

RESOLUTION

NO. R-23-507

CITY HALL: November 2, 2023

BY: COUNCILMEMBER MORENO, MORRELL, HARRIS, GREEN AND THOMAS

**RESOLUTION AND ORDER RELATED TO MADISON ENERGY INVESTMENTS,
INC. MOTION TO AMEND COMMUNITY SOLAR RULES**

DOCKET NO. UD-18-03

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

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

WHEREAS, Entergy New Orleans, LLC (“ENO” or “Company”) is a public utility providing electric and natural gas service to all of New Orleans; and

WHEREAS, the Council has repeatedly expressed support for the efficient use of clean, sustainable technology to improve the quality of life for citizens and businesses; and

WHEREAS, the Council wishes to expand the renewable options available to New Orleans residents, particularly those who are unable to participate in the Net Energy Metering Rules for the City of New Orleans program; and

WHEREAS, on March 28, 2019, the Council adopted Resolution No. R-19-111, establishing the Community Solar Rules, and subsequently amended those Rules in Resolution Nos. R-19-390 and R-22-76; and

WHEREAS, on July 13, 2022, Madison Energy Investments (“MEI”) filed its Motion to Amend the Community Solar Rules (“Motion”) seeking amendments to the Community Solar Rules to (1) increase the tariff rate for all subscribers; (2) raise the minimum project size; (3) employ consolidated utility billing; (4) require ENO to enter into PPAs with developers; (5) shift ownership of renewable energy credits (“RECs”) from subscribers to Subscriber Organizations; (6) increase the PPA term limit from 10 to 20 years; and (7) increase the minimum requirement for Low-Income Subscribers; and

WHEREAS, on August 18, 2022, the Council adopted Resolution R-22-370, establishing a comment period to seek input from the parties to this docket on the Motion; and

WHEREAS, on September 9, 2022, the Alliance for Affordable Energy (“AAE”) filed comments (1) generally supporting or not opposing tariff changes and other measures to increase the revenues that would be generated by Community Solar facilities, increasing the maximum project size, carefully designed consolidated billing, extending the PPA term limit and increasing the low-income subscriber minimum; (2) seeking clarification of the PPA proposal; and (3) opposing the proposal to change REC ownership; and

WHEREAS, on December 7, 2022, ENO submitted comments. ENO opposed the proposed amendments, arguing that they destroy the balance of the rules that protects customers, ignore costs to customers, and ignore technical feasibility and that such wholesale changes should only be made through a full rulemaking process with participation from all interested parties; and

WHEREAS, on December 7, 2022, the Coalition for Community Solar Access (“CCSA”) filed a motion to intervene and filed comments. The motion to intervene was granted and the comments were accepted into the record by the hearing officer in an Order issued December 8, 2022. CCSA’s comments promoted the benefits of a well-run community solar program and provided information on the mechanics and economic benefits of community solar; and

WHEREAS, on January 6, 2023, MEI filed reply comments to ENO’s Comments to MEI’s Motion to Amend the Community Solar Rules, reiterating its arguments in support of increasing the tariff rate, raising the maximum allowable project size, consolidated utility billing, requiring ENO to pay for electricity through a PPA, shifting the ownership of RECs to the Subscriber Organization, and increasing the PPA term limit; however, neither Council Resolution R-22-370 nor the hearing officer provided for the filing of reply comments; and

WHEREAS, on January 10, 2023, the hearing officer issued a Memorandum and Order providing that parties shall have until January 17, 2023 to submit reply comments to MEI’s reply comments submitted on January 6, 2023; and

WHEREAS, on January 17, 2023, ENO filed reply comments in response to reply comments filed by MEI on January 6, 2023, continuing to oppose MEI’s proposals and arguing for the necessity of a full rulemaking proceeding; and

WHEREAS, on February 2, 2023, Together New Orleans (“TNO”) filed a *Petition for Intervention and Inclusion on Service List*, which was granted by the hearing officer by Order issued on February 2, 2023; and

WHEREAS, on April 6, 2023, the Council adopted Resolution R-23-130, which granted MEI’s proposal to raise the maximum Community Solar Generating (“CGS”) facility size from 2MW to 5MW; denied MEI’s proposal to amend Article IV, Sec. A(6) of the Community Solar

Rules; directed the Council Utilities Regulatory Office (“CURO”) to convene a technical conference by May 12, 2023 on remaining issues; and instructed parties to file comments on the remaining issues by June 16, 2023 with reply comments due by July 7, 2023; and

WHEREAS, on April 25, 2023, CURO hosted said technical conference; and

WHEREAS, on June 16, 2023, ENO filed an analysis of the cost to ratepayers of the maximum amount of CSG Facilities provided for in the Rules, and filed additional comments asserting: (1) intervenors have no justification for increasing CSG subscriber credit rates; (2) ENO will explore various system and process modifications required to implement a form of consolidated billing as well as the costs involved and allocation of those costs; (3) if Council supports ENO pursuing a low-income pilot concept without wholesale changes to the Community Solar Rules, the Company supports testing the change to a standard 20-year PPA; (4) provided limited refinements to the Community Solar Rules, ENO proposes a pilot to target 100% low-income participation without inflating Subscriber credit rates and increasing costs by non-participating customers; and (5) Subscriber Organizations should not receive RECs, and if the Council considers changing REC ownership, ENO should be allowed to receive the RECs and retire them on behalf of participating customers such that the CSG projects can be counted towards ENO’s compliance obligation under the Renewable and Clean Portfolio Standard (“RCPS”); and

WHEREAS, on June 16, 2023, AAE filed comments asserting (1) support of the adoption of a full retail tariff rate to provide an adequate incentive for community solar developers; (2) support of the broadening of the definition of “Low-Income Customers” by either increasing the percentage of Area Median Income that qualifies or by some other method; (3) if consolidated billing is adopted, the Council must ensure that customer savings flow through under the consolidated billing scheme; (4) support of the current rules where the ownership of RECs defaults

to subscribers with the option to transfer ownership to community solar developers; (5) support of the current Community Solar Rules' position placing no limits on the minimum number of low-income subscribers per project; and (6) support of extending PPA terms under the Rules to 20 years in order to align more closely with other utility PPAs and to provide better financing option to community solar developers; and

WHEREAS, on June 16, 2023, TNO submitted comments including a report on Community Solar in New Orleans created for TNO by Gabel Associates, arguing that the tariff rate credit in the Community Solar Rules is too low and fails to capture all value created by community solar facilities, and that without an increase in the tariff rate, a community solar project would never break even; and

WHEREAS, on June 16, 2023, MEI submitted comments, again urging that the tariff rate be increased, consolidated billing be utilized, REC ownership be shifted from subscribers to Subscriber Organizations, and that the term length of the PPA be extended to 20 years; however, MEI stated that upon discussion with the stakeholders at the technical meeting, MEI agreed with ENO and other parties that raising the threshold of low-income subscribers per CSG facility is likely unnecessary and could slow down project development; and

WHEREAS, further, in MEI's June 16, 2023 comments, MEI indicated that it has run several financial models assuming the current rules and "found that while a project may pencil with 100% LMI offtake, it simply will not be financeable without any non- LMI participation"; and

WHEREAS, on June 16, 2023, a non-party, Working Power, filed comments in this docket; however, by Order dated June 19, 2023, the hearing officer excluded the public comments

from evidence on the basis that Working Power is a non-party, and accordingly, does not possess standing to participate in this proceeding; and

WHEREAS, on June 20, 2023, ProRate Energy submitted late additional comments, which supported the adoption of an alternative rate structure of Community Solar and were accepted into the record by the hearing officer by way of Order issued June 26, 2023; and

WHEREAS, on July 7, 2023, Air Products and Chemicals (“Air Products”) filed comments opposing the proposed changes to the Community Solar Rules because they would increase costs to non-participants; opposing ENO’s proposed pilot program arguing that an RFP could serve the same purpose; and supporting that Community Solar projects should count toward ENO’s RCPS compliance obligations; and

WHEREAS, on July 7, 2023, AAE submitted reply comments, arguing that ENO’s rate impact analysis ignores the benefits of local community solar and opposing the proposal to shift ownership of RECs to Subscriber Organizations; and

WHEREAS, on July 7, 2023, Pro Rate Energy filed Reply Comments criticizing the way the Community Solar Rules are published and offering ways in which the Community Solar Rules could be improved; and

WHEREAS, on July 9, 2023, TNO submitted untimely comments, which were admitted to the record by the hearing officer in an Order dated July 10, 2023. TNO’s comments included a study conducted by the National Renewable Energy Laboratory on behalf of TNO with economic modeling to determine the viability of community solar at different solar credit price points. TNO argued that the bill credit is too low for a community solar project developer to ever recoup its costs; the 2 MW size limit and PPA term limit of 10 years further harm the viability of community solar projects and that the minimum credit for a solar project to be viable would be \$0.10056/kWh.

TNO argues the current tariff rate is too low, the actual value of the solar energy produced by community solar is \$0.1485/kWh, including only direct energy-related benefits, and increases to \$0.1818/kWh when societal benefits are included; as a result, the Council should increase the credit to at least \$0.10056/kWh; and

WHEREAS, on July 7, 2023, ENO filed additional reply comments arguing that the Gabel study's assertion that the tariff rates undervalue community solar is without merit; that if REC ownership is to be changed, ownership should be shifted to ENO, not to Subscriber Organizations and used for ENO's RCPS compliance, that MEI's claim a project with 100% LMI offtake would not be financeable is incorrect; and opposing ProRate Energy's proposal; and

WHEREAS, on July 11, 2023, Pro Rate Energy filed supplemental reply comments, which were admitted to the record by the hearing officer in an Order dated July 14, 2023. ProRate Energy's comments made further suggestion on improving the Community Solar Rules; and

WHEREAS, on August 4, 2023, CURO filed the Administrative Records Chart in this docket; and

WHEREAS, having reviewed the record, the Council has determined that revisions to the Community Solar Rules and related CSG forms and tariff schedules are appropriate; and

WHEREAS, an increase in the Subscriber credit provided for electricity generated by community solar projects, including an adder for Low-Income Subscribers, is likely to increase the deployment of community solar in New Orleans; and

WHEREAS, based on the comments in the record, the Council has determined that it is reasonable to credit all Subscribers with the full retail rate, and that a 2.0 cents/kWh adder for Low-Income Subscribers is reasonable considering the value of the benefits of community solar offered in comments; and

WHEREAS, the Council understands that any increase in the subscriber credits will increase the cost of the community solar program and its attendant impact on ratepayers, the Council also understands that the impact will occur over time and will be dependent on the rate and magnitude of CSG development in New Orleans; and

WHEREAS, the Council believes that an increase in the subscriber credits can be accomplished while still protecting ratepayers from undue burden and providing the ratepayers with the stated benefits of community solar; and

WHEREAS, the Council is aware that Article VII, F of the Rules requires annual utility reporting which will provide sufficient information for the Council to monitor the costs and benefits of the Community Solar Program; and

WHEREAS, the Parties have raised valid concerns regarding the utilization of consolidated utility billing that have not been sufficiently addressed; and

WHEREAS, while ownership of RECs should remain with the Subscribers, as initially set forth in the Community Solar Rules, more flexibility should be provided to allow Subscriber Organizations to reach agreement with Subscribers to transfer RECs to the Subscriber Organization without further regulatory hurdles; and

WHEREAS, changing the term of the PPA from ten years with two five-year automatic renewal terms for Subscriber Organizations to a term of 20 years is a minimal change to the PPA that may result in easier financing of Community Solar projects; and

WHEREAS, in light of the comments of the parties and MEI's agreement that raising the threshold of Low-Income Subscribers per CSG facility is likely unnecessary and could slow down project development, no change should be made to that provision at this time; **NOW THEREFORE**

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That:

- 1) MEI's proposal regarding crediting all subscribers at the full retail rate, and MEI's encouragement of a Low-Income Benefits and Public Entity Benefits adders is **GRANTED IN PART**. . The value of the CSG per kWh credit rate for Subscribers that do not qualify as a Low-Income Subscriber shall be revised to be the full retail rate, including all applicable rider schedules that would be applicable to the Subscriber on a per kWh basis. The value of the CSG per kWh credit rate for Low-income Subscribers shall be revised to be the full retail rate, including all applicable rider schedules that would be applicable to the Low-Income Subscriber on a per kWh basis, plus 2.0 cents/kWh.
- 2) MEI's proposal to eliminate "Article XIII. Consumer Protection and Disclosure – section G. Subscriber Funds" and replacing that section with a requirement that ENO manage consolidated utility billing for its subscribers is **DENIED**.
- 3) MEI's proposal of assigning renewable energy credits ("RECs") to Subscriber Organizations is **GRANTED IN PART**. Subscriber Organizations may enter into an agreement with subscriber customers to transfer ownership of RECs from the customer to the Subscriber Organization. Any such agreement to transfer ownership of the RECs must be included in the subscription agreement; and must be highlighted, clearly stated, and initialed by the customer.
- 4) MEI's proposal to increase the PPA initial term from ten years to twenty years is **GRANTED**. ENO is directed to amend the first sentence of Article 4.1 of its Standard Offer Community Solar Power Purchase Agreement, Form CSG-4, to read: "This Agreement shall become effective upon its execution by the Parties and shall continue

in effect for a Term of 20 years from and after the Date of Commercial operation (“Initial Term”), subject to early termination as set forth herein, or until the termination of any Interconnection Agreement associated with the CSG Facility, whichever occurs first.” The remainder of Article 4.1 shall remain unchanged. ENO is further directed to amend Article 4.2 to read “Renewal. If the Subscriber Organization is in compliance with the terms of this Agreement, the Agreement may be renewed by mutual agreement of the Parties. Company will send Subscriber Organization a notice of the pending expiration of the Agreement three months prior to the expiration of the Initial Term, along with an indication of whether the Company is willing to discuss renewal of the Agreement with the Subscriber Organization.”

- 5) MEI’s proposal to amend Article V, B(1)(b) of the Community Solar Rules, which establishes the minimum requirement for Low-Income Subscribers for a Community Solar Generating Facility to be classified in the Low-Income Category at 40% is DENIED.
- 6) The Community Solar Rules as amended and attached as Exhibit B are adopted in their entirety.
- 7) No later than December 29, 2023, ENO is directed to submit a revised Form CSG-4 – Standard offer power purchase agreement and a revised Rate schedule CSGF – Community Solar Generating Facilities consistent with this Resolution and the final, clean version of the Community Solar Rules.

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

YEAS:

NAYS:

ABSENT:

AND THE RESOLUTION WAS ADOPTED.