

**RESOLUTION**

**NO. R-22-145**

**CITY HALL: March 24, 2022**

**BY: COUNCILMEMBERS MORENO, MORRELL, HARRIS, GREEN AND THOMAS**

**RULEMAKING PROCEEDING  
TO ESTABLISH RENEWABLE PORTFOLIO STANDARDS**

**RESOLUTION AND ORDER APPROVING  
ENTERGY NEW ORLEANS' INITIAL RCPS COMPLIANCE PLAN  
COVERING COMPLIANCE YEAR 2022**

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

**WHEREAS**, on May 20, 2021, the Council adopted Resolution No. R-21-182 adopting a Renewable and Clean Portfolio Standard to 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

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<sup>1</sup> Pursuant to a Council-approved restructuring that was effective December 1, 2017, Entergy New Orleans, Inc. is now operating as Entergy New Orleans, LLC.

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 while ensuring that the City has a safe and reliable power supply at a reasonable cost and retains as much flexibility as possible to employ a wide range of currently known and yet to be developed zero carbon-emissions technologies; and

**WHEREAS**, the RCPS adopted in Resolution No. R-21-182 at Section 4(e) required ENO to file a proposed Initial RCPS Compliance plan for the interim prior to the conclusion of the next triennial IRP cycle; and

**WHEREAS**, on August 18, 2021, ENO filed its Initial RCPS Compliance Plan Covering Compliance Year 2022 with the Council ("ICP").<sup>2</sup> ENO requested that the Council review the ENO ICP and (a) approve ENO's proposed definition of the term "deliverable into the MISO region" applied to Renewable Energy Credits ("RECs"); (b) clarify whether the Council will provide a calculation of the Alternative Compliance Payment ("ACP") for the ICP Period; (c) approve the proposed treatment of the Green Pricing Option ("GPO"); (d) approve the Electric Vehicle ("EV") credit calculation as described in the ICP Appendix A; and (e) approve the proposed purchase of RECs to establish a 5% contingency and compliance reserve;<sup>3</sup> and

**WHEREAS**, comments on the ICP were submitted on November 8, 2021 by the Alliance for Affordable Energy ("AAE") and Energy Future New Orleans Coalition ("EFNO")

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<sup>2</sup> Entergy New Orleans Initial RCPS Compliance Plan Covering Compliance Year 2022, Docket No. UD-19-01, submitted Aug. 18, 2018 ("ICP").

<sup>3</sup> ICP at 10.

(AAE/EFNO Comments”),<sup>4</sup> Air Products and Chemicals, Inc. (“AP Comments”),<sup>5</sup> and the Council’s Utility Advisors (“Advisors’ Comments”);<sup>6</sup> and

**WHEREAS**, on December 30, 2021 ENO filed reply comments responding to the comments of the intervenors and the Advisors<sup>7</sup> and circulated the accompanying excel files containing corrected Tables A-1 and A-2 on January 4, 2022 (together “ENO Reply”); and

Deliverability of RECs into MISO

**WHEREAS**, ENO states that it expects to purchase unbundled RECs and seeks a further definition from the Council of the term “deliverable into the MISO region” contained in the definition of “REC.”<sup>8</sup> ENO proposes that the term be applied to any facilities located in an electrically interconnected balancing authority that neighbors the MISO balancing authority and that this would include SPP, TVA, PJM, and the Southern Company Services transmission system;<sup>9</sup> and

**WHEREAS**, Air Products and Chemicals, Inc. (“Air Products”) commented that it would object to any revision to the language or proposed meaning of the definition of REC that eliminates RECs generated in ERCOT from qualifying for RCPS compliance and that it understands ENO’s proposed language is not intended to affect the ability of RECs generated in ERCOT from qualifying.<sup>10</sup> AAE and EFNO contend that ENO’s proposed definition represents too big a market

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<sup>4</sup> Response of the Alliance for Affordable Energy and Energy Future New Orleans Coalition to Entergy New Orleans’ Initial RCPS Compliance Plan Covering Compliance Year 2022, Docket No. UD-19-01, submitted Nov. 8, 2021 (“AAE/EFNO Comments”).

<sup>5</sup> Air Products and Chemicals, Inc. Comments on Entergy New Orleans, LLC Initial RCPS Compliance Plan for 2022, Docket No. UD-19-01, submitted Nov. 8, 2021 (“AP Comments”).

<sup>6</sup> Advisors’ Comments on Entergy New Orleans LLC’s Initial RCPS Compliance Plan Covering Compliance Year 2022, Docket No. UD-19-01, submitted Nov. 8, 2021 (“Advisors’ Comments”).

<sup>7</sup> Entergy New Orleans Reply to Comments Regarding Initial RCPS Compliance Plan Covering Compliance Year 2022, filed Dec. 30, 2021 in Docket No. UD-19-01 (together with the accompanying excel files “ENO Reply”).

<sup>8</sup> ICP at 6.

<sup>9</sup> ICP at 6-7.

<sup>10</sup> AP Comments at 2.

“neighborhood” to ensure ratepayer confidence that investments in clean energy are actually changing the way that their electricity is generated and that development in adjacent markets is too remote to support local economic development benefits.<sup>11</sup> AAE and EFNO argue that the region from which RECs may be acquired should be limited to the MISO system, or even MISO South alone;<sup>12</sup> and

**WHEREAS**, the Council finds that ENO’s proposed definition is too broad and has the potential to encompass resources that may not be deliverable into the MISO region, and thus, is inconsistent with the definition in the RCPS;<sup>13</sup> and

**WHEREAS**, the Council denies ENO’s request to change the definition of REC and finds that an identified renewable energy resource that is currently delivering or has delivered energy to MISO is sufficient to demonstrate that a facility is deliverable into the MISO region; and

Calculation of the ACP

**WHEREAS**, in the ICP, ENO states that it has not been provided with the level of ACP, and seeks clarification that the Council will provide ENO with its calculation of the ACP for the ICP period;<sup>14</sup> and

**WHEREAS**, AAE and EFNO argue that the Council should ensure that the ACP amount is set at a level that secures sufficient funds to procure not only substitute clean energy to meet compliance goals, but also the administrative expense of doing so, as well as a penalty that cannot be passed on to ratepayers.<sup>15</sup> They argue that the ACP should be set at a level that significantly exceeds the cost of compliance;<sup>16</sup> and

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<sup>11</sup> AAE/EFNO Comments at 3.

<sup>12</sup> AAE/EFNO Comments at 3.

<sup>13</sup> Advisors’ Comments at 3.

<sup>14</sup> ICP at 9.

<sup>15</sup> AAE/EFNO Comments at 4.

<sup>16</sup> AAE/EFNO Comments at 4.

**WHEREAS**, Section 4(e) of the RCPS requires the utility to include a calculation of the ACP in the development of its three-year compliance plans. The Council therefore requires ENO to similarly develop an ACP calculation to accompany this ICP.<sup>17</sup> Further, Section 5(a)(2) of the RCPS requires the ACP to be “based on the highest market value of RECs in MISO over the prior three years, multiplied by a 1.15 multiplier” and ENO should provide the Council with the range of highest price Green-e certified RECs, and associated REC contract terms, from available market sources in MISO or neighboring balancing authorities over the prior three years;<sup>18</sup> and

**WHEREAS**, in the ENO Reply, ENO proposes an ACP and provides the Council with the highest REC market index price over the past three years, based on REC market data from Marex Spectron.<sup>19</sup> ENO provided the prices for RECs in Michigan and Texas, states in which a portion of the retail customers are located in MISO and for National Green-e Certifiable RECs.<sup>20</sup> ENO proposes applying the 1.15 multiplier required under the RCPS rules to the highest market price for Michigan RECs because the majority of Michigan is in MISO compared to only a small percentage of Texas.<sup>21</sup> This results in a proposed ACP of \$3.60 per MWh, compared to the \$8.45 per MWh ACP that would result if the Texas REC price were used as the base for the ACP.<sup>22</sup> ENO also notes that Section 5 of the RCPS Rules does not contemplate prospective inclusion in the ACP of a “penalty that cannot be passed on to ratepayers” as proposed by AAE,<sup>23</sup> and

**WHEREAS**, the Council has reviewed ENO’s Reply and proposed ACP and recognizes that at this moment in time, information regarding market prices of RECs in MISO is sparse and it may not be possible to find data that truly and accurately represents “the highest market value

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<sup>17</sup> Advisors’ Comments at 3.

<sup>18</sup> Advisors’ Comments at 3-4.

<sup>19</sup> ENO Reply at 4.

<sup>20</sup> ENO Reply at 4.

<sup>21</sup> ENO Reply at 4.

<sup>22</sup> ENO Reply at 4.

<sup>23</sup> ENO Reply at 5.

of RECs in MISO over the prior three years” as is required under the RCPS. Nevertheless, of the information provided to the Council at this time, the Council finds that the price of Texas RECs presented in ENO’s Reply, while not a perfect match for the RCPS requirement, is the closest match of the data presented to “the highest market value of RECs in MISO over the prior three years”. Therefore, the Council finds that for this Compliance Year 2022 the ACP should be based on the value of Texas RECs, and therefore be set at \$8.45 per MWh. This determination is based solely on the specific circumstances of this Compliance Year 2022, and the Council expects that it may rely on a different basis in future years for establishing the “highest market value of RECs in MISO over the prior three years” as the market for RECs in MISO develops and becomes more robust; and

#### Treatment of the GPO

**WHEREAS**, ENO notes that the RCPS did not explicitly address the extent to which the renewable energy provided to GPO customers satisfies the RCPS obligations ENO has on behalf of those customers, and proposes to exclude from the 2022 RCPS compliance calculation all RECs used to match consumption beyond 64% of the GPO customers’ consumption, to avoid having GPO customers who choose to support clean energy in excess of RCPS requirements provide credits to be used on behalf of other customers.<sup>24</sup> ENO notes that at current subscription levels, GPO enrollment would affect less than 100 MWh of output from ENO’s solar facilities;<sup>25</sup> and

**WHEREAS**, AAE and EFNO argue that any purchases made voluntarily by ratepayers must be excluded from compliance calculations;<sup>26</sup> and

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<sup>24</sup> ICP at 3.

<sup>25</sup> ICP at 3.

<sup>26</sup> AAE/EFNO Comments at 2.

**WHEREAS**, the Council acknowledges that ENO's proposal may have implications for Green-e certification and also that it may be difficult to implement and monitor,<sup>27</sup> and a better approach would be to modify the RCPS to require that all RECs retired under the GPO be excluded from compliance while reducing the Retail Compliance Load by the same amount.<sup>28</sup> However, at approximately 100 MWh, the GPO enrollment is sufficiently small that there is no need for Council action to either accept ENO's proposal or modify the RCPS through this compliance proceeding, rather, it could take up the matter at the next periodic RCPS review;<sup>29</sup> and

**WHEREAS**, in the ENO Reply, ENO agrees both with the Advisor's proposed approach to the GPO and with the Advisors' assessment that the right timeframe to address the issue is during the next RCPS Periodic Review, or to the extent GPO participation encompasses significantly more annual energy;<sup>30</sup> and

**WHEREAS**, recognizing that the RCPS does not currently provide for any treatment regarding RECs associated with the GPO, the Council finds that no RECs associated with the GPO shall be utilized to satisfy RCPS compliance until such time as the Council may revise the RCPS in a future RCPS Periodic Review proceeding, and

**WHEREAS**, considering that enrollment in the GPO is currently small, as is the associated energy as compared to ENO's total energy requirements, the Council finds that there is no need at this time to modify the RCPS to address this issue, but that it may be taken up in future RCPS Periodic Review proceedings; and

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<sup>27</sup> Advisors' Comments at 4.

<sup>28</sup> Advisors' Comments at 4.

<sup>29</sup> Advisors' Comments at 4-5.

<sup>30</sup> ENO Reply at 2.

## Electric Vehicles

**WHEREAS**, ENO notes in the ICP that the definition of a Tier 3 resource includes “electric vehicle charging infrastructure directly connected to the Utility’s transmission or distribution system” and requires that CECs be based upon the calculated 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;<sup>31</sup> and

**WHEREAS**, EFNO argues that EV infrastructure should not satisfy RCPS requirements, and decarbonization of generation resources must not be conflated with decarbonization of end use in the attribution of credits.<sup>32</sup> EFNO argues that the definition of “Clean Energy Credit” should not be applied to energy withdrawal, but instead to generation alone.<sup>33</sup> The Advisors note that in the RCPS, electric vehicle charging infrastructure falls under the Tier 3 Resource category, which requires ENO to provide either a certified engineering calculation demonstrating the net reduction in carbon emissions or data demonstrating measured emissions reductions.<sup>34</sup> The Advisors note that their review of the ICP’s Appendix A found certain computational errors, and that while the Advisors concur with the estimated metrics and methodology employed in Appendix A, ENO should review and resubmit the calculations;<sup>35</sup> and

**WHEREAS**, in the ENO Reply, ENO acknowledges the errors in Appendix A and encloses a corrected version of Tables A-1 and A-2.<sup>36</sup> ENO also notes that the RCPS rules explicitly recognize the contribution of electric vehicle charging in reducing carbon emissions and

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<sup>31</sup> ICP at 6, quoting the Renewable and Clean Portfolio Standard (“RCPS”) at Section 2, definition of “Tier 3 Resource,” *see* Resolution No. R-21-182, Appendix B.

<sup>32</sup> AAE/EFNO Comments at 4.

<sup>33</sup> AAE/EFNO Comments at 4.

<sup>34</sup> Advisors’ Comments at 5.

<sup>35</sup> Advisors’ Comments at 6.

<sup>36</sup> ENO Reply at 1.



that a crediting mechanism that recognizes the net carbon reduction contributions of transportation electrification is essential to ensure that these electrification efforts are paced on a similar footing as other decarbonization measures;<sup>37</sup> and

**WHEREAS**, the RCPS expressly allows electric vehicle charging infrastructure to be included as a Tier 3 Resource for the purposes of RCPS compliance. As a result, the Council does not find it appropriate to modify the RCPS through this compliance proceeding; and

**WHEREAS**, the Council finds that ENO's proposed treatment of EV charging infrastructure, as supported by the revised Tables A-1 and A-2, is in compliance with the RCPS rules; and

Proposed Contingency Reserve

**WHEREAS**, in the ICP, ENO reported that it projected that its existing resources were estimated to produce 112,006 more Clean Energy Credits ("CECs") than would be needed to meet the 2022 target of 64% its estimated Retail Compliance Load.<sup>38</sup> ENO recommended that although a surplus is projected, the plan should provide a sufficient level of CECs to protect against unforeseen supply-and demand-side uncertainties and begin building a compliance reserve to provide flexibility in future years and help limit customer costs.<sup>39</sup> In order to meet these objectives, ENO proposes to pursue an additional 67,104 CECs from public EV chargers and purchased RECs in order to provide a 5% contingency, noting that the short timeframe between the expected approval of the ICP and the 2022 compliance year limits the resources available for the 2022 compliance year.<sup>40</sup> ENO also notes that if, at the end of the 2022 compliance period, it has CECs exceeding 64% of its Retail Compliance Load, it will utilize the Banking and Compliance Reserve

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<sup>37</sup> ENO Reply at 1.

<sup>38</sup> ICP at 4.

<sup>39</sup> ICP at 5.

<sup>40</sup> ICP at 5-6.

Provision of the RCPS to utilize excess RECs that meet the requirements of the rules over the next two compliance years;<sup>41</sup> and

**WHEREAS**, AAE and EFNO comment that while the establishment of a contingency level of CEC procurement is wise, the level of contingency balance must be based on analysis and real-world data as soon as is practicable and that a meaningful contingency reserve must be based on meaningful metrics;<sup>42</sup> and

**WHEREAS**, in the ENO Reply, ENO reports that during Hurricane Ida, two ENO-contracted resources, the Iris and St. James solar facilities, sustained damage that is expected to delay the near-term operation of these facilities and that at this time neither resource is expected to achieve commercial operation until at least 1Q2022.<sup>43</sup> Accordingly, ENO reports, the expected total CECs from those resources for 2022 has been reduced by 25%, and combined with excluding RECs retired for the GPO program from RCPS compliance, the resources in ENO's current portfolio are projected to generate 44,518 fewer CECs than projected in ENO's ICP filing, and in order to maintain the planned 5% contingency, ENO intends to increase its REC purchases by the corresponding amount, resulting in a total REC purchase of 111,059;<sup>44</sup> and

**WHEREAS**, the Council finds that ENO's proposal to create a 5% contingency reserve is reasonable for this Compliance Year 2022 ICP. However, recognizing the lack of specific metrics and experience in complying with the RCPS Rules in this first compliance year, the Council directs ENO to monitor and assess the performance of its resources on an ongoing basis over the course of the year with respect to the creation of the anticipated RECs and CECs, and to notify the Council promptly should any of the proposed resources fail to perform in a manner that would require a

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<sup>41</sup> ICP at 9.

<sup>42</sup> AAE/EFNO Comments at 2-3.

<sup>43</sup> ENO Reply at 2.

<sup>44</sup> ENO Reply at 2-3.

material adjustment to this ICP in order for ENO to comply with the RCPS for Compliance Year 2022; and

**WHEREAS**, the Council directs ENO in the development of its next RCPS Compliance Plan to work with stakeholders to identify relevant analyses and metrics to be utilized on a going forward basis to determine an appropriate contingency reserve; and

Other Compliance Matters

**WHEREAS**, ENO estimates in the ICP that its cost of compliance would be in the range of \$67,000 to \$333,000, and that the estimated Customer Protection Cost Cap is \$6.12 million.<sup>45</sup> ENO also states in the ICP that the ICP contemplates using far fewer unbundled RECs than the maximum number of 895,551 that would be permitted under the RCPS for 2022;<sup>46</sup> and

**WHEREAS**, while parties made suggestions as to how the RCPS should be modified with respect to several topics, no party has argued that the ICP proposed by ENO is not in compliance with the RCPS as it currently exists, and ENO's Reply was responsive to the Advisors' recommendations; and

**WHEREAS**, as a general matter, the purpose of compliance filings is to assess whether the utility's filing is in compliance with the existing rules or Council Resolution or Order requiring the filing. In most circumstances, the principles of transparency and fairness to interested parties dictate that changes to rules should not be made unless parties have had sufficient notice that rules may be changed in a particular proceeding and an opportunity to intervene in the proceeding and comment upon the proposed changes. The Council declines to make changes to the RCPS through this compliance proceeding, without prejudice to issues raised in this proceeding being raised again

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<sup>45</sup> ICP at 8.

<sup>46</sup> ICP at 10.

in future RCPS Periodic Review proceedings where interested parties will have sufficient notice that changes to the RCPS may be adopted; **NOW THEREFORE**

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

ENO's proposed ICP, as supplemented by ENO's Reply is in compliance with the RCPS, as discussed herein.

**BE IT FURTHER RESOLVED THAT:**

1. The Council declines to make changes to the RCPS with respect to the definition of RECs and specifically the requirement that to qualify for compliance purposes, one of the conditions that RECs must meet is that 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. The Council clarifies that with respect to the definition of RECs in the RCPS, "deliverable into the MISO region" can be demonstrated by a showing that energy from the identified Renewable Energy Resource either is currently being delivered to MISO or has been delivered to MISO previously.
3. The Council establishes an ACP value of \$8.45 per MWh for Compliance Year 2022.
4. The Council does not accept ENO's proposed treatment for the GPO and its associated applicability for RCPS compliance and clarifies that no RECs associated with the GPO shall be utilized to satisfy RCPS compliance until such time as the Council may revise the RCPS in a future RCPS Periodic Review proceeding.
5. The Council approves ENO's EV Credit Calculation methodology for use in ENO's Compliance Demonstration Report for 2022, to be filed prior to May 1, 2023.

6. ENO's proposal to create a 5% contingency reserve is reasonable for this Compliance Year 2022 ICP. However, recognizing the lack of specific metrics and experience in complying with the RCPS Rules in this first compliance year, the Council directs ENO to monitor and assess the performance of its resources on an ongoing basis over the course of the year with respect to the creation of the anticipated RECs and CECs, and to notify the Council promptly should any of the proposed resources fail to perform in a manner that would require a material adjustment to this ICP in order for ENO to comply with the RCPS for Compliance Year 2022.
7. The Council directs ENO in the development of its next RCPS Compliance Plan to work with stakeholders to identify relevant analyses and metrics to be utilized on a going forward basis to determine an appropriate contingency reserve.

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

**YEAS: Giarrusso, Green, Harris, King, Morrell - 5**

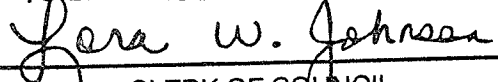
**NAYS: 0**

**ABSENT: Moreno, Thomas - 2**

**AND THE RESOLUTION WAS ADOPTED.**

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THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY

  
CLERK OF COUNCIL