-109 at 6.

²⁸⁹ ENO Comments on R-21-109 at 1.

beneficial electrification in the event that the Council does not return to the originally proposed rules.²⁹⁰ ENO argued that beneficial electrification has the potential to account for 16-67% of the carbon reduction necessary to mitigate climate change and can directly improve air quality in Orleans Parish.²⁹¹ ENO argued that the proposed revisions would (1) conflict with the policy direction of the Biden-Harris administration; (2) ignore evidence in the record and the universal recommendations of climate scientists and industry experts by limiting the technologies available for use in reducing emissions; (3) needlessly hinder ENO's ability to achieve aggressive and necessary emission reductions in a cost-effective manner; (4) reduce potential opportunities that allow ENO and the Council to partner with other commercial sectors to achieve their carbon reduction goals in a cost-effective manner; (5) eliminate incentives for cleaning the air in Orleans Parish; and (6) create powerful disincentives from pursuing beneficial electrification projects like the electrification of the New Orleans Sewerage and Water Board;²⁹² and

ENO argued that the record of the case as well as numerous published studies reflect a clear consensus among the scientific community that, to effectively combat climate change, no zero-emission, or emission-reducing, resources should be excluded from climate policies, and no credible evidence has been submitted to support removing any weapons from New Orleans' arsenal in the fight against climate change.²⁹³ ENO also argued that the critical role of beneficial electrification in achieving ambitious climate goals is universally acknowledged by scientists, industry experts, and all climate advocates whose positions are informed by facts and science, and that the City's Climate Action Plan also expressly recognizes the importance of beneficial electrification to achieving the City's carbon reduction goals and highlights significant

²⁹⁰ ENO Comments on R-21-109 at 3, 19-20.

²⁹¹ ENO Comments on R-21-109 at 1.

²⁹² ENO Comments on R-21-109 at 2.

²⁹³ ENO Comments on R-21-109 at 5.

opportunities for reduction in the City’s emissions through electrification.²⁹⁴ ENO argues that beneficial electrification projects can target in-City emissions sources, and that if the Council desires a climate policy that will also lead to cleaner air in New Orleans, beneficial electrification is a resource that should be incentivized, not penalized.²⁹⁵

ENO argued that the Council’s proposed revisions disincentivize beneficial electrification by removing it as a Tier 1 resource, removing the term Beneficial Electrification and its associated definition from the Rules, imposing additional costs related to beneficial electrification by allowing such projects to impose an incremental obligation upon ENO to incur further costs to acquire more CECs.²⁹⁶ ENO explained that for example, the cost of electrifying the Sewerage and Water Board under the Council’s proposed revisions increases the cost of that project by approximately \$359,000 to \$384,000 compared to the Advisors Final Proposed RCPS Rules.²⁹⁷ ENO argued that one reason to pursue a technology-neutral, all-tools-in-the-toolbox approach is to leave open the possibility that a technology option which is not preferred today will someday become viable if it achieves cost reductions or fills an emerging need in managing the grid, and that CCUS is the quintessential example of such a technology.²⁹⁸ ENO quoted the International Energy Agency as saying “Reaching net zero will be virtually impossible without CCUS.”²⁹⁹ ENO also argued that CCUS has several characteristics that many other clean energy options do not: it can be retrofitted onto existing facilities, which may involve lower per megawatt-hour capital costs than other options, and it can be applied to dispatchable electricity sources.³⁰⁰ ENO also argued

²⁹⁴ ENO Comments on R-21-109 at 5-6.

²⁹⁵ ENO Comments on R-21-109 at 9.

²⁹⁶ ENO Comments on R-21-109 at 12-13.

²⁹⁷ ENO Comments on R-21-109 at 16.

²⁹⁸ ENO Comments on R-21-109 at 10.

²⁹⁹ ENO Comments on R-21-109 at 10, citing IEA (2020) Energy Technology Perspectives 2020: Special Report on Carbon Capture Utilisation and Storage, at 13.

³⁰⁰ ENO Comments on R-21-109 at 10.

that excluding CCUS is inconsistent with federal policy because the Biden-Harris administration is targeting a goal “to make CCUS a widely available, cost-effective, and rapidly scalable solution to reduce carbon emissions to meet mid-century climate goals. Toward this end, the administration has stated that it will double down on federal investments and enhance tax incentives for CCUS. At the same time, to bring new carbon capture technologies to market, Biden is proposing to continue to fund carbon capture research, development and demonstration.”³⁰¹ ENO argued that no party has offered any evidence, analysis, or scientifically-sound study that supports adopting a technology-restricted climate policy.³⁰²

ENO argued that as it procures CECs in a least-cost fashion, excluding CCUS and penalizing beneficial electrification mean that ENO will have to select less cost-efficient sources of CECs in place of beneficial electrification and CCUS (if those options were part of the preferred compliance mix), and that depending on whether these increased costs lead to ENO reaching the cost cap, this will leave ENO facing higher costs or acquiring less clean energy, or both.³⁰³

After thoughtful consideration of all of the parties’ positions and arguments, the Council agrees that technological limitations should be taken into account and that the viability of CCS and CCUS technologies have not been sufficiently demonstrated at this time. Accordingly, the Council is disinclined to include the deployment of CCS and CCUS technologies on generating resources as an eligible method for compliance with the RCPS. This finding does not preclude a party from presenting such evidence in a future RCPS periodic review proceeding as is necessary to demonstrate to the Council’s satisfaction that the environmental safety of and the cost-

³⁰¹ ENO Comments on R-21-109 at 11, quoting, <https://joebiden.com/climate-plan/>.

³⁰² ENO Comments on R-21-109 at 11.

³⁰³ ENO Comments on R-21-109 at 17.

effectiveness of carbon capture and sequestration (“CCS”) or CCUS measures have advanced sufficiently that such measures would satisfy the intent of the RCPS.

While the Council notes that Beneficial Electrification could bring substantial benefits to New Orleans by reducing local carbon emissions, the Council finds that the ultimate purpose of the RCPS will be to eliminate carbon emissions from the Utility’s generation portfolio. The Council therefore will not include Beneficial Electrification in the RCPS as a Tier 1 resource as proposed by the Advisors.

The Council finds that permitting zero-carbon resources to be utilized will provide sufficient flexibility for the utility to use the lowest cost combination of available resources to reduce carbon emissions in its portfolio, which should permit rapid decarbonization without an unacceptable economic impact on utility customers.

c. Should there be a requirement that some portion of the RPS must be met through specific types of renewables (or RECs), such as solar or distributed generation?

and

d. Should the Council consider adopting a method of encouraging local renewable resources, such as by providing ENO with greater credit toward meeting the RPS requirement for local resources than for remote resources?

ENO opposed any type of “carve-out” that mandates a specific amount in MW or percentage of a single resource type or technology because it would hamper flexibility and increase costs.³⁰⁴

AAE supported creating set-asides and carveouts as a great way to ensure that an RPS meets all the legislative objectives set forth in the RPS in an intentional and explicit way, and notes

³⁰⁴ ENO Comments at 20.

that carveouts can be set up in several different ways and can include geographic, vintage, and technology limitations.³⁰⁵ AAE emphasized that creating requirements and limits through carve-outs helps ensure the development of new renewables and the associated benefits such as economic development and pollution reduction.³⁰⁶

AAE recommended the rules propose a 10% carve out for low- and moderate-income households.³⁰⁷ AAE also proposed that, in order to assure that the RPS ensures that new renewable resources are being encouraged and built, the Council may choose to make all REC-eligible resources, even existing resources, located within the city or state as being eligible while resources outside of the state may only be eligible if the project did not start generating electricity prior to the confirmation of an RPS.³⁰⁸ AAE noted that carve-outs can drive up costs, but do not always do so³⁰⁹ and warns against multipliers as usually being arbitrarily derived and diluting the RPS goal and/or cause ENO to over or under procure a renewable of a certain types, possibly at an inflated cost.³¹⁰

PosiGen supported a rooftop solar carve-out for low-income residents based upon Washington, D.C.'s program.³¹¹

Audubon argued the Council should consider a tier structure that builds toward increasing reliance of local, distributed, and resilient renewable energy resources.³¹²

Vote Solar + 350 NO recommended that “renewable resilience projects,” including renewable microgrids, solar + storage on individual residences and businesses, be given top

³⁰⁵ AAE Comments at 12.

³⁰⁶ AAE Comments at 12.

³⁰⁷ AAE Comments at 13.

³⁰⁸ AAE Comments at 13.

³⁰⁹ AAE Comments at 15.

³¹⁰ AAE Comments at 16.

³¹¹ PosiGen Comments at 6; PosiGen Letter at 1; PosiGen Reply Comments at 4-5.

³¹² Audubon Comments at 8.

preference, explaining that those resources should be in Tier 1 because they would be used and dispatchable by ENO to enhance its operation of the distribution system.³¹³

C2ES noted that New Orleans may wish to use its RPS mandate to help develop in-state renewable resources and recommends that an economic study be conducted to determine realistic targets for development of wind and solar for consumption in New Orleans using a geographic information system filter to inform the suitability of any specific RPS carve outs (such as 10% solar PV).³¹⁴ C2ES also recommended that to “lock in higher levels of clean energy earlier, the city should consider expanding the RPS to a CES.”³¹⁵

SREA recognized there are benefits to creating “carve-outs” for RPS goals; however, utility-scale solar energy and wind energy resources are significantly lower-cost compared to localized or distributed generation requirements, and importing renewable energy resources from outside the city will likely keep overall ratepayer costs low, and overall RPS programmatic costs in check.³¹⁶

SREA supported some small level of localized solar power generation as a carve-out, but notes that larger-scale renewable energy projects outside of the city are significantly lower cost, and that localized DG renewable energy resources alone do not inherently guarantee a more resilient local grid system against things like weather and flooding.³¹⁷

SREA stated that creating additional requirements beyond a competitive bidding process will increase costs, however, such costs may be justifiable based on externalized non-energy benefits, such as local economic growth or resiliency.³¹⁸

³¹³ Vote Solar + 350 NO Comments at 8.

³¹⁴ C2ES Comments at 4.

³¹⁵ C2ES Comments at 4.

³¹⁶ SREA Comments at 11-12.

³¹⁷ SREA Reply Comments at 4.

³¹⁸ SREA Comments at 12.

SREA stated that while several commenters rightfully state that micro-grid and energy storage devices would improve resiliency during dangerous storm conditions, those technologies are typically outside the scope of an RPS, given that batteries can be charged with non-renewable resources, and micro-grids can operate on natural gas or other fossil fuels.³¹⁹ SREA recommended that micro-grid and energy storage policies and incentives be developed outside this RPS.³²⁰

After 2025, EFNO proposed that at least 10% of ENO's load be met through resilient energy resources connected to ENO's distribution grid and at least 30% with a combination of resilient resources and renewable resources connected to ENO's distribution grid.³²¹ EFNO would also require that after 2025 at least 10% of ENO's retail sales be met through resilient resources and renewable resources connected to ENO's distribution grid that are operated for the benefit of low-income customers.³²²

GSREIA also supported carve outs for specific renewables, including locally sited renewables, arguing that the RPS policy is an opportunity not only to transition New Orleans to cleaner renewable resources, but also to incentivize job opportunity, workforce training, and innovation throughout the region.³²³ They supported separating resources out by the categories of distribution level, state boundaries, and all remaining deliverable resources.³²⁴

The Advisors generally preferred to prioritize resources for compliance purposes through the use of multipliers rather than the use of carve outs because a carve out that requires that a specific amount of a certain type of resource be added to the portfolio without regard to the cost of that resource could increase rates.³²⁵ The Advisors argued that successful use of a multiplier

³¹⁹ SREA Reply Comments at 4.

³²⁰ SREA Reply Comments at 4.

³²¹ EFNO Reply Comments at 8-9.

³²² EFNO Reply Comments at 9.

³²³ GSREIA Reply Comments at 3.

³²⁴ GSREIA Reply Comments at 3.

³²⁵ Advisors Reply Comments at 10.

would allow high value resources to be added when they are acceptably close to lower value resources in cost, but would not cause them to be added “at any cost.”³²⁶ They also argued that use of a multiplier rather than a carve out would, as some parties note, potentially reduce the overall amount of resources acquired but cause the resulting portfolio to have a higher percentage of the high value resources.³²⁷

AAE suggested that the Council consider at least three geographic delineations, the first is within the city limits (on the distribution level), the second is within state boundaries, and the third is “all remaining deliverable resource.”³²⁸

SREA discouraged the creation of multiple Tiers based “in Louisiana” or “in MISO” because excluding or disincentivizing non-Louisiana and non-MISO resources may increase costs to New Orleans, therefore, SREA recommended that all renewable energy resources not fulfilling the local (in New Orleans) carve-out be allowed to bid into a competitive solicitation.³²⁹ Then, they argued, the City Council would be allowed to evaluate all potential projects based on cost and potentially other metrics developed in the future.³³⁰ SREA argued that geographic and technological diversity of renewable energy resources helps balance power production and larger solar facilities outside of the city are able to optimize power production and include “tracking” systems to reduce cost and boost power production.³³¹ SREA explained that during large storm events, solar power resources tend to reduce power output due to clouds, while wind energy facilities tend to have higher levels of power production due to higher wind speeds, while solar

³²⁶ Advisors Reply Comments at 10.

³²⁷ Advisors Reply Comments at 10.

³²⁸ AAE Comments at 12-13.

³²⁹ SREA Reply Comments at 5, SREA Comments on Advisors’ Report at 3.

³³⁰ SREA Comments on Advisors’ Report at 3.

³³¹ SREA Reply Comments at 5.

power resources generally generate higher levels of power during the summertime and afternoons, whereas wind power resources generally are at peak performance during wintertime and night.³³²

PosiGen supported adopting Washington, D.C.'s tiered compliance system, with Tier 1 being locally sited generation, certified solar thermal, energy efficiency and demand response, low-income programs; Tier 2 being renewable resources located in Louisiana, and Tier 3 being renewable resources outside Louisiana.³³³ PosiGen proposed that Tier 1 be 50% of the target, that Tier 2 be 25%.³³⁴ PosiGen proposed that Tier 1 be given a multiplier of 2, Tier 2 be given a multiplier of 1.5 and that Tier 3 should receive a multiplier of 1.25.³³⁵

PosiGen also asserted that DERs could address ENO's reliability problems.³³⁶

ENO opposed the use of multipliers for RECs because it could create unintended consequences and lead to distorted or increased REC prices for customers.³³⁷ ENO recommended that REC purchases should be treated as a fuel cost and recovered through the fuel adjustment clause.³³⁸

In the June 22, 2020 EFNO Coalition Comments, the EFNO Coalition also argued that the use of multipliers sets up "cliffs" along the way when extra credit goes away, particularly in 2040 when both the use of RECs without the associated kWhs also begins phasing out in the original Alternative 2 draft.³³⁹ Several other parties voiced similar concerns in the technical conferences, and in order to smooth out the "cliff," the draft RCPS being submitted to the Council now begins earlier the phase out of reliance upon RECs without the associated kWhs and is accomplished

³³² SREA Reply Comments at 5.

³³³ PosiGen Comments at 4-6.

³³⁴ PosiGen Comments at 5.

³³⁵ PosiGen Comments at 8.

³³⁶ PosiGen Reply Comments on Advisors' Report at 17.

³³⁷ ENO Reply Comments at 15.

³³⁸ ENO Reply Comments at 15.

³³⁹ June 22, 2020 EFNO Comments at 7.

through smaller increments.³⁴⁰ The Advisors argued that it is appropriate to allow the use of multipliers while the goal is to reach “net zero” by 2040, but once net zero has been reached in 2040 and the RCPS progresses toward the goal of achieving true zero in 2050, the focus of the RCPS turns more heavily to eliminating carbon-emitting resources from ENO’s portfolio rather than merely offsetting them, and thus, reliance upon multipliers becomes counter-productive at that point in time and should be eliminated.³⁴¹

The Advisors noted, however, that to the extent that the Council wishes to prioritize certain resources under the RPS without creating a mandatory carve-out, providing a multiplier would give such resources an economic advantage in RPS compliance, meaning that ENO could satisfy the RPS requirement with fewer kWh of a more desirable resource at a lower cost, which should result in ENO choosing the preferred Tier 1 resource without increased costs to customers.³⁴² The Advisors argued that while some parties might perceive this as an economic distortion, what it allows the Council to do is to give a high-priority resource and economic advantage that would ensure that if it gets “close enough” to being competitive it can be included without negative bill impacts to customers.³⁴³ The Advisors noted that if extensively utilized, such multipliers could reduce the overall number of kWhs from renewable resources, but it should result in the more desirable resources being chosen, so the resources put into tiers with multipliers should be carefully selected to ensure that the overall value of prioritizing those resources offsets the slightly lower number of carbon emitting kWhs offset.³⁴⁴ The Advisors explained that this type of adjustment

³⁴⁰ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 78.

³⁴¹ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 78.

³⁴² Advisors Report at 21.

³⁴³ Advisors Report at 21.

³⁴⁴ Advisors Report at 21-22.

would allow the Council to take into consideration the value of local jobs created, or local benefits from the reduction of emissions within Orleans Parish.³⁴⁵

Upon review and consideration of the comments filed by the Advisors and the parties, the Council is disinclined to adopt specific carve-outs for any specific resource, but rather to promote the adoption of high-priority resources through the adoption of tiers of resources to which multipliers are applied. The Council is persuaded that the use of multipliers rather than carve-outs to encourage high priority resources strikes an appropriate balance between incentivizing the adoption of high-priority resources and controlling costs to customers.

The Council agrees with the Advisors' proposal that Tiers with multipliers be used until 2040 when the use of RECs without the purchase of the associated energy begins to be phased out in order to (1) accelerate the development of high-value resources that provide significant benefits to New Orleans ratepayers and citizens, and (2) reduce the cost of compliance during the period of time that ENO is not projected to require new capacity to be added to the system. The Council also agrees that Tiers receiving multipliers should be limited to resources located in ENO's service territory (which consists of the entire Parish of Orleans) due to the potential reliability benefits associated with having resources located in the service territory as well as direct benefits to customers of being able to reduce their utility bills through energy efficiency, conservation and demand response measures.

The Council finds that this will permit both economic renewable and certain zero-emissions resources to participate fully in the RPS and to be given full credit for the value they provide, while allowing resources that bring additional benefits to Orleans Parish beyond merely

³⁴⁵ Advisors Report at 22.

the energy produced, such as support for the distribution grid reliability, to receive greater credit, and thus receive priority.

The Advisors propose that Tier 1 be reserved for measures that demonstrably reduce carbon emissions in Orleans Parish.³⁴⁶

However, some parties object to the inclusion of Beneficial Electrification in the RCPS as a carbon-emissions-reducing resource,³⁴⁷ and as is discussed above, the Council finds that because such resources would allow fossil resources to remain in the utility's fuel mix for longer than they otherwise might, they should not be included as a Tier 1 resource.

The Advisors propose that Tier 2 be reserved for measures located in Orleans Parish, including Renewable Energy Resources, Zero Carbon Emissions Resources, DERs and Incremental DSM.³⁴⁸

Air Products opposed the proposed changes to the Tier System in R-21-109, namely, the reduction of the Multiplier for Tier 1 from 1.5 to 1.25 and the reduction of the Tier 2 multiplier from 1.25 to 1.0, because these changes will magnify the impact of the proposed technology-specific exclusion of the Council with respect to the cost and difficulty of compliance.³⁴⁹

The Council finds that in light of the elimination of Tier 1 (as defined in the Advisors Final Proposed RCPS Regulations), and the potential reliability benefits cited by several of the parties of resources that are sited close to load,³⁵⁰ and the ability of customer-sited resources to reduce customer bills, prioritizing zero-carbon resources located with the utility's service territory as a Tier 2 resource is consistent with the Council's RPS intent of ensuring the City has a safe and

³⁴⁶ Advisors' Proposal at 5-6, Advisors' RCPS Reply Comments at 1.

³⁴⁷ EFNO Comments to Advisors' Proposed RCPS, Appendix A, EFNO Proposed Revisions.

³⁴⁸ Advisors' Proposal, Appendix A at 6, Advisors' RCPS Reply Comments at 1.

³⁴⁹ Air Products Comments on R-21-109 at 8.

³⁵⁰ PosiGen Reply Comments on Advisors' Report at 17.

reliable power supply at a reasonable cost, that the Advisors' proposed Tier 2 should become Tier 1, and that all DSM programs installed after January 1, 2021 should be included in this Tier. The Council agrees with the Advisors' initial recommendation, however, that an appropriate multiplier for these resources is 1.25, and therefore will retain that multiplier for the new Tier 1.

Tier 2 shall become the resources previously in Tier 3 except for non-Incremental DSM installed after January 2021, which has been moved to Tier 1. The Council agrees that the 1.0 multiplier remains appropriate for these resources and will apply that multiplier to the new Tier 2. Tier 3 shall now be reserved for electric vehicle charging infrastructure and such Qualified Measures as may be approved by the Council on a case-by-case basis in order to permit the Council to consider, on a case-by-case basis, the merits of projects that do not fall into either Tier 1 or Tier 2 for inclusion in the RCPS. The utility shall provide a certified engineering study or before and after measurements demonstrating emissions reductions and include a proposed annual CEC in MWh for each such proposed Qualified Measure in its application for the project's approval and Tier 3 will receive a 1.0 multiplier on the Council-approved CEC.

3. How should the RPS standard be enforced, should the Council consider a penalty or Alternative Compliance Payment Structure?

ENO proposed a voluntary standard with no enforcement provision or penalty mechanism.³⁵¹ ENO opposed an alternative compliance payment as unnecessary where, as in New Orleans, the regulator has authority over the utility's resource planning process.³⁵² Air Products argued that to the extent the Council adopts an RPS with a required target, the Council should review compliance on an annual basis, and if ENO is found to be out of compliance, the Council

³⁵¹ ENO Comments at 2.

³⁵² ENO Comments at 14.

should initiate a docket with an opportunity for intervention and discovery to evaluate the non-compliance and determine whether it was the result of reasonable and prudent decision-making, and if it was reasonable and prudent, a penalty should not be imposed.³⁵³

Air Products also argued that the Council cannot determine the prudence of any compliance plan or approve changes to a plan without a litigated proceeding with the opportunity for discovery, testimony and a hearing.³⁵⁴

Air Products requested that ENO be required to make two separate filings -- a report filed by April 1 of each year on its achievement of its RCPS goal for the prior calendar year and a plan filed by June 1 each year for how ENO will achieve RPS compliance for the next calendar year. Both the report and the plan should be filed in a docketed proceeding, and there should be opportunity for intervention and discovery on each filing, and for the report, there should also be a process for addressing any potential disputed issues through a hearing procedure.³⁵⁵ The Advisors agreed as to the annual report on the achievement of the goal, but as is discussed above, suggest that the forward-looking RCPS compliance plan could be filed every three years and be informed by the analyses conducted in the IRP process.³⁵⁶

Air Products made several suggestions regarding RPS compliance payments and costs for purposes of observing the cost cap³⁵⁷ that the Advisors agreed were worthy of further discussion.³⁵⁸ The Advisors stated they would consider Air Products' proposal to limit use of any alternative compliance payment fund to compliance with the RPS standard.³⁵⁹

³⁵³ Air Products Comments at 3.

³⁵⁴ Air Products Reply Comments at 10.

³⁵⁵ Air Products Comments at 5-6.

³⁵⁶ Advisors Reply Comments at 32.

³⁵⁷ Air Products comments at 6 and 8.

³⁵⁸ Advisors Reply Comments at 32.

³⁵⁹ Advisors Reply Comments at 32, citing Air Products at 10.

PosiGen supported an annual compliance report requirement such as that filed under Washington, D.C.'s RPS rules.³⁶⁰

PosiGen also supported the use of an alternative compliance payment paid into a public purpose fund for investment into locally sited renewables.³⁶¹ PosiGen supported the creation of a Public Purpose Charge based on kWh-retail sales and allowing organizations that work with low-income households to broker the funds for qualifying participants.³⁶² PosiGen strongly urged that the alternative compliance payment not be recoverable in rates, otherwise it will not be an actual financial non-compliance penalty for the utility.³⁶³

Audubon recommended that the Council install performance-based regulation measures such as increases or reductions in return on equity, regulatory flexibility and others to enforce the RPS.³⁶⁴ Audubon stated it agrees that an alternative compliance payment mechanism may not be ideal for a city-based RPS and urges the Council to also evaluate and consider the adoption of penalties to ENO's return on equity.³⁶⁵

AAE initially stated that an alternative compliance payment can help keep the costs of compliance to a manageable level by effectively becoming the ceiling for the REC price, and by extension, the ceiling for compliance costs -- if REC prices are too high, utilities can simply pay the alternative compliance payment.³⁶⁶ AAE recommended separate ACPs be set for each tier of resources.³⁶⁷

³⁶⁰ PosiGen Comments at 8.

³⁶¹ PosiGen Comments at 9.

³⁶² PosiGen Comments at 10.

³⁶³ PosiGen Reply Comments at 2.

³⁶⁴ Audubon Comments at 9.

³⁶⁵ Audubon Reply Comments at 8.

³⁶⁶ AAE Comments at 16-17.

³⁶⁷ AAE Comments at 17-18.

Vote Solar and 350 New Orleans recommended that any Renewable Energy Credit-based accounting system for an R-RPS include an alternative compliance payment as a backstop, that it differentiate the level of alternative compliance payment by class of resource to account for the difference in cost of procuring different resources, that it be set high enough to incent the appropriate amount of investment in technology, that it represent a foregone investment in renewable energy and therefore un-fulfilled economic, resilience, and health benefits for ratepayers, and that it not be mutually exclusive with other compliance and enforcement mechanisms.³⁶⁸

AAE and 350 New Orleans argued that the creation of a public benefits charge should be put in place to benefit local businesses and residents to reduce energy burdens and that the goal of a Public Benefit Fund should not just be to increase market share for local companies, but to increase prosperity for the City of New Orleans and the availability of true opportunities for residents to become not merely employees of local companies, but entrepreneurs in a home-grown economy that provides consumer options and competition.³⁶⁹

C2ES supported the use of an alternative compliance payment to enforce the RPS as a common option in use in many states with an RPS, noting that in some states it is recoverable in rates and that some states use it to support future renewable energy deployments and energy efficiency programs.³⁷⁰

SREA argued that penalties levied on ENO regarding RPS non-compliance may increase costs to local ratepayers, unless fines are levied against shareholders, and suggested that one option

³⁶⁸ Vote Solar + 350 NO Comments at 12-13.

³⁶⁹ AAE + 350 NO Reply Comments on Advisors' Report at 8-9.

³⁷⁰ C2ES Comments at 4.

may be a stock option where the city of New Orleans becomes a shareholder and fines are paid to the city in shares of company stock.³⁷¹

The Advisors recommended an annual reporting requirement where ENO reports on its attainment of the target in the prior year and provides its plan for meeting the compliance requirement in the coming year.³⁷² The Advisors noted that they are recommending a cap on expenditures (see more detail below), and recommended that when ENO's compliance report indicates that ENO has not met the target, ENO be required to demonstrate why its failure to meet the target was prudent, just and reasonable.³⁷³ The Advisors stated that if ENO can demonstrate to the Council's satisfaction that it could not meet the target without exceeding the cap or that the resources needed to meet the target could not be procured in a prudent and reasonable manner, ENO would be excused from meeting the target in that compliance year.³⁷⁴ However, the Advisors recommended, subsequent targets would not be changed, and ENO would have the obligation to "catch up" when it is able to do so without exceeding the cap.³⁷⁵

The Advisors supported a mandatory, enforceable RPS standard.³⁷⁶ The Advisors generally supported a model requiring annual compliance reporting and an opportunity for ENO to demonstrate why any failure to meet the target without exceeding the expenditure cap set by the Council was the result of prudent decision making.³⁷⁷ The Advisors recognized, however, that it would be unfair to penalize the utility for failing to meet an impossible goal, given proposed constraints; thus, the Advisors recommended that the Council include mechanisms for the Council to provide due process and render a determination that a failure to comply with the RPS standard

³⁷¹ SREA Comments at 12.

³⁷² Advisors' Report at 23.

³⁷³ Advisors' Report at 23.

³⁷⁴ Advisors' Report at 23.

³⁷⁵ Advisors' Report at 23.

³⁷⁶ Advisors' Reply Comments at 6.

³⁷⁷ Advisors Report at 23.

was imprudent prior to penalizing the utility or disallowing recovery of costs.³⁷⁸ In addition, the Advisors stated, to the extent that the Council adopts a standard that must be met through some measure of third party compliance (such as mandating a carve-out for rooftop solar installed on customer rooftops or that resilient microgrids be built on customer property), any enforcement mechanism would need to take into account that the utility cannot actually compel customers to participate in such programs.³⁷⁹ Similarly, the Advisors stated, any enforcement mechanism would need to recognize any rate impact cap set by the Council, the Council could not require ENO to spend beyond the cap to comply with the RPS and then prohibit ENO from recovering such costs from ratepayers.³⁸⁰

The Advisors stated that to the extent that ENO can demonstrate that making the alternative compliance payment is the least-cost method of complying with the RPS target, ENO should be permitted to recover the payment from ratepayers.³⁸¹ The Advisors stated that cost recovery of the alternative compliance payment should only be denied to ENO where it has been demonstrated that ENO's failure to meet the RPS goal was imprudent - such as where compliance was possible at a lower cost than the alternative compliance payment.³⁸² The Advisors explained the Council could then direct that any payments be made to a fund to be used for purposes to further the goal of the RPS target ultimately chosen - whether that be to reduce local carbon emissions to the greatest extent possible or to provide funding to local renewable and energy efficiency projects.³⁸³

³⁷⁸ Advisors' Reply Comments at 6.

³⁷⁹ Advisors' Reply Comments at 6.

³⁸⁰ As applied in Louisiana, to both the Council and the LPSC, the *Hope-Bluefield* Doctrine means that base rates should allow the utility to recover prudently incurred O&M expenses, taxes, and a fair return on investment that is used and useful in providing utility services. *Gordon v. Council of the City of New Orleans*, 9 So. 3d 63, 73 (La. 2009), (citing *Cent. Louisiana Elec. Co. v. Louisiana Pub. Serv. Comm'n*, 508 So. 2d 1361, 1364-1371 (La. 1987)). See also, *Entergy Gulf States, Inc. v. Louisiana Pub. Serv. Comm'n*, 730 So. 2d 890, 894-895 (La. 1999) (also citing *Central Louisiana Elec. Co. v. Louisiana Public Service Comm'n*, 508 So. 2d at 1365).

³⁸¹ Advisors' Report at 23.

³⁸² Advisors Report at 24.

³⁸³ Advisors Report at 24.

The Advisors explained that this structure should also have the result that if the alternative compliance payment is cheaper than any other method of compliance, ENO would choose to make the payment which could then be used to further the purposes of the RPS, rather than pursuing other options.³⁸⁴ The Advisors explained it would also have the effect of ensuring that whenever the RPS target is not met, that full amount of expenditures up to the cap are made in that year.³⁸⁵ The Advisors noted that where a standard allowing a broad array of resources to count towards meeting the targets is employed, the alternative compliance payment is less likely to be invoked than a standard that relies on a limited selection of resources.³⁸⁶

The Advisors stated that alternatively, should the Council determine that it would prefer a penalty mechanism to an alternative compliance payment, the Council could establish a mechanism whereby if ENO fails to meet a target for a given year, it must appear before the Council and demonstrate why its failure was the product of prudent, just and reasonable decision-making.³⁸⁷ The Advisors stated that to the extent that the Council finds ENO's failure to meet the target to not be prudent, just and reasonable, the Council would then be able to impose a reasonable penalty.³⁸⁸

The Advisors argued that ACPs to the CleanNOLA Fund should not be viewed as a penalty for non-compliance.³⁸⁹ The Advisors noted that under the proposed RCPS, the Council retains its full authority to penalize the utility for noncompliance with the Council's regulations regardless of the application of the ACP.³⁹⁰ The Advisors explained that the purpose of an ACP is to ensure that where the utility has good reason for its failure to comply, such as the unavailability of

³⁸⁴ Advisors Report at 24.

³⁸⁵ Advisors Report at 24.

³⁸⁶ Advisors Report at 24.

³⁸⁷ Advisors Report at 24.

³⁸⁸ Advisors Report at 24.

³⁸⁹ Advisors' Proposed RCPS Regulations Filing, Appendix D at 81.

³⁹⁰ Advisors' Proposed RCPS Regulations Filing, Appendix D at 81.

resources that can be procured through reasonable and prudent efforts, some progress can still be made toward the goal of reducing carbon emissions in Orleans Parish.³⁹¹ If, after providing all parties appropriate due process, the Council were to find that the utility failed to make reasonable and prudent efforts to comply with the RCPS, the Council's regular penalty authority could still be exercised against the utility.³⁹²

ENO recommended more simple compliance mechanisms, like those for Energy Smart or those applied in R-18-221.³⁹³

ENO argued it is inconsistent with Louisiana law for ENO to affirmatively prove the reasonableness and/or prudence of the decisions it makes and the costs it incurs to comply with the Council's mandate, absent any demonstration of imprudence by the Council or anyone else.³⁹⁴ ENO argued that requiring ENO's compliance with the Council's mandate while prohibiting ENO from recovering the associated costs of complying with the mandate would be arbitrary, unreasonable, and improper under the prudent investment rule.³⁹⁵

ENO argued the penalty mechanisms also cannot set forth standards that are inconsistent with prior Council decisions, such as the approval of Union Power Block 1 ("UPB1") and other fossil resources (i.e., because Council approved UPB1, it cannot require 100% zero emissions by 2050 with zero RECs).³⁹⁶ The Advisors noted that 2050 is well beyond anticipated deactivation of UPB1 that ENO has publicly discussed. Given the anticipated deactivation dates of the various ENO facilities, the Advisors argued there is at least a reasonable possibility that ENO will be able to comply with the RPS without having to retire any of its existing fleet early.³⁹⁷

³⁹¹ Advisors' Proposed RCPS Regulations Filing, Appendix D at 81.

³⁹² Advisors' Proposed RCPS Regulations Filing, Appendix D at 81.

³⁹³ ENO Comments on Advisors' Report at 3.

³⁹⁴ ENO Comments on Advisors' Report at 30.

³⁹⁵ ENO Comments on Advisors' Report at 30.

³⁹⁶ ENO Comments on Advisors' Report at 31.

³⁹⁷ Advisors' Reply Comments at 36.

The Council agrees with the Advisors and the parties that argue that the standard should be mandatory. The Council agrees, however, that it would be unjust and unreasonable to penalize ENO for failing to meet a standard that could not be met. The Council finds therefore that in the event that the Utility is unable to comply with the standard using reasonable measures, the Utility should make an alternative compliance payment based on the MWh shortfall, subject to the limit imposed in the Customer Protection Cost Cap, which shall be recoverable from ratepayers unless it is demonstrated to the Council and the Council finds that the Utility's failure to comply with the RCPS was unreasonable.

The Council notes that in the event that the Council finds that the Utility has violated an order of the Council, including the Council's RCPS, the Council has the authority under Section 3-130(7) of the Home Rule Charter of the City of New Orleans to impose such reasonable penalties as the Council may provide, and no further penalty authority should be required for the Council to enforce this RCPS.

The May 11, 2020 EFNO Letter also requested a transparent process for measuring and reporting benchmarks and progress.³⁹⁸ Specifically, the EFNO Coalition requested the creation of a Data Platform, such as that operated by Austin Energy to allow the public to view the utility's progress.³⁹⁹ The EFNO Coalition reiterated this request in its June 22, 2020 EFNO Comments, arguing that without such a transparent Data Dashboard, the Council and the public are forced to wait until an end of the year report, and potentially until after Entergy complies with data requests in order to unravel details.⁴⁰⁰

³⁹⁸ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72.

³⁹⁹ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72-73, citing May 11, 2020 EFNO Letter at 3.

⁴⁰⁰ June 22, 2020 EFNO Comments at 5-6.

The Advisors reviewed Austin Energy's Data Dashboard, which provides data reporting in a more consumer-friendly and readily accessible format and is updated as data becomes publicly available on a calendar year or fiscal year basis.⁴⁰¹ The Advisors stated that it is reasonable to require that the utility maintain an easy to find webpage with a user-friendly interface where it makes available the public versions of all reports and documents related to RCPS and the utility's carbon emissions that it submits to the Council or any other relevant government agency or public body, and have included such a recommendation in the proposed RCPS.⁴⁰²

The EFNO Coalition argued that the Council should require transparent disclosure of emissions data and RPS performance metrics.⁴⁰³ The Advisors agreed and proposed a requirement that the utility maintain a user friendly web page where the public can easily gain access to all of ENO's public filings regarding its RCPS compliance and its carbon emissions, whether filed at the Council or with another governmental agency or entity.⁴⁰⁴

The Council agrees that it would facilitate oversight of the RCPS implementation as well as the public's understanding of the utility's progress to require that the utility maintain an easy to find webpage with a user-friendly interface where it makes available the public versions of all reports and documents related to RCPS and the utility's carbon emissions that it submits to the Council or any other relevant government agency or public body, and that this would not be unduly burdensome to the utility.

⁴⁰¹ Advisors' Proposed RCPS Regulations Filing, Appendix D at 73.

⁴⁰² Advisors' Proposed RCPS Regulations Filing, Appendix D at 73.

⁴⁰³ August 27, 2020 EFNO Letter at 3.

⁴⁰⁴ Advisors' Proposed RCPS Regulations Filing, Appendix D at 87.

4. What protections should be put in place to protect ratepayers from unreasonable increases in rates due to the RPS?

a. *What would be an unacceptable level of rate impact resulting from compliance with an RPS?*

Air Products argued that to the extent an RPS target is adopted by the Council, it should be subject to a 1% rate cap, such that if acquiring or contracting for the resource being added to satisfy the RPS target would cause rates to serve ENO customers to increase by 1% or more compared to either not adding the resource or adding another resource that would otherwise be available, the RPS-compliant resource would not be added.⁴⁰⁵

AAE recommended that the Council focus on bill impact rather than on rate impact, and that the Council limit bill impacts related to the RPS by implementing a rate cap, increasing funding to energy efficiency, having a carve-out for low-to-moderate income (“LMI”) resources, weaning ENO off of market purchases and above market-price contracts with its affiliates in favor of local sources or buying competitively procured renewables.⁴⁰⁶

AAE stated that RPS compliance costs have typically been between 1 and 3% with only two states seeing bill impacts above 5% and some being below 1%.⁴⁰⁷

Sierra Club stated it was open to mechanisms for cost containment, provided they are appropriately crafted.⁴⁰⁸

Audubon argued that the costs of global warming and climate change adaptation dwarf any reasonably expected costs associated with a carefully crafted and well-managed decarbonization strategy.⁴⁰⁹

⁴⁰⁵ Air Products Comments at 4.

⁴⁰⁶ AAE Comments at 22-23.

⁴⁰⁷ AAE Comments at 23-24.

⁴⁰⁸ Sierra Club Intervention at 7.

⁴⁰⁹ Audubon Comments at 10.

PosiGen stated it would support a maximum bill charge of \$2 per month for residential customers not to exceed 5% of the total bill, \$20 per month for small commercial customers, not to exceed 2% of the total bill and \$200 per month for large commercial and industrial customers not to exceed 1% of the total bill.⁴¹⁰

PosiGen also suggested the Council consider waiving the recovery from low-income households and capping administrative costs in the 5-8% range.⁴¹¹

PosiGen argued that in the consideration of costs, the total cost of each resource, including spillover costs, costs like climate impacts, air pollution, water use and others should be considered.⁴¹²

Vote Solar and 350 New Orleans recommended a rate cap of \$1 per month for residential customers and \$10/month for all non-residential customers.⁴¹³ They also recommended that not more than 7.5% of all individual program costs should be related to administration.⁴¹⁴

The EFNO coalition proposed that low income customers should be exempt from paying any costs associated with RPS compliance.⁴¹⁵ ENO pointed out that, depending upon the definition of “low income” employed, this could result in as much as 30% of residential customers being exempt from paying for the RPS compliance.⁴¹⁶ GSREIA agreed with AAE’s proposal that all low-income customers be exempted from the costs of compliance with an RPS mandate and, like SREA urged the Council to act quickly to take advantage of federal tax credits.⁴¹⁷ GSREIA also

⁴¹⁰ PosiGen Comments at 10.

⁴¹¹ PosiGen Comments at 10.

⁴¹² PosiGen Letter at 1-2.

⁴¹³ Vote Solar + 350 NO Comments at 14.

⁴¹⁴ Vote Solar + 350 NO Comments at 15.

⁴¹⁵ AAE Comments at 20.

⁴¹⁶ ENO Reply Comments at 17.

⁴¹⁷ GSREIA Reply Comments at 5.

supported the recommendation for a cap on administrative costs for administering the RPS of 5-8%.⁴¹⁸

The Advisors recommended a cap on ENO incremental expenditures to comply with the RPS of 1% of total retail revenues.⁴¹⁹ Based on the Advisors' estimate of ENO's current total retail revenues of approximately \$609.7 million, the Advisors anticipated this would allow incremental expenditures by ENO of approximately \$6.1 million per year, which would increase as ENO's total retail revenues increase over time.⁴²⁰ While the specific impact on particular rate classes of an increase of 1% of ENO's total retail revenues would vary depending on the cost allocation mechanisms approved by the Council in the rate case, the Advisors estimated that the customer bill impact would vary between 1.05% for the class with the greatest impact and 0.86% for the rate class with the lowest impact, except for the Lighting rate class, which would only experience a 0.28% increase.⁴²¹ The cap would apply to incremental expenditures -- meaning the difference between what ENO would have otherwise spent to meet the requirements of its load and what it spent to meet the requirements of its load in a manner that complies with the RPS.⁴²²

The Advisors stated they would not envision that any of ENO's currently existing or already approved resources would count toward this limit, since they were in place prior to the establishment of the RPS and although they may be counted toward compliance, they are not true "incremental" costs because they will go forward even if the Council decides not to adopt an RPS at all.⁴²³ The Advisors explained this would also include the Energy Smart program budgets in pursuit of the Council's pre-existing 2% goal.⁴²⁴ To the extent that ENO determined in any given

⁴¹⁸ GSREIA Reply Comments at 5.

⁴¹⁹ Advisors' Report at 27.

⁴²⁰ Advisors' Report at 27.

⁴²¹ Advisors' Report at 27.

⁴²² Advisors' Report at 27.

⁴²³ Advisors' Report at 27.

⁴²⁴ Advisors' Report at 27.

year that the most cost-effective way to comply with the RPS would be to invest in the Energy Smart program beyond the Council-approved budget to make the 2% DSM goal, then ENO's Energy Smart costs above the approved budget would count toward the RPS expenditure cap, but the Council-approved Energy Smart budget would not.⁴²⁵

The Advisors supported a firm cap on the ratepayer impact, whether it be in the form of a net bill impact limit or a net expenditure limit.⁴²⁶ The Advisors stated that if there is no limit on the amount of costs ENO must incur to comply with the RPS standard adopted by the Council, there is a possibility that compliance would cause rates to increase to an unacceptable level.⁴²⁷ The Advisors recommended that such a limit be constructed to apply to net ratepayer impact, meaning that the cap applies only to costs that ENO incurs solely to comply with the RPS.⁴²⁸ This would mean, for example, that if ENO has a need to add capacity or energy to serve its customers, and it chooses to add a more expensive resource rather than a less expensive resource because the more expensive resource would allow it to comply with the RPS standard, then the portion of the costs subject to the cap is the difference between the more expensive resource chosen and the less expensive resource that could have been used to meet the capacity need if the RPS standard were not in place.⁴²⁹

The Council agrees with the assessment of the Advisors and Air Products that the rate impact of the standard should be capped at 1% of retail sales and that ENO should be released from the obligation to comply with the standard, for that specific year, in the event that it is unable to do so without exceeding the cap. In any year where ENO cannot meet the target without

⁴²⁵ Advisors' Report at 27.

⁴²⁶ Advisors' Reply Comments at 8.

⁴²⁷ Advisors' Reply Comments at 8.

⁴²⁸ Advisors' Reply Comments at 8.

⁴²⁹ Advisors' Reply Comments at 8.

exceeding the cap, it should achieve as much progress toward meeting the target as it can while remaining within the cap through a combination of what reasonable measures are available and the ACP.

- b. If a limit on rate impact is established, how should it be structured -- as a flat cap, as an Alternative Compliance Payment structure, or through some other structure?*

ENO argued that arbitrary cost caps may not provide sufficient flexibility for meeting Council mandates and that ENO should not be penalized for failing to adhere to cost caps absent a finding of imprudence.⁴³⁰

SREA argued that in order to keep RPS costs low, the RPS should be implemented quickly to take advantage of federal tax credits, competitive procurements need to be prioritized, and ENO needs to stop relying on capacity-only resource planning and instead focus on energy-based planning.⁴³¹

Audubon recommended a comprehensive local integrated resource planning process guided by the 100% RPS goal in order to control costs, as well as a wide range of other tools such as monitoring and reporting, regulatory and public dashboards communicating progress toward goals, customer education, and stimulation of competitive market development opportunities.⁴³²

C2ES noted that cost containment mechanisms like cost caps can be explicitly stated in RPS legislation and can state an amount (typically a percentage) by which customer bills may not increase due to the RPS, thereby limiting a utility's expenditures.⁴³³

⁴³⁰ ENO Reply Comments at 17.

⁴³¹ SREA Comments at 12-15.

⁴³² Audubon Comments at 10.

⁴³³ C2ES Comments at 5.

GSREIA supported either a penalty or an alternative compliance payment with funds from such measures going into a “green fund” to be used to finance renewable energy projects.⁴³⁴

AAE stated that there are four common types of cost containment, a renewable energy fund cap which sets a pre-determined limit to the amount of money available to fund renewable energy projects, a renewable energy contract price cap that limits the price of contracts, and alternative compliance payment, which is the most common form and allows a utility to make a payment rather than retiring RECs which effectively sets a REC price ceiling, and a rate/bill impact or revenue requirement cap, the second most common form which is often complex and ambiguously defined.⁴³⁵ AAE also argued that income qualified customers should be exempt from an RPS rider.⁴³⁶

The EFNO coalition also proposed an elaborate “cost cap” mechanism in their proposed R-RPS that did not actually cap the utility’s expenditures.⁴³⁷ Rather than a mechanism where a cost cap is established and expenditures beyond the cap are presumed imprudent, and not eligible for recovery from customers, it set forth a limit on what can be collected from customers in the year the costs are incurred and would allow ENO to amortize the remaining costs it incurs over a twenty-year period.⁴³⁸ The Advisors argued this would allow R-RPS compliance at any cost, which, given ENO’s analysis that compliance with a 55% RPS by 2033 could raise its rates by as much as 30%, is a significant concern.⁴³⁹ The Advisors state that the overall package of the R-RPS proposed by EFNO would ensure that ENO must choose from a limited number of relatively high-cost resources for compliance, in a manner that would require ENO to replace some of its

⁴³⁴ GSREIA Reply Comments at 4.

⁴³⁵ AAE Comments at 25-26.

⁴³⁶ AAE Comments at 27.

⁴³⁷ EFNO Reply Comments Appendix A at Sec. 14.

⁴³⁸ EFNO Reply Comments Appendix A at Sec. 14.

⁴³⁹ Advisors’ Report at 26.

existing zero-carbon resources with these high-cost resources (ENO cannot reach 55% renewables by 2033 without deactivating at least some portion of its nuclear fleet, which currently provides 56.9% of its energy) and puts no limit on the level of costs ENO would be required to incur in order to comply.⁴⁴⁰ The Advisors stated they are deeply concerned that this would result in significant rate increases with no mechanism in place by which the Council can oversee the level of expenditures.⁴⁴¹

The Advisors also recognized ENO's concerns that an annual cost cap would limit its flexibility in acquiring resources, and that it may be prudent for ENO to make a large expenditure in a single year that meets the RPS requirements for several years.⁴⁴² To that end, the Advisors recommended that the Council's rule retain the flexibility for ENO to propose and the Council to approve a compliance plan that meets the target for a block of years that observes the cost cap and the targets for the total block of years without being required to comply with the particular target and cost cap for any specific year within that block of years.⁴⁴³ Thus, if an attractive opportunity arises for an investment in a larger project, ENO should be able to propose it and the Council to consider it and render a decision as to whether it is a prudent, just and reasonable method of compliance with the Council's RPS targets.⁴⁴⁴

The Advisors expressed concern about the impacts of an RPS on low income customers, but rather than creating an elaborate program to provide incentives for low income customers to put rooftop solar on their homes in the hope that the bills of the participating low income families would be reduced and those families could have the benefits of renewable power, the Advisors

⁴⁴⁰ Advisors' Report at 26.

⁴⁴¹ Advisors' Report at 26.

⁴⁴² Advisors' Report at 28.

⁴⁴³ Advisors' Report at 28.

⁴⁴⁴ Advisors' Report at 28.

generally prefer a model that prevents electricity rates from skyrocketing due to an RPS and that increases the percentage of renewable power in ENO's portfolio that all customers -- including all low income customers (not just those low income customers participating in a rooftop solar program) -- receive.⁴⁴⁵

The EFNO Coalition also argued that the CleanNOLA Fund is poorly defined and that "alternative compliance payments" into such a fund should not be viewed as an alternative to compliance, but rather a failure to comply with the RCPS.⁴⁴⁶ The EFNO Coalition argued that the fund should not be an incentive to underperform, and that it would be best utilized to provide opportunities for the LMI community to have greater access to resources that lower carbon emissions in Orleans Parish while additionally providing opportunities for workforce development in clean energy sectors.⁴⁴⁷

ENO argued the establishment of a fund like a CleanNOLA fund would constitute the imposition of an impermissible tax intended to raise revenue for the subsidization of unspecified projects, as opposed to fees designed to implement a specific utility regulatory program.⁴⁴⁸

Air Products requested that the Council establish in this proceeding parameters for how the CleanNOLA Fund can be used, and specifically that it determine that the Fund be used only for purposes of achieving RCPS Compliance.⁴⁴⁹ Air Products argued that this is appropriate because the CleanNOLA Fund will be funded with prudently incurred ACP payments recoverable from the utility's ratepayers, the cost for CleanNOLA Fund projects would be paid by ratepayers of the utility through their electric rates, even though the projects are not tied to Utility customers' electric

⁴⁴⁵ Advisors' Reply Comments at 9-10.

⁴⁴⁶ June 22, 2020 EFNO Comments at 9.

⁴⁴⁷ June 22, 2020 EFNO Comments at 9.

⁴⁴⁸ ENO Comments at 31-32.

⁴⁴⁹ Air Products RCPS Comments at 5-6.

service and ENO's cost of service for setting their rates.⁴⁵⁰ Further, Air Products argued that the Utility's ratepayers would then still have the obligation to pay for prudently incurred costs of the Utility for complying with the RCPS.⁴⁵¹

The EFNO Coalition opposed Air Products' recommended language, and argued that instead, any CleanNOLA funds should be used specifically for programs that reduce energy burdens for low-income or vulnerable families which also hasten the goals of the RCPS.⁴⁵² The EFNO Coalition did agree that the CleanNOLA fund should be used exclusively for the purposes of achieving the Council's clean energy mandate.⁴⁵³

ENO offered clarifying language, but generally supported the intent of Air Products' proposal,⁴⁵⁴ while the Advisors stated that Air Products is correct that as a general matter, ratepayer money should be used to benefit ratepayers and not to fund private projects.⁴⁵⁵ The Advisors opposed, however, limiting the use of the CleanNOLA Fund to ENO-owned projects.⁴⁵⁶ The Advisors noted that there is a possibility that once the CleanNOLA Fund is established, it may receive funding from additional sources, such as grants, the use of which should not be unnecessarily restricted.⁴⁵⁷

The Advisors argued that a reasonable compromise that would ensure that ratepayer funding is used to benefit ratepayers would be for the Council to specify that a condition of project funding made from any portion of the CleanNOLA Fund funding received from ratepayers is that such funding be limited to projects that would meet the definition of one of the resources eligible

⁴⁵⁰ Air Products RCPS Comments at 5-6.

⁴⁵¹ Air Products RCPS Comments at 6.

⁴⁵² EFNO RCPS Reply Comments at 6-7.

⁴⁵³ EFNO RCPS Reply Comments at 7.

⁴⁵⁴ ENO RCPS Reply Comments at 3.

⁴⁵⁵ Advisors' RCPS Reply Comments at 20.

⁴⁵⁶ Advisors' RCPS Reply Comments at 20.

⁴⁵⁷ Advisors' RCPS Reply Comments at 21.

for inclusion in the RCPS and that all environmental attributes (RECs or clean energy credits (“CECs”)) generated by the project must be transferred to ENO and used by ENO for RCPS Compliance.⁴⁵⁸

The Council finds that the most effective method of ensuring that customers are not unreasonably harmed by the imposition of the standard is to impose a flat cap of 1% of plan year total utility retail sales revenues limit on the combined expenditures of the Utility and ACP funds paid by the Utility. The Council agrees that there may be particular projects that might cause the Utility to exceed this cap in any given year that are nevertheless consistent with the goals of the standard and worthy of consideration, and finds that it is reasonable to allow the Utility to propose such projects to the Council for its review and consideration and, should the Council find the project to be consistent with the intent of the standard, beneficial to the Utility’s customers, and in compliance with any other applicable Council standards, rules or regulations, for the Council to have the ability to approve such projects in advance, notwithstanding that the flat cap of 1% might be exceeded.

The Council finds that the establishment of CleanNOLA fund as a mechanism to accept and use the Alternative Compliance Payments for purposes of compliance with the standard is reasonable.

C. Issues Raised by the Parties

In Resolution R-19-109, the Council also invited the parties to comment upon any other topic they deemed to be relevant to the Council’s consideration of an RPS.

⁴⁵⁸ Advisors’ RCPS Reply Comments at 21.

Many parties filed comments regarding the danger of, and New Orleans' particular vulnerability to, climate change, further emphasizing the need identified by the Council for the City to respond to the climate change crisis.⁴⁵⁹

a) Integration of the Standard into the Integrated Resource Planning Process

The Advisors stated that there seemed to be general consensus that it would be appropriate to incorporate the RPS into the IRP process to some extent. While parties disagreed on precisely how the IRP and RPS should be integrated and whether or not the IRP process should be modified, it does appear that there is a degree of general agreement that some level of integration of the RPS into the IRP is desired.⁴⁶⁰ The Advisors agreed that greater consideration should be given to the interaction between the IRP process and RPS regulations.⁴⁶¹

ENO proposed that the Council use the IRP to evaluate the path to long-term decarbonization goals.⁴⁶² ENO argued that the Council should use IRP to evaluate long-term goals and the means for achieving them.⁴⁶³ ENO also recommended more simple compliance mechanisms, more like Energy Smart or R-18-221.⁴⁶⁴ While the Advisors disagreed that the long-term RPS goals should be set through the IRP, the Advisors stated that the analyses performed in the IRP could inform ENO's RPS compliance plan, and therefore, rather than filing an annual plan for complying with the IRP, the Advisors suggested that, as is currently done with the Energy Smart program, once the IRP analyses have been completed, ENO could develop and file with the

⁴⁵⁹ See, e.g., AAE Comments at 2-3, 350 NO Comments on Advisors' Report at 1-3, 350 NO Reply Comments at 1-4; Audubon Comments at 2-3.

⁴⁶⁰ Advisors' Reply Comments at 2-3. See generally, ENO Comments on Advisors' Report at p. 3 and Intervenor Group Comments on Advisors' Report at 6.

⁴⁶¹ Advisors' Reply Comments at 3.

⁴⁶² ENO Comments on Advisors' Report at 11.

⁴⁶³ ENO Comments on Advisors' Report at 3.

⁴⁶⁴ ENO Comments on Advisors' Report at 3 and 20.

Council an RPS implementation plan covering at least the next three-year period that is informed by the IRP analyses.

PosiGen stated that ENO should be barred from adding any new fossil-fired generation units after 2022 and not model such units in the IRP process, that only resources permitted in the RPS should be allowed to be modeled in the IRP process.⁴⁶⁵

The EFNO coalition, some of whose members participated in the recent rulemaking to change the Council IRP Rules would now change those IRP Rules through this RPS proceeding without notice or opportunity for other parties interested in the IRP Rules to object or comment, which would lack transparency and would not afford sufficient process to parties with an interest in the IRP Rules.⁴⁶⁶ Similarly, SREA, who did not participate in the recent IRP Rules rulemaking docket, advocated for changes to the IRP Rules.⁴⁶⁷ The Advisors argued it is not necessary or appropriate to modify the Council's IRP Rules through this RPS rulemaking docket⁴⁶⁸ because the IRP rules currently require ENO to develop at least one Planning Strategy that reflects known regulatory policy goals of the Council, which would include whatever RPS is adopted by the Council.⁴⁶⁹ Thus, the Advisors concluded, modification of the IRP Rules to accommodate the output of the RPS rulemaking is not necessary.⁴⁷⁰

In addressing these issues, the Advisors recommended that the Council consider the possibility of using a structure for the RPS that is similar to the Energy Smart program, where, once the IRP modeling (which is required to produce at least some resource portfolios that accomplish the Council's regulatory goals as IRP planning strategies) is complete, ENO would

⁴⁶⁵ PosiGen Comments at 10.

⁴⁶⁶ EFNO Reply Comments, Appendix A at Sec. 3.

⁴⁶⁷ SREA Comments at 14-15.

⁴⁶⁸ Advisors' Report at 28.

⁴⁶⁹ Electric Utility Integrated Resource Plan Rules of the Council of the City of New Orleans, Section 7.D.3.

⁴⁷⁰ Advisors' Report at 29.

file an Implementation Plan for the next three program years of Energy Smart which details the program design, budgets, and kWh savings goals.⁴⁷¹ ENO would then file annual compliance reports indicating its progress toward achieving the Council's goals, the utilization of the authorized budgets and general performance of the plan.⁴⁷² While the Advisors explained that particular structure would likely need to be adjusted to accommodate the specific RPS standard ultimately adopted by the Council, the Advisors suggested that the basic model of requiring ENO to periodically file an RPS implementation plan for a multi-year, near-term period informed by the outcome of the IRP modeling, and then to file annual compliance reports detailing progress toward the Council-set goals, is a workable structure that could be adapted and employed for RPS purposes.⁴⁷³ However, unlike the Energy Smart program, the Advisors recommended that the long-term goals of the RPS program be set forth by the Council in adopting its RPS standard, rather than developed through IRP modeling, which is generally designed to consider several different planning strategies such as those that would prioritize least cost options over emissions-free options.⁴⁷⁴

The EFNO Coalition argues that the IRP and the RPS are inextricably linked, and while the RPS should be a mandated policy of the Council that informs the IRP, the IRP should guide the implementation of that mandate.⁴⁷⁵

The Council agrees that it would be appropriate to model the compliance reporting and planning mechanisms for the standard on the successful Energy Smart program compliance reporting and planning mechanisms (adjusted as necessary for differing circumstances). The

⁴⁷¹ Advisors Reply Comments at 7.

⁴⁷² Advisors Reply Comments at 7.

⁴⁷³ Advisors Reply Comments at 7.

⁴⁷⁴ Advisors Reply Comments at 7.

⁴⁷⁵ EFNO RCPS Reply Comments at 6.

Council finds that the compliance reporting and planning requirements of the Advisors' Final Proposed RCPS Regulations, therefore, are reasonable and should be adopted.

5. Periodic Review of the RCPS

The Advisors noted that a significant number of the states that have adopted an RPS have also modified that RPS over the years to change the targets or to adjust the resources that are permitted for compliance.⁴⁷⁶ While the Advisors recommended that the basic structure of the RPS be generally stable enough to allow for prudent long-term planning, the Advisors also recommended that the Council consider adding a provision to any RPS that requires periodic reassessment of the targets informed by the progress made toward existing targets, rate and customer impact, and any market or industry developments that might indicate it would be prudent to make adjustments to the RPS.⁴⁷⁷

In their Proposed RCPS Regulations, the Advisors proposed a provision that would prompt the Council to undertake a review of the RCPS, including a wide array of relevant factors such as progress toward the goals, developments of climate science, impacts on customers, technological and market developments and progress on actual emissions reductions of the Utility's portfolio so that the Council could make a determination whether the RCPS remains appropriate for the City or whether it requires modification.⁴⁷⁸

The EFNO Coalition in its August 27, 2020 Letter took the position that revisiting the RPS only once per decade would be "an irresponsible level of oversight."⁴⁷⁹ However, the EFNO Coalition then appeared to reverse their position on periodic revisiting of the RCPS, by

⁴⁷⁶ Advisors' Reply Comments at 6.

⁴⁷⁷ Advisors' Reply Comments at 6-7.

⁴⁷⁸ Advisors RCPS Proposed Regulations at Section 1(b).

⁴⁷⁹ August 27, 2020 EFNO Letter at 3.

substantially modifying the Advisors' proposed periodic review provision such that every three years it would review only "progress and plans for meeting the requirements of this RCPS" -- which is already to be reviewed annually. It would not prompt any evaluation of whether or not the RCPS remains appropriate for New Orleans and is functioning as the Council intended it to. The EFNO Coalition's periodic review proposal would never revisit the RCPS itself.

The Advisors explained that based on feedback at the technical conferences, the Advisors proposed a five-year periodic review with a grandfathering provision such that projects undertaken under a particular set of RCPS regulations would continue to receive the same credit, and that any regulatory changes would only apply to new projects going forward.⁴⁸⁰

The Council finds that in light of the perennial rapid advancements in technology, markets, and climate science, as well as the need to ensure that the RCPS continues to be in the best interest of Utility customers, a broad review of the continued appropriateness of the RCPS approximately every five years would be appropriate, and that grandfathering existing projects would also be appropriate in order to provide the certainty necessary for people and businesses to make long-term investments in energy infrastructure.

6. Modification to Other Sets of Council Rules

The Intervenor Group Comments acknowledged that the R-RPS is not consistent with the Council's current procedures and rules, writing, "Implementing the R-RPS means that some procedures must be changed, and rules that might limit the R-RPS might need amendment."⁴⁸¹

The EFNO coalition also proposed modification of the Council's Net Energy Metering Rules through this RPS rulemaking docket by adding new rights for NEM customers in their

⁴⁸⁰ Advisors' Proposed RCPS Regulations Filing, Appendix D at 87-88.

⁴⁸¹ Intervenor Group Comments at 4.

proposed R-RPS, including a provision that would grant Net Energy Metering customers the right to continue receiving service under the net metering tariff and NEM rules in effect at the time they apply for net energy metering service for a period of at least twenty years.⁴⁸² The Advisors argue that making such a change to the Council's existing NEM rules without notice or opportunity for affected parties to comment lacks transparency and fails to offer said parties sufficient due process.⁴⁸³ In addition, the Advisors argued, the proposal that customer-generator facilities not be required to pay additional or separate charges for electric service that would not apply if they were not a customer-generator is made without reference to any information regarding whether such customers require additional services and impose additional costs on the system that would be imposed on non-participating customers if not paid by the customer-generator.⁴⁸⁴

In the May 11, 2020 EFNO Letter, the EFNO Coalition stated that “[t]here are many existing rules and regulations in New Orleans that also include lists of definitions, including the rules associated with Integrated Resource Planning, Community Solar, etc. The Council’s rules associated with a new energy standard should include standardized definitions that agree with those existing regulations.”⁴⁸⁵ However, after the Advisors created a table comparing definitions in the draft RCPS Alternative 2 to definitions in the IRP Rules, Community Solar Rules and NEM Rules so that parties could see the definitions side-by-side and address any inconsistencies,⁴⁸⁶ the EFNO parties reversed their position that the “new energy standard should include standardized definitions that agree with those existing regulations” and instead claimed that “Advisors took the position that pre-existing definitions could not be reconsidered, expanded, or adjusted to account

⁴⁸² EFNO Reply Comments, Appendix A at Sec. 8.

⁴⁸³ Advisors’ Report at 29.

⁴⁸⁴ Advisors’ Report at 29.

⁴⁸⁵ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 73, citing May 11, 2020 EFNO Letter at 3.

⁴⁸⁶ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 73-74.

for RPS goals achievement and structure,”⁴⁸⁷ arguing that “[t]his ‘least common denominator’ approach to certain key definitions will unreasonably constrain the RPS process and frustrate Council goals from the very start.”⁴⁸⁸ The Advisors argued that this is a gross mischaracterization of the Advisors’ position,⁴⁸⁹ which was that it is inappropriate, at a late stage of an RCPS rulemaking position, to change definitions contained in the IRP Rules, the NEM Rules, and the Community Solar Rules, when there had been no notice to the public and interested parties that those sets of rules might be amended through the RCPS proceeding and no opportunity for parties impacted by changes to those rules to intervene in this proceeding and make their opinions known.⁴⁹⁰ The Advisors argued that to go so far beyond the issues set forth in the Resolution establishing this rulemaking docket with no public notice and opportunity to comment would be a violation of due process and of the principle of transparency of government.⁴⁹¹

The Council agrees that reopening and changing definitions in other sets of regulations through the adoption of RCPS regulations would not provide adequate notice and due process to parties potentially impacted by those changes, and any such changes should be made in the relevant dockets, or through entirely new proceedings where appropriate notice can be provided rather than through this proceeding.

7. Process and Public Engagement

The EFNO coalition also advocated for the creation of an R-RPS community advisory group with expansive powers that would be funded up to \$50,000 to cover the group’s administrative expenses.⁴⁹² The budget for the group would be paid by ratepayers as in incremental

⁴⁸⁷ June 22, 2020 EFNO Comments at 4.

⁴⁸⁸ June 22, 2020 EFNO Comments at 4.

⁴⁸⁹ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 74.

⁴⁹⁰ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 74.

⁴⁹¹ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 74.

⁴⁹² EFNO Reply Comments, Appendix A at Sec. 15.

cost of RPS compliance.⁴⁹³ The Council would be required to consult with this group and receive a recommendation from them prior to utilizing revenues from the EFNO's proposed Public Purpose Fund to establish a Green Bank.⁴⁹⁴ If the EFNO's proposed R-RPS community advisory group recommended it, the Council would be required to consider whether it is necessary to waive the recovery of incremental R-RPS costs from low-income households.⁴⁹⁵ The proposed R-RPS community advisory group would also be required to present recommendations to the Council for changes to the recently adopted Community Solar Rules.⁴⁹⁶ In addition, the EFNO's proposed R-RPS community advisory group would work with the Office of Supplier Diversity to develop a certification for vendors of renewable energy resources and related services that would qualify as Tier 1 and Tier 2 resources under the EFNO's proposed rule.⁴⁹⁷ The R-RPS community advisory group would also consult with ENO on the development of additional financial incentives, grants, and rebates, assignable to a third-party provider (such as a rooftop solar company) to support and develop the utilization of resilient energy resources for certain types of customers and the R-RPS community advisory group would identify geographic zones for which ENO would be required to provide for the equitable distribution of total publicly-funded financial supports or incentives for resilient resources.⁴⁹⁸

The Advisors argued that the EFNO coalition's proposal is a blatant attempt to re-open several other Council rulemakings (NEM, IRP and community solar, in particular) and revise those rules outside of the normal rulemaking process and without notice to potentially affected parties, and it would delegate an extensive amount of the Council's regulatory authority to an unelected

⁴⁹³ EFNO Reply Comments, Appendix A at Sec. 15.

⁴⁹⁴ EFNO Reply Comments, Appendix A at Sec. 15.

⁴⁹⁵ EFNO Reply Comments, Appendix A at Sec. 15.

⁴⁹⁶ EFNO Reply Comments, Appendix A at Sec. 12.

⁴⁹⁷ EFNO Reply Comments, Appendix A at Sec. 12.

⁴⁹⁸ EFNO Reply Comments, Appendix A at Sec. 12.

community advisory group with no accountability to the public and give that community advisory group an unprecedented level of control over the Council's Agenda.⁴⁹⁹ The Advisors stated that a delegation of this level of authority to an advisory committee of the Council would be contrary to City Code Section 3-127 regarding the creation of Advisory Committees, which provides:

The Council may appoint advisory committees which shall exist for not more than one year from the date of appointment, but which may be reappointed from year to year. The members of advisory committees shall not be paid; their function shall be limited to counsel and advice, and their expenses, if any, shall be paid from appropriations to the Council. Advisory committees shall have no employees, but the Council may cause its employees to furnish such service as may be needed by said committees.

The Advisors argue that Section 3-127 simply does not allow for the structure proposed by EFNO for its R-RPS Advisory Committee.⁵⁰⁰ The committee could not be constituted for a three-year period, as proposed,⁵⁰¹ its role would have to be limited to providing counsel and advice to the Council meaning that it could not mandate which issues the Council must consider, and its proposed \$50,000 budget could not be paid by ratepayers as an incremental RPS compliance cost.⁵⁰² The Advisors recommended that the proposed R-RPS Advisory Group should be rejected.⁵⁰³

The May 11, 2020 EFNO Letter further requested an entirely different procedure than that set forth in Resolution No. R-20-104. The May 11, 2020 EFNO Letter sought the addition of discovery rights, the creation of a data room (they did not specify who should create such data room) for stakeholders and participants to share documents related to the development of the portfolio goals, a plan for dispute resolution among the parties (including memorialization of

⁴⁹⁹ Advisors' Report at 30.

⁵⁰⁰ Advisors' Report at 31.

⁵⁰¹ EFNO Reply Comments, Appendix A at Sec. 15.

⁵⁰² EFNO Reply Comments, Appendix A at Sec. 15.

⁵⁰³ Advisors' Report at 31.

dissenting opinions), a comprehensive plan for public engagement, and adoption of a statement of objectives for the rulemaking proceeding agreed to and adopted by the parties.⁵⁰⁴

In response to the May 11, 2020 EFNO Letter, the Advisors noted that there was no requirement for any party to agree to the Advisors' proposed regulations, thus there is no need for dispute resolution among the parties.⁵⁰⁵ Further, the Advisors argued, there was no need for dissenting opinions expressed in the technical conference to be memorialized, because under the procedural schedule, two opportunities exist for the parties to make their own opinions regarding the ultimate draft regulations proposed by the Advisors known directly to the Council in writing by filing comments and reply comments regarding the draft.⁵⁰⁶ Further, the Advisors noted that the Council's process had been open to any member of the public wishing to participate and had numerous opportunities for parties and members of the public to make their views known to the Council both in writing and orally in public meetings.⁵⁰⁷ The Advisors also noted that the EFNO Coalition did not provide any detail as to what additional public engagement process they are seeking.⁵⁰⁸

The Council concurs that there has been sufficient and recurrent opportunity for public comment and involvement in this proceeding and notes that in addition to oral comments received in public meetings, the Council has received fifty-one sets of comments from over twenty-five parties and other interested organizations not party to the proceeding.

Air Products argued that while many details of what will be included in ENO's three-year compliance plan will be discussed during IRP proceedings, actual RCPS Compliance Plans and

⁵⁰⁴ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72, citing May 11, 2020 EFNO Letter at pp. 2-3.

⁵⁰⁵ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72.

⁵⁰⁶ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72.

⁵⁰⁷ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72.

⁵⁰⁸ Advisors' Proposed RCPS Regulations Filing, Appendix D at 72.

the Compliance Demonstration Reports submitted by ENO to the Council should be filed at the Council and provided to stakeholders with an opportunity for stakeholders to comment.⁵⁰⁹ The Advisors agreed that stakeholders should have the opportunity to comment on RCPS compliance filings,⁵¹⁰ as did ENO⁵¹¹ and the EFNO Coalition.⁵¹²

Air Products also proposed that following stakeholder comment on the RCPS Compliance Plan, the Council should issue a resolution either finding that ENO complied with the RCPS for the given year (or block of years) or failed to comply, and that any finding of compliance should not be a finding that ENO prudently incurred costs with respect to an addition of a resource, as such a review and determination should be made in a separate proceeding(s).⁵¹³

The Advisors agreed that the prudence of the total costs of any given investment to acquire or construct any resource on the ENO system should be considered in a separate proceeding to evaluate that resource in accordance with the Council's regulations, and a determination on RCPS Compliance would not eliminate the potential need for such proceeding.⁵¹⁴ However, the Advisors opposed Air Product's proposal to limit the scope of the Council's review of costs in the annual RCPS Compliance Demonstration Report filings to only the costs of the RECs and ACP is appropriate, arguing that the Council's review of the RCPS Compliance filing should include a review of the total costs of RCPS Compliance for the relevant year and whether the Utility remained within the Customer Protection Cost Cap.⁵¹⁵ The Advisors noted, however, that since the review of the RCPS Compliance Costs only includes a review of the incremental costs incurred

⁵⁰⁹ Air Products RCPS Comments at 3.

⁵¹⁰ Advisors' RCPS Reply Comments at 18.

⁵¹¹ ENO RCPS Reply Comments at 3.

⁵¹² EFNO RCPS Reply Comments at 6.

⁵¹³ Air Products RCPS Comments at 3-4.

⁵¹⁴ Advisors' RCPS Reply Comments at 19.

⁵¹⁵ Advisors' RCPS Reply Comments at 19

by the Utility in complying with the RCPS, that review would not result in any finding regarding any resource costs beyond the incremental costs.⁵¹⁶

The Advisors argued that the EFNO Coalition also misapplied that arbitrary and capricious standard in their argument “But the Advisors have not provided the most basic due process step of responding to those comments and articulating as justification” and that the statement is factually incorrect.⁵¹⁷

As the Advisors argued, the Louisiana Supreme Court holds that an order of the Council should not be overturned unless it is arbitrary and capricious, a clear abuse of authority, or not reasonably based upon the factual evidence presented.⁵¹⁸ While the arbitrary and capricious standard generally requires that a regulatory body is obligated to identify and comment on the relevant and significant issues raised during the proceeding, it does not require the Council to discuss every fact or opinion contained in public comments in a rulemaking proceeding.⁵¹⁹ Further, as the Advisors noted, the legal standard of review is applicable to Council Resolutions, not to filings made by the Advisors.⁵²⁰

The EFNO Coalition argues that the two technical meetings held pursuant to the passage of Resolution R-20-104 were too rapidly paced and provided insufficient time to explore collaborative resolution of a host of issues.⁵²¹ The EFNO Coalition argued that compared to other

⁵¹⁶ Advisors’ RCPS Reply Comments at 19.

⁵¹⁷ Advisors’ RCPS Reply Comments at 40, citing EFNO RCPS Comments at 2.

⁵¹⁸ *Entergy La., LLC v. La PSC*, 990 So. 2d 716, 723 (La. 2008)

⁵¹⁹ *South Carolina ex. Rel. Tindal v. Block*, 717 F. 2d 874, 885-886 (4th Cir. 1983). “In determining what points are significant, the “arbitrary and capricious” standard of review must be kept in mind. Thus only comments which, if true, raise points relevant to the agency’s decision and which, if adopted, would require a change in an agency’s proposed rules cast doubt on the reasonableness of a position taken by the agency. Moreover, comments which themselves are purely speculative and do not disclose the factual or policy basis on which they rest require no response. There must be some basis for thinking a position taken in opposition to the agency is true. *Home Box Office, Inc. v. FCC*, 567 F.2d 9 at n. 58 (D.C. Cir. 1977), citing *Portland Cement Ass’n v. Ruckelshaus*, 158 U.S. App. D.C. 308, 326-327, 486 F. 2d. 375, 393-394 (1973).

⁵²⁰ Advisors’ RCPS Reply Comments at 41.

⁵²¹ EFNO RCPS Reply Comments at 2.

rulemaking proceedings involving clean energy standards, the process fell short in facilitating consensus between stakeholders and providing critical data points for the assessment of strategies.⁵²²

The Council observes that the two technical conferences included over nine hours of discussion among the parties regarding the proposed text of the regulations. The Council also notes that it observed in Resolution No. R-20-104 that the parties appeared to be moving farther apart from each other, rather than approaching consensus on the issues.⁵²³ Further, based on the subsequent rounds of comments filed, including the EFNO Coalition's position that the proposed RCPS regulations should be rejected in their entirety and developed through the IRP process instead,⁵²⁴ and the fact that the EFNO Coalition appears to have lost many of its own original members along the way, indicating a significant lack of consensus even among the Intervenor,⁵²⁵ it appears to the Council that the parties continue to have strongly held opposing views, and that it is unlikely that further discussion between the parties is likely to result in consensus. The Council is unwilling to further delay the implementation of an RCPS in the hopes of obtaining a consensus that may never come. The Council has received extensive comments from the parties on the RCPS and now has a fully developed record upon which to act.

8. Retail Competition

The Intervenor Group Comments stated that "The Advisors appear to assume that the status quo for utility regulation is the structure in which any RPS must be implemented."⁵²⁶ The Advisors

⁵²² EFNO RCPS Reply Comments at 2.

⁵²³ Resolution No. R-20-104 at 6.

⁵²⁴ EFNO August 27, 2020 Letter at 3.

⁵²⁵ The Council observes that of the eight original EFNO Coalition members, only three signed on to the EFNO RCPS Comments and RCPS Reply Comments. *See* EFNO Reply Comments, EFNO RCPS Comments and EFNO RCPS Reply Comments.

⁵²⁶ Intervenor Group Comments at 5.

agreed that they did assume in the Advisors' Report that the existing Council procedures and City Code would generally continue to apply to utility regulation in New Orleans and would govern the implementation of an RPS standard.⁵²⁷ The Advisors noted that while the regulatory structure has evolved over time, and it can be expected to continue to evolve to meet new developments in the utility industry, a significant rewrite of the underlying structure of utility regulation was not contemplated in the scope of the rulemaking set forth by the Council in this proceeding.⁵²⁸

AAE offered four overarching comments for the RPS rules: (1) resource investment strategies should leverage private capital investments of customers and communities; (2) renewable energy procurement should rely on competitive mechanisms and access to open markets; (3) the RPS should prioritize capital investments that enhance grid resilience and integration of distributed energy resources; and (4) a resilient grid strategy will mitigate ratepayer exposure to investment risk.⁵²⁹ As the Advisors point out, in order to achieve these objectives, however, AAE argued the entire regulatory structure within New Orleans should be overturned.⁵³⁰

AAE argued that the way to leverage private and community investments is to require the distribution system to adhere to open access principles and promote grid services⁵³¹ and to ensure that competitive market mechanisms be established so that energy customers, DER providers, and community resources can develop and deliver grid service for fair value, including voltage support, load balancing, and enhanced utilization of clean energy resources.⁵³² The Advisors argued that undertaking such an effort would require the Council to establish a comprehensive set of regulations over such sellers of grid services to ensure the stability and reliability of the grid.

⁵²⁷ Advisors' Reply Comments on Advisors' Report at 13.

⁵²⁸ Advisors' Reply Comments on Advisors' Report at 13.

⁵²⁹ AAE Comments on Advisors' Report at 9.

⁵³⁰ Advisors' Reply Comments at 21.

⁵³¹ AAE Comments on Advisors' Report at 10.

⁵³² AAE Comments on Advisors' Report at 12.

AAE argued that the R-RPS rules should replace cost-of-service regulation with an open-access distribution network incorporating (1) unbundled interconnection and distribution costs; (2) equal access to the distribution network; and (3) open markets mechanisms for competitive clean energy supply and grid services.⁵³³ The Advisors argued that such a complete upheaval of the utility regulatory structure in New Orleans would go well beyond the scope of what the Council set forth for consideration in this docket and has implications well beyond the adoption of an RPS.⁵³⁴ The Advisors recommended that such a drastic change not be made as an action incidental to the adoption of an RPS and that such a change not be undertaken lightly or without extensive and careful study.⁵³⁵

The Advisors stated that the parties pointing out that the Advisors' Report was premised largely on the assumption that the existing regulatory model will continue in place in New Orleans⁵³⁶ are correct.⁵³⁷ The Advisors noted that as legal and technical Advisors to the Council, advising the Council on the legal and technical feasibility and viability of various proposals before it is an inherent part of the Advisors' role.⁵³⁸ The Advisors explained that they have had no indication to date from the Council that a complete overhaul of the Council's regulatory structure is desired, and so they have focused their efforts on RPS designs that could be implemented and would function within the existing regulatory and legal constructs.⁵³⁹

⁵³³ Comments of the Alliance for Affordable Energy ("AAE Comments on Advisors' Report") at 29, UD-19-01, Oct. 15, 2019.

⁵³⁴ Advisors Reply Comments at 4.

⁵³⁵ Advisors' Reply Comments at 4.

⁵³⁶ Intervenor Group Comments on Advisors' Report at 5.

⁵³⁷ Advisors Reply Comments at 5.

⁵³⁸ Advisors Reply Comments at 5.

⁵³⁹ Advisors Reply Comments at 5.

The Council clarifies that the scope of this proceeding is not to make fundamental changes to its regulation of ENO or to terminate ENO's franchise to provide retail electric service in New Orleans in this proceeding.

However, the Council notes that, as referenced by the Advisors, the Council has recently adopted new rules governing ENO's issuances of Requests for Proposals ("RFPs") for generating resources to ensure that such RFPs are competitive, fair and open to all entities capable of meeting the identified energy or capacity need.⁵⁴⁰

9. Guiding Principles

In Resolution No. R-20-104, the Council directed the Advisors to further develop proposals for a RCPS based on Alternative 2 in Appendix A of the Advisors' Report with (1) a mandatory requirement that ENO achieve 100% net zero emissions by 2040; (2) reliance on RECs purchased without the associated energy for compliance with the standard being phased out over the ten-year period from 2040 to 2050; (3) ENO has no carbon-emitting resources in the portfolio of resources it uses to serve New Orleans by 2050; and (4) a mechanism to limit costs in any one plan year to no more than one percent (1%) of plan year total utility retail sales revenues. The intentions set forth in the original Alternative 2 draft were:

1. Aggressively pursue reductions to carbon emissions to improve the health and quality of life of the citizens of New Orleans and to reduce the City's impact on climate change, which is an existential threat to the City's security.
2. Ensure that the City has a safe and reliable power supply at a reasonable cost and retain as much flexibility as possible to employ a wide range of currently known and yet to be developed zero-emissions energy technologies.

⁵⁴⁰ See, Resolution No. R-20-105.

In the May 11, 2020 EFNO Letter, the EFNO Coalition advocated for a different procedure and set of principles than was set forth in Resolution No. R-20-104 and requested that the Council adopt the following principles for the UD-19-01 proceeding:

- Mitigate climate change by reducing emissions of carbon dioxide, methane, nitrogen oxide, and fluorinated gases.
- Improve air quality by reducing co-pollutants that include particulate matter (PM10 and PM2.5), ammonia, sulfur dioxide, carbon monoxide, volatile organic compounds.
- Lower energy cost burdens to no more than 10% of total household annual income in New Orleans.
- Provide protections, as well as economic and local health benefits, for low-income customers & disadvantages businesses in New Orleans.
- Increase sustainable energy business activity in New Orleans.
- Increase efficiency in New Orleans.
- Increase renewable energy in New Orleans.
- Increase preparedness and improve responsiveness to the impacts of climate change.
- Commit to equity and transparency in process and outcomes.
- Align parallel proceedings (e.g., rate cases, power plant proposals, IRP).⁵⁴¹

The Advisors argued that while each of the EFNO Coalition proposed principles is a good objective in the abstract, the more different principles a particular set of regulations seeks to achieve, the more complex it is to design and implement, and the greater the chances that the attempt to implement one principle might conflict with another.⁵⁴² The Advisors stated that setting forth principles or intent for a particular regulation should attempt to convey priorities that assist in interpretation and implementation of the regulations, while the list of principles set forth by the

⁵⁴¹ May 11, 2020 EFNO Letter at p. 1.

⁵⁴² Advisors' Proposed RCPS Regulations, Appendix D at 71, filed Docket No. UD-19-01, Aug. 28, 2020 ("Advisors' Proposed RCPS Regulations Filing").

EFNO Coalition would attempt to have the RCPS take on nearly every problem the EFNO Coalition perceives with the Council's current utility regulation, and would create a scattered focus rather than a disciplined effort to achieve a goal.⁵⁴³ The Advisors argued that the draft regulations do serve many, if not all of the principles set forth by the EFNO Coalition, but are governed by the specific priorities set forth by the Council in Resolution No. R-20-104 - to aggressively pursue carbon emissions while ensuring safe, reliable, affordable power.⁵⁴⁴

PosiGen argued that ENO's CES proposal improperly attempts to constrain the focus of the RPS by focusing on carbon emissions reductions, maintaining reliability and minimizing rate increases.⁵⁴⁵ PosiGen argued that ENO fails to focus on adding new renewables, improving customer bill affordability and equity.⁵⁴⁶

The EFNO Coalition argues that while providing least-cost energy options is important in a city with as much income disparity as New Orleans, the city must also explore opportunities to build wealth and create jobs in the city, wherever possible in zero carbon industries.⁵⁴⁷

The Council agrees that the principles guiding the implementation of the RCPS Regulations should be focused and assist the parties and Council in setting priorities and interpreting the regulations rather than all-encompassing in nature.

The Council finds the statement of intent in the Advisors' Final Proposed RCPS Regulations to be consistent with the Council's instructions in Resolution No. R-20-104.

⁵⁴³ Advisors' Proposed RCPS Regulations Filing, Appendix D at 71.

⁵⁴⁴ Advisors' Proposed RCPS Regulations Filing, Appendix D at 71.

⁵⁴⁵ PosiGen Reply Comments on Advisors' Report at 10.

⁵⁴⁶ PosiGen Reply Comments on Advisors' Report at 11.

⁵⁴⁷ EFNO RCPS Reply Comments at 7.

10. Low-to-Moderate Income Customers and Equity

The American Association of Blacks in Energy asked the Council to consider the impact of energy policy on consumer rates, and ensure that as New Orleans and the nation address needed emission reductions, policy makers also avoid unnecessarily increasing the energy burden for those consumers least able to afford it.⁵⁴⁸ The American Association of Blacks in Energy argued that a flexible reliance on energy technologies and resources can assist the Council in achieving a win-win for customers and that energy rates can remain low while carbon emission rates are substantially reduced.

PosiGen recommended designing a low-income solar program modeled after the Energy Smart program, which incentivizes upgrades by paying a small percentage of the total cost, arguing that by using ratepayer dollars to incentivize private spending on low-income solar programs instead of ENO-funded programs, then the total cost of the program will be reduced while maximizing the number of families who would directly benefit.⁵⁴⁹ PosiGen supported the creation of an RPS program that would provide an upfront incentive to residential customers who install a new solar system in exchange for crediting ENO the equivalent amount of RECs that the system would be expected to generate over its life.⁵⁵⁰ PosiGen suggested targeting income-qualified households for a solar incentive program and providing them with larger payments.⁵⁵¹

PosiGen also encouraged the Council to look for other ways to leverage private capital by using innovative financing mechanisms like green bonds, PACE financing, partnering with local financing institutions, and the creation of a local Green Bank with potential funding from the

⁵⁴⁸ American Association of Blacks in Energy November 18, 2020 Letter at 2.

⁵⁴⁹ PosiGen Comments on Advisors' Report at 5; PosiGen Reply Comments on Advisors' Report at 3.

⁵⁵⁰ PosiGen Reply Comments on Advisors' Report at 6.

⁵⁵¹ PosiGen Reply Comments on Advisors' Report at 6 and 7-8.

Finance Authority of New Orleans as well as philanthropic and social impact investors.⁵⁵² PosiGen provided examples of rooftop solar incentive programs created in Connecticut, New York, Minnesota and California.⁵⁵³ PosiGen also suggested that the Council consider partnering with local community development financial institutions which are “100% dedicated to delivering responsible, affordable lending to help low-income, low-wealth, and other disadvantaged people and communities join the economic mainstream.”⁵⁵⁴ As the Advisors noted, PosiGen offers no details, however, on what any partnership or other financing method might look like, whether the Council would be expected provide any funding to such sources as part of such a partnership or where such funds would come from.⁵⁵⁵

PosiGen disputed the characterization of PosiGen and other EFNO members as rent-seeking actors looking for hand-outs from the Council at the expense of New Orleans residents.⁵⁵⁶ PosiGen argued that any incentives created by the Council to foster a robust local renewable energy and energy efficiency market would pass through to PosiGen’s customers via lower monthly lease payments and greater monthly bill savings, not to PosiGen.⁵⁵⁷ PosiGen argued that the Council must recognize and work to address existing social injustices that result in high energy burdens and localized pollution.⁵⁵⁸

PosiGen argued that it is more appropriate to focus on reducing overall bills than on reducing rates, which includes deployment of energy efficiency and rooftop solar.⁵⁵⁹

⁵⁵² PosiGen Comments on Advisors’ Report at 5, PosiGen Reply Comments on Advisors’ Report at 9.

⁵⁵³ PosiGen Reply Comments on Advisors’ Report at 5-6.

⁵⁵⁴ PosiGen Comments on Advisors’ Report at 5.

⁵⁵⁵ Advisors’ Proposal, Appendix D at 64.

⁵⁵⁶ PosiGen Reply Comments on Advisors’ Report at 12.

⁵⁵⁷ PosiGen Reply Comments on Advisors’ Report at 12.

⁵⁵⁸ PosiGen Reply Comments on Advisors’ Report at 12-13.

⁵⁵⁹ PosiGen Reply Comments on Advisors’ Report at 13-14.

PosiGen argued that the EFNO Coalition R-RPS proposal maximizes local clean energy solutions in the New Orleans Community.⁵⁶⁰

The EFNO Coalition also argued that more attention should be given to LMI customers and on the high energy cost burdens on households that could be alleviated with modifications to Alternative 2.⁵⁶¹ Specifically, the EFNO Coalition requested that (i) Tier 1 credits be assigned to resources that benefit LMI customers; (ii) waiving RCPS compliance costs for LMI customers; (iii) a requirement that the utility's spending on and beneficial impacts to LMI customers shall not be less than 100% of the share of the LMI customers as a percentage of the total population in Orleans Parish; and (iv) that the Council consider instituting a simultaneous and parallel development of policy that targets energy burdens in New Orleans including the establishment of a working group during the process to develop recommendations to support New Orleans Low-Income households.⁵⁶²

The Advisors noted that, as the EFNO Coalition acknowledged, some of these proposals would require significantly more study, including a determination of how to define LMI customers and how to identify and correctly categorize ENO customers falling into this category.⁵⁶³ In particular, the Advisors noted that ENO does not currently have a separate rate class for LMI customers that could, for example, be excluded from paying RCPS compliance costs or used to calculate what percentage of ENO customer base is LMI.⁵⁶⁴ Rather, the Advisors explained, ENO is dependent upon such customers seeking bill assistance or other LMI programming from ENO to identify such customers.⁵⁶⁵ Further, the Advisors argue that while the exact percentage of

⁵⁶⁰ PosiGen Reply Comments on Advisors' Report at 21.

⁵⁶¹ June 22, 2020 EFNO Comments at 8.

⁵⁶² June 22, 2020, EFNO Comments at 8-9.

⁵⁶³ Advisors' Proposed RCPS Regulations Filing, Appendix D at 79, citing June 22, 2020, EFNO Comments at 9.

⁵⁶⁴ Advisors' Proposed RCPS Regulations Filing, Appendix D at 79.

⁵⁶⁵ Advisors' Proposed RCPS Regulations Filing, Appendix D at 79.

ENO's customer base that would fall into the as-yet undefined LMI category suggested by the EFNO Coalition is not known, the U.S. Census Bureau reports that approximately 24.6% of New Orleans citizens are living in poverty⁵⁶⁶ indicating that under the EFNO Coalition's proposal most likely at least a quarter of ENO's residential customers would be exempted from paying for RCPS compliance, which could result in either substantial cost-shifting or a reduction to the RCPS compliance budget.⁵⁶⁷

The Advisors further argued that providing subsidies or a higher Tier credit to projects serving LMI customers still only benefits those LMI customers who are able to participate in various programs - for example, LMI customers who do not own their home might be excluded from a rooftop solar program (the Advisors note that LMI customers do already receive preferential treatment for community solar projects under the Community Solar Rules).⁵⁶⁸ The Advisors argued that the best way to bring the benefits of clean energy to LMI customers in New Orleans is to aggressively pursue carbon emissions reductions, prioritizing reductions of emissions in Orleans Parish, at the lowest reasonable cost, with a Customer Protection Cost Cap to ensure that the RCPS does not create a significant increase in electricity rates.⁵⁶⁹ The Advisors argued that being able to provide 100% clean power to all utility customers at the lowest rates reasonably possible should create substantial benefits for LMI customers, whether or not they are able to participate in any particular RCPS project.⁵⁷⁰

The Council finds that none of the programs suggested by PosiGen or the EFNO Coalition are sufficiently developed for the Council to adopt as part of the RCPS, particularly given that

⁵⁶⁶ Advisors' Proposed RCPS Regulations Filing, Appendix D at 79, citing <https://www.census.gov/quickfacts/neworleanscitylouisiana>.

⁵⁶⁷ Advisors' Proposed RCPS Regulations Filing, Appendix D at 79.

⁵⁶⁸ Advisors' Proposed RCPS Regulations Filing, Appendix D at 79.

⁵⁶⁹ Advisors' Proposed RCPS Regulations Filing, Appendix D at 80.

⁵⁷⁰ Advisors' Proposed RCPS Regulations Filing, Appendix D at 80.

ENO does not have a separate rate class for LMI customers, or any way of identifying LMI customers that do not first identify themselves to ENO. This finding does not, however, preclude any particular program to provide benefits to LMI customers from being proposed to and considered by the Council outside of this RCPS proceeding, the Council remains interested in well-developed programs to benefit LMI customers.

The Advisors argued that the RCPS proposed by the EFNO coalition also does not live up to the EFNO Coalition's own standards.⁵⁷¹ The EFNO Coalition's Comments argue that the Advisors' RCPS Proposal ignores equity, and the Council has an opportunity to advance energy justice and equity by requiring that a renewable portfolio standard provide economic opportunity for low-income households in New Orleans by including programs that (1) clean up energy systems and reduce local climate impacts; (2) produce much needed bill savings; and (3) create new local workforce opportunities in the energy services industry.⁵⁷² However, the Advisors argued, the EFNO Coalition's proposal does less to accomplish these three goals than the Advisors' Proposed RCPS Regulations.⁵⁷³

The Advisors argued the Proposed RCPS regulations clean up energy systems and reduce local climate impacts by requiring ENO to get to net-zero carbon emission energy by 2040 and 100% carbon-free generation by 2050 and prioritizing measures that reduce local climate impacts by applying a Tier 1 multiplier to any resource that reduces carbon emissions from an existing source of emissions in New Orleans.⁵⁷⁴ The Advisors argued that not only does the EFNO Coalition's proposal provide no incentive whatsoever for resources that reduce local climate impacts, the EFNO Coalition has deleted from the Advisors' RCPS proposal even the requirement

⁵⁷¹ Advisors' RCPS Reply Comments at 33.

⁵⁷² Advisors' RCPS Reply Comments at 33, citing EFNO Coalition RCPS Comments at 4.

⁵⁷³ Advisors' RCPS Reply Comments at 33.

⁵⁷⁴ Advisors' RCPS Reply Comments at 33.

that RECs used for compliance be certified by Green-e or tracked through any RTO tracking system meaning that RECs produced as far away as Hawaii or Alaska or even in foreign countries could in theory be purchased and used to comply with the EFNO Coalition RCPS, which would do far less than the Advisors' proposal to reduce local climate impacts.⁵⁷⁵ The Advisors argued that eliminating the certification and tracking mechanisms also eliminates the Council's ability to ensure that the RECs used for RCPS Compliance are used only for that purpose and are then retired.⁵⁷⁶

With respect to the EFNO Coalition's second equity goal, producing much-needed bill savings, the Advisors argued that no provision of the EFNO Coalition's RCPS would guarantee bill savings and would, in fact, remove the Customer Protection Cost Cap that would at least prevent significant bill increases, while creating a structure that under at least some interpretations, could require ENO to prematurely retire and replace 44% of its existing generation within the next two years.⁵⁷⁷ The Advisors argued that their RCPS proposal, developed in coordination with the Parties to this docket, should have a much more predictable and controllable impact on customer bills than the EFNO Coalition's blank check for compliance.⁵⁷⁸

The Advisors argued that the EFNO Coalition's proposed RCPS also contains no provision that advances their third equity goal, to create new local workforce opportunities in the energy services industry.⁵⁷⁹ The Advisors' Proposed RCPS advances this goal by offering a Tier 2 multiplier to any renewable energy resource, zero-carbon energy resource or DER in Orleans Parish, including DSM that goes above and beyond the Council's pre-existing DSM targets,

⁵⁷⁵ Advisors' RCPS Reply Comments at 33.

⁵⁷⁶ Advisors' RCPS Reply Comments at 33.

⁵⁷⁷ Advisors' RCPS Reply Comments at 34.

⁵⁷⁸ Advisors' RCPS Reply Comments at 34.

⁵⁷⁹ Advisors' RCPS Reply Comments at 34.

making these resources more desirable to ENO for compliance purposes than comparably priced remote resources outside of New Orleans.⁵⁸⁰

The Advisors argued that the EFNO Coalition's own proposal contains no mechanisms to advance equity in Orleans Parish.⁵⁸¹ The Advisors also argued that while their proposed RCPS focuses on reducing carbon emissions above other priorities, it does, in fact, contain provisions that do advance the EFNO Coalition's stated equity goals better than the proposed regulations set forth by the EFNO Coalition.⁵⁸²

In light of the fact that the EFNO Coalition's proposed RCPS does not appear to fulfill any of the EFNO Coalition's own recommendations regarding equity, the Council finds that the EFNO Coalition has not offered an alternative plan to the Council to advance equity that is superior to the Advisors' Final Proposed RCPS Regulations.

11. Other Issues

PosiGen supported including a "local and diversity" hiring requirement to resources added as a result of the RPS, which could mean a minimum percentage of employees or contract staff that work to construct or maintain a utility-owned Tier 1 resource must reside in Orleans Parish, and that companies that are MBE, work with low to moderate income communities and families, or are public benefit non-profits should be given hiring priority.⁵⁸³

In Resolution R-20-105, the Council recently issued new regulations for all utility RFPs for new resources that require future utility RFPs to contain a provision that requires a comprehensive narrative from all respondents detailing the respondent's plan to have the

⁵⁸⁰ Advisors' RCPS Reply Comments at 34.

⁵⁸¹ Advisors' RCPS Reply Comments at 34.

⁵⁸² Advisors' RCPS Reply Comments at 34-35.

⁵⁸³ PosiGen Comments at 9.

addressable spend associated with their proposals comply with the goals articulated in Article IV of Chapter 70 of the Code of the City of New Orleans pertaining to local and disadvantaged business enterprises and the City of New Orleans. These rules would also apply to any ENO solicitation related to RCPS compliance, therefore a “local and diversity” requirement specific to these RCPS regulations is unnecessary and would be duplicative of existing requirements.

ENO and Air Products also opposed a proposal made during the technical conference to account for line losses on the transmission and distribution system.⁵⁸⁴ The Advisors agreed with the arguments made by ENO and Air Products that fully accounting for line losses is not done in the majority of states that measure compliance against retail load, and would significantly complicate compliance calculations and require that the targets also be reconfigured.⁵⁸⁵ The Advisors did not recommend that line losses be considered in the RCPS.⁵⁸⁶

For the reasons articulated by ENO, Air Products and the Advisors, the Council finds that line losses should not be included in the RCPS compliance calculations.

⁵⁸⁴ Entergy New Orleans Letter, submitted in Docket UD-19-01 on August 21, 2020 (“August 21, 2020 ENO Letter”) at 3-4.

⁵⁸⁵ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 84, citing August 21, 2020 ENO Letter at 3-4.

⁵⁸⁶ Advisors’ Proposed RCPS Regulations Filing, Appendix D at 84.