



Entergy Services, LLC
639 Loyola Avenue
P. O. Box 61000
New Orleans, LA 70161-1000
Tel 504 576 2984
Fax 504 576 5579
hbarton@entergy.com

Harry M. Barton
Senior Counsel
Legal Department -- Regulatory

June 7, 2019

Via Hand Delivery

Lora W. Johnson, CMC, LMMC
Clerk of Council
Room 1E09, City Hall
1300 Perdido Street
New Orleans, LA 70112

Re: Rulemaking Proceeding to Consider the Process for How Any Future Requests for Proposals for Generating Resources or Purchase Power Agreements Issued by Entergy New Orleans, LLC Shall Be Conducted CNO Docket No. UD-18-05

Dear Ms. Johnson:

Enclosed for your further handling please find an original and three copies of Entergy New Orleans, LLC's ("ENO") Reply Comments on the Proposed Rules Applicable to Future Requests for Proposals for Generating Resources or Purchase Power Agreements, together with an exhibit thereto, in connection with the above-referenced matter. Please file an original and two copies into the record and return a date-stamped copy to our courier.

Should you have any questions, please do not hesitate to contact me. Thank you in advance for your usual courtesy and assistance with this matter.

Sincerely,

Harry M. Barton

HMB/hmb
Enclosures
cc: Official Service List

RECEIVED
JUN 07 2019

BY: 

**BEFORE THE
COUNCIL OF THE CITY OF NEW ORLEANS**

**IN RE: RULEMAKING PROCEEDING)
TO CONSIDER THE PROCESS FOR)
HOW ANY FUTURE REQUESTS FOR)
PROPOSALS FOR GENERATING)
RESOURCES OR PURCHASE)
POWER AGREEMENTS ISSUED BY)
ENTERGY NEW ORLEANS, LLC)
SHALL BE CONDUCTED**

DOCKET NO. UD-18-05

**ENTERGY NEW ORLEANS, LLC’S REPLY COMMENTS ON PROPOSED RULES
APPLICABLE TO FUTURE REQUESTS FOR PROPOSALS ISSUED FOR
GENERATION RESOURCES OR PURCHASE POWER AGREEMENTS**

Entergy New Orleans, LLC (“ENO” or the “Company”) submits this latest filing into the record of the Council of the City of New Orleans’ (the “Council”) Rulemaking Concerning Future Requests for Proposals (“RFPs”) for Generating Resources or Purchase Power Agreements (“PPAs”). ENO submits these Reply Comments pursuant to the procedural schedule set forth in Council Resolution No. R-19-110 and in response to Proposed Rules submitted by the Advisors on May 10, 2019 (“Proposed Rules”). ENO also submits proposed “redline” edits to the Proposed Rules as an Exhibit to the Reply Comments (Exhibit 1, “ENO’s Proposed Edits”).¹

Prior to the submission of the Proposed Rules, ENO along with Air Products and Chemicals, Inc. (“APC”) and the Alliance for Affordable Energy (“AAE”) (collectively, the “Intervenors”), submitted comments to address the list of topics identified by the Council in Resolution R-18-355. The Advisors also submitted a Report, on February 18, 2019, that summarized the comments from ENO and the Intervenors and made certain recommendations to the Council.

¹ The contents of the other comments submitted on June 7, 2019 may necessitate further proposed edits to the Advisors’ Proposed Rules. ENO reserves the right to submit such additional proposals with its reply comments, to be filed June 26, 2019.

ENO believes the Proposed Rules generally provide a good framework for addressing the issues the Council identified in Resolution R-18-355 and that the Parties identified in their various comments. ENO is concerned about the added costs that would result from some provisions of the Proposed Rules and the risk that ENO would not be able to comply with some of the temporal requirements in the Proposed Rules without harming the integrity of future RFPs. The increased costs associated with the Proposed Rules (particularly the greatly expanded role of an Independent Monitor (“IM”)) should be of concern to the Council because adding costs to the RFP process can limit or eliminate cost savings for customers that would otherwise result from the selection of cost-effective resources from future RFPs. As ENO has noted from the outset of this proceeding, the Council must balance the aspirational goals articulated in Resolution R-18-355 with the reality that adding numerous conditions, coupled with impractical temporal requirements, to future RFPs will ultimately come at a cost to ENO’s customers. ENO’s Comments and Proposed Edits address these issues. ENO’s Proposed Edits also contain: (i) additional language ENO believes necessary to clarify the Proposed Rules, (ii) a proposed capacity threshold below which the rules would not apply, and (iii) a proposed exemption to the process for hiring an IM that may prove necessary to accommodate specific sets of circumstances discussed more fully herein. ENO’s Comments are organized according to the Sections of the Proposed Rules.

I. Sections I and II: Scope and Purpose of Rules.

ENO has provided two clarifying edits, and one proposed substantive edit, to the Scope and Purpose Sections of the Proposed Rules. First, ENO suggests noting that any rules the Council may adopt from this proceeding apply solely to ENO’s provision of electric service and not to ENO’s provision of gas service.² ENO believes this scope is consistent with the scope of the

² ENO also proposes a minor edit to Section III (A) of the Proposed Rules for this same purpose.

rulemaking the Council initiated with Resolution R-18-355. ENO also notes that while the Purpose Section of the Proposed Rules mentions transparency, efficiency, and public confidence as purposes, no mention is made of ENO's duty to provide reliable electric service to its customers at the lowest reasonable cost. ENO suggests mentioning this goal within the language articulating the purpose of any rules the Council may adopt as a result of this proceeding.

The substantive edit ENO has suggested for this Section of the Proposed Rules proposes that any rules adopted by the Council from this proceeding would apply to RFPs seeking resources with a capacity greater than 20 megawatts. As will be discussed further below, if the Council adopts the Proposed Rules as written, the cost of future RFPs (particularly the cost of engaging IMs) will increase greatly. ENO is concerned that for smaller resources, any savings associated with cost-effectiveness of those resources could be negated by the cost of compliance with the Proposed Rules. As the Council is aware, smaller resources do not have the same economies of scale as larger resources and, as such, have smaller margins of cost-effectiveness. Given this fact, increased costs from compliance with the RFP rules could conceivably limit or eliminate any savings associated with the cost-effectiveness of these smaller resources. This effect could, in turn, limit ENO's future ability to add distributed-generation ("DG") scale resources on a cost-effective basis, since DG-scale resources are typically smaller and do not benefit from economies of scale. A similar chilling effect could be seen for renewable resources located within Orleans Parish because land constraints limit renewable resources located within New Orleans to a smaller size. ENO believes the Council should strongly consider adding a minimum capacity threshold of 20 megawatts to the scope of any rules adopted in this proceeding. Without such a minimum threshold, the Council may inadvertently limit ENO's future ability to add cost-effective DG-scale and locally-sited renewable resources to its supply-side portfolio.

II. Section III: Pre-RFP Process and Documents.

This Section of the Proposed Rules attempts to balance the need for ENO's experienced team of resource and supply planners to design the scope of future RFPs to solicit resources needed to meet the specific needs of ENO's customers with the policy goals advocated for by Intervenors in their comments (*e.g.*, experimenting with an "all-source" solicitation model, ensuring "sufficient flexibility" for future RFPs). The Proposed Rules seem appropriately balance these potentially competing interests, but ENO does believe certain clarifications and exemptions are required.

A. Issuance and Content of Notice of Intent

First, Section III(B)(1) appears to contemplate that ENO's resource planning team will be afforded the ability to design the scope of future RFPs according to their business judgment, but that ENO must also provide detailed explanations as to why such future scopes may not contain "sufficient flexibility" or be suited to "all-source" solicitations. Yet, the Proposed Rules do not define "sufficient flexibility" or an "all source" solicitation. As such, it is unclear what may trigger an obligation to provide more detailed explanations supporting the scope and design of future proposed RFPs. ENO requests greater clarity on these components if they are included in any rules the Council adopts. Next, as ENO noted in both sets of previously filed comments, requiring "all source" solicitations, as ENO understands the term's meaning, will add considerable cost and time to each RFP because "all source" solicitations present great difficulty in terms of developing metrics that fairly evaluate submissions on a level playing field (to the extent such evaluations are possible). The decision to add cost and time may not be in the Council or customers' best interest and should be carefully considered before being recommended or adopted.

Finally, ENO is particularly concerned with the suggested requirement from the Proposed Rules that future RFP documents "should also specifically identify the interconnection and/or

delivery points that would most benefit the transmission and distribution systems in terms of reliability.” There are several issues that would make this requirement incredibly costly and time consuming, if it were even possible to comply with the requirement in the first place. As the Advisors know from the current Integrated Resource Plan process, ENO does not possess the ability to identify optimal locations for new resources on its distribution system at present and developing this capability could take several years. As such, the Proposed Rules contain a requirement with which compliance is presently impossible; ENO suggests removal of this proposed requirement. As to the transmission system, ENO is unaware of any utility in the country that identifies specifically preferred interconnection points when issuing RFPs for new resources. This is presumably due to the enormous amount of time and money that would need to be spent to perform the kind of specific analysis to identify such interconnection points for each new RFP. Moreover, including such specific requirements within an RFP would unnecessarily limit the number of proposals submitted by only soliciting proposals from bidders with projects near the interconnection points. ENO’s Proposed Edits suggest modifying this requirement to state a more general preference for a geographic location. Such a modification would reduce the cost and time required to comply with whatever rules the Council adopts from this proceeding, and facilitate the goal of getting more, not fewer, proposals submitted into future RFPs.

B. Timing Requirements

ENO also notes that the Proposed Rules contemplate that the Notice of Intent (“NOI”) would contain a list of proposed milestones for future RFPs. ENO is concerned that the point at which it would issue an NOI may be too early to identify the timing associated with the proposed

milestones. ENO recommends that the proposed milestones be published with draft RFP documents, rather than the NOI.³

More importantly, ENO does not believe it is realistic, or in the best interests of customers, to require that only twelve (12) months be allowed to pass between the issuance of an RFP and the filing of an application for approval of whatever resources are selected from the RFP.⁴ ENO believes that this issue with the Proposed Rules can be addressed in one of two ways. The first option (which is depicted in ENO's Proposed Edits) would be to change the time requirement to twenty-four (24) months. The second option would be to have the selection of bids for winning proposals, not the issuance of the RFP, be the triggering event for the twelve-month time period. Regardless of which proposed solution the Council chooses, this kind of modification **will be necessary** because a twelve month time limit from the issuance of an RFP to the filing of an application simply does not allow enough time for potential respondents to carefully prepare and submit bids and for ENO to conduct: (i) evaluation of, or obtain clarification on, bids, (ii) selection and vetting of winning proposals, (iii) complex contract negotiations (including with respect to contract structures that may be new and novel, but also beneficial to customers), and (iv) preparation of a regulatory-grade filing. If the Council desires these activities be conducted carefully and prudently, the time restriction contained in the Proposed Rules must be modified. ENO also notes that the Proposed Rules contemplate the Advisors being able to contact the IM at any time to monitor progress in RFPs, in addition to ENO issuing reports every 60 days. These provisions will reduce the risk of undue delay in RFPs more effectively than impractical deadlines.

³ ENO has not made a proposed "redline" edit to move the milestone requirement to Section IV(A)(1) of the Proposed Rules.

⁴ For an "all source" solicitation, the 12-month time limit is even more unlikely to be possible for ENO to meet due to the added time required to develop metrics for the level comparison of different kinds of resources.

C. Disadvantaged Business Enterprise Goals

As ENO noted in both sets of comments filed previously in this proceeding, ENO and Entergy Corporation (“Entergy”) both prioritize hiring and creating opportunities for minority- and women-owned businesses (referred to in the Proposed Rules as “DBEs”) to perform services and gain economic advantages.⁵ The processes and personnel that Entergy employs to ensure that such opportunities are created for DBEs have been repeatedly acknowledged for their progressiveness and effectiveness.⁶ Any suggestion that ENO or Entergy do not value or prioritize DBEs is baseless. ENO, the Council, and the City of New Orleans share the same priorities when it comes to hiring DBEs. ENO’s concerns with utilizing Article IV of Chapter 70 of the Code of the City of New Orleans as the benchmark for assessing whether ENO’s future RFPs are designed to achieve these priorities are, and always have been, technical in nature.

First, this Section of the City Code expressly applies only to contracts to which the City is a party. The City would not typically be a party to any PPAs into which ENO enters, or to any contracts associated with the construction of new ENO-owned generating assets. As such, ENO believes that bidders into future RFPs would be understandably confused by rules or RFP documents that reference a section of the City Code that is inapplicable on its face to the agreements that may be confected following the completion of the RFP process. To address this issue, ENO proposes that this portion of the Proposed Rules be modified to provide additional clarity that the compliance with the DBE-related **goals** of this section of the City Code, and not

⁵ http://www.entergy.com/operations_information/supplier_diversity/

⁶ For example, the Southern Region Minority Supplier Development Council’s honored Entergy as the Corporation of the Year at its 2015 IMPACT Awards and to name the Company’s Manager of Supplier Diversity and Development group as its Supplier Diversity Advocate of the Year.

compliance with the entire section of the City Code, is what bidders should consider in crafting their proposals.

An additional concern with Article IV of Chapter 70 of the Code of the City of New Orleans is that the DBE-related goals in this section of the Code are not defined in terms of “addressable spend,” but rather seem to focus on the total budget associated with a project. The concept of addressable spend is very important to consider when examining DBE goals and what effect such goals could have on the overall cost of a project undertaken by ENO, particularly in the context of PPAs or contracts to construct or acquire generating assets. For example, with a new generation resource a majority of the costs are tied to the acquisition and installation of the components of the resource that generate electricity (*e.g.*, photovoltaic panels, reciprocating combustion engines, etc.). Typically, this portion of the construction cost would not be considered “addressable spend” since a limited number of entities manufacture such technologies and there is not an opportunity to acquire these components of a resource from a local DBE. If the cost of these components of a resource were included in any overall DBE goals associated with the project, it would likely be addressed by adding a DBE as a “middle-man” to purchase those components from a manufacturer and then sell the components to a utility, presumably at a higher cost than what the utility would pay in a direct transaction with the manufacturer. This increased cost would ultimately be born by customers. To address this issue, ENO has suggested introducing the concept of addressable spend into this Section of the Proposed Rules and requiring that compliance with the DBE goals outlined in the City Code be measured in terms of addressable spend, and not the overall cost or value of a proposal. ENO believes that such a modification will advance the DBE-related goals shared by the Council, ENO, and the City, but without creating unnecessary cost increases for ENO’s customers.

D. IM Process and Duties and Periodic Reporting

The Council noted at the outset of these proceedings that it prioritized the goal of increasing transparency and public confidence in future RFPs, but also wanted to increase efficiency and decrease costs associated with future RFPs. In both sets of ENO's comments, ENO noted that these goals could be competing, and not complementary, efforts. The Proposed Rules concerning the scope of future IMs' duties and the process for selecting those future IMs provides a good example of how these goals may compete once the Council adopts rules from this proceeding. The expanded scope of future IMs' duties,⁷ and the extensive process that will be required to hire new IMs and educate them on ENO and Entergy's internal processes (not to mention maintain a current list of Council-approved IMs, regardless of whether any RFPs are anticipated in the near future) will increase the cost, and decrease the temporal efficiency, of future RFPs. However, the added cost and time may increase public confidence in future RFPs, to the extent that the public follows such proceedings. How to prioritize these competing goals and whether to add cost and time to future RFPs in order to shore up public perception are decisions the Council will need to make. That said, ENO's Comments on the Proposed Rules offer a suggestion on how to address one practical concern that may present itself in particular sets of circumstances.

Situations may arise in the future where ENO faces an immediate need to issue an RFP for new resources due to emerging regulatory priorities or reliability issues and the Council either does not have a current list of pre-qualified IMs, or none of the Council's pre-qualified IMs are available to perform the work necessary. Given this possibility, ENO has included in its Proposed Edits an exemption from the requirement to use Council pre-qualified IMs if such situations arise in the

⁷ Typically, an IM will issue one report at the end of an RFP process. The Advisors' Proposed Rules seem to contemplate between 5-6 reports being prepared by the IM as well as the IM redacting each of these reports for public consumption.

future. ENO is open to other solutions for addressing these sets of possible future circumstances but strongly believes that the Proposed Rules need to contain an exemption that provides ENO a path forward on RFPs if the Council's pre-qualified IMs are unavailable to ENO for any reason.

Also, ENO notes that it will typically already have an IM engaged prior to issuing an NOI for an RFP. ENO does not see anything in the Proposed Rules that would impede ENO's continuation of this business practice but wanted to note this typical practice for the record. ENO also proposes a minor edit to the Proposed Rules concerning the periodic reporting requirements. The Proposed Rules do not contain an end date at which the duty to provide reports every 60 days terminates. ENO's Proposed Edits suggest that this obligation would terminate once ENO has filed an application with the Council for approval of resources selected from the RFP at issue. ENO has also proposed that the same confidentiality restrictions applicable in Section V(B) of the Proposed Rules also apply to the reports issued pursuant to Section III(E).

III. Development of Final RFP Documents.

ENO generally believes the content and notice requirements for draft and final RFP documents to be reasonable. ENO has proposed one clarifying edit to Section IV(B) of the Proposed Rules, to indicate that ENO may choose to convene the public meeting and technical conference discussed therein in a single meeting. ENO believes this was the intent of the Proposed Rules, given the Council's interest in creating an efficient RFP process, but proposed the edit to make this intent clear and avoid the risk of being required to add unnecessary cost and time to the RFP process due to an ambiguity in the rules.

IV. Issuance and Post Issuance of RFP.

ENO generally agrees with the appropriateness of the protocols identified in the Safeguard Provisions Section of the Proposed Rules and notes that ENO follows very similar procedures


today. ENO has proposed one edit to clarify that these safeguard provisions are only required when ENO or an affiliated entity intends to submit a self-build proposal into the RFP at issue. Absent a self-build being submitted, such formalities are unnecessary. ENO understands from the prior proceedings in this matter that this is the intent behind this portion of the Proposed Rules but suggests the edit to avoid unnecessary complications resulting from an ambiguity in the rules.

V. Effectuation of Rules.

ENO is unclear on what this Section of the Proposed Rules means and requests clarification prior to submitting any comments.

Respectfully submitted,

By: _____


Timothy S. Cragin, Bar No. 22313
Harry M. Barton, Bar No. 29751
639 Loyola Avenue, Mail Unit L-ENT-26E
New Orleans, Louisiana 70113
Telephone: (504) 576-2984
Facsimile: (504) 576-5579

**ATTORNEYS FOR ENTERGY NEW
ORLEANS, LLC**

CERTIFICATE OF SERVICE

Docket No. UD-18-05

I hereby certify that I have served the required number of copies of the foregoing report upon all other known parties of this proceeding, by the following: electronic mail, facsimile, overnight mail, hand delivery, and/or United States Postal Service, postage prepaid.

Lora W. Johnson, CMC, LMMC
Clerk of Council
Council of the City of New Orleans
City Hall, Room 1E09
1300 Perdido Street
New Orleans, LA 70112

Erin Spears, Chief of Staff
Bobbie Mason
Council Utilities Regulatory Office
City of New Orleans
City Hall, Room 6E07
1300 Perdido Street
New Orleans, LA 70112

David Gavlinski
Council Chief of Staff
New Orleans City Council
City Hall, Room 1E06
1300 Perdido Street
New Orleans, LA 70112

Sunni LeBeouf
City Attorney Office
City Hall, Room 5th Floor
1300 Perdido Street
New Orleans, LA 70112

Norman White
Department of Finance
City Hall, Room 3E06
1300 Perdido Street
New Orleans, LA 70112

Hon. Jeffery S. Gulin
3203 Bridle Ridge Lane
Lutherville, MD 21093

Clinton A. Vince, Esq.
Presley R. Reed, Jr., Esq.
Emma F. Hand, Esq.
Dentons US LLP
1900 K Street NW
Washington, DC 20006

Basile J. Uddo, Esq.
J.A. "Jay" Beatmann, Jr.
c/o Dentons US LLP
The Poydras Center
650 Poydras Street,
Suite 2850
New Orleans, LA 70130-6132

Errol Smith, CPA
Bruno and Tervalon
4298 Elysian Fields Avenue
New Orleans, LA 70122

Philip J. Movish
Joseph W. Rogers
Victor M. Prep
Legend Consulting Group
8055 East Tufts Avenue
Suite 1250
Denver, CO 80237-2835

Timothy S. Cragin
Alyssa Maurice-Anderson
Harry M. Barton
Karen Freese
Entergy Services, LLC
Mail Unit L-ENT-26E
639 Loyola Avenue
New Orleans, LA 70113

Brian L. Guillot
Entergy New Orleans, LLC
Mail Unit L-MAG-505B
1600 Perdido Street
New Orleans, LA 70112

Joseph J. Romano, III
Suzanne Fontan
Therese Perrault
Entergy Services, LLC
Mail Unit L-ENT-4C
639 Loyola Avenue
New Orleans, LA 70113

Polly S. Rosemond
Seth Cureington
Derek Mills
Keith Woods
Entergy New Orleans, LLC
Mail Unit L-MAG-505B
1600 Perdido Street
New Orleans, LA 70112

Katherine W. King
Randy Young
Kean Miller LLP
400 Convention Street, Suite 700
Post Office Box 3513
Baton Rouge, LA 70821

Carrie Tournillon
900 Poydras St.
Suite 3600
New Orleans, 70112

Mark Zimmerman
Air Products and Chemicals, Inc.
720 I Hamilton Boulevard
Allentown, PA 18195

Maurice Brubaker
Air Products and Chemicals, Inc.
16690 Swingly Ridge Road
Suite 140
Chesterfield, MO 63017

Logan Atkinson Burke
Sophie Zaken
Alliance for Affordable Energy
4505 S. Claiborne Avenue
New Orleans, La 70125

New Orleans, Louisiana, this 7th day of June 2019.



Harry M. Barton

**RULES APPLICABLE TO FUTURE REQUESTS FOR PROPOSALS ISSUED BY
ENTERGY NEW ORLEANS, LLC FOR GENERATION RESOURCES OR PURCHASE
POWER AGREEMENTS**

I. Scope of Rules

The rules provided herein shall govern the process for how any future Requests for Proposals (“RFP”) issued by Entergy New Orleans, LLC (“ENO” or “Company”) for electric generating resources or purchase power agreements (“PPA”), regardless of the technology sought, shall be conducted. In the absence of an express exemption from the Council, ENO shall be required to comply with these rules for RFPs seeking to acquire generating resources or PPAs with a capacity of greater than twenty (20) megawatts (“MWs”).

II. Purpose of Rules

The purpose of these rules is to increase transparency, efficiency, and public confidence in the manner in which ENO conducts RFPs for generating resources and purchase power agreements. These rules also seek to ensure that RFPs are designed to continue to allow ENO to meet the needs of its customers for reliable electric service at the lowest reasonable cost.

III. Pre-Draft RFP Process and Documents

A. Notice of Intent to Issue RFP

Upon determining that the acquisition of an additional generating resource(s) or purchase power agreement(s) is necessary for the Company to fulfill its obligation to provide reliable, safe electric ~~and gas~~ service to its customers at the lowest reasonable cost, ENO shall inform the New Orleans City Council (“Council”), its utility Advisors, and the Council’s Utilities Regulatory Office (“CURO”) in writing of its intent to develop and issue an RFP for a new resource(s) or PPA(s). A public version of ENO’s Notice of Intent to Issue an RFP (“NOI”) shall be posted on the Company’s website and CURO shall cause the NOI to be posted on the Council’s website. ENO shall also circulate the public version of the NOI to the Official Service List in Council Docket No. UD-18-05.

B. Content of NOI

ENO’s NOI shall include the following:

1. A clear and thorough explanation of the Company’s stated resource needs and specific goals to be outlined in the draft RFP. The proposed scope of the RFP shall be clearly described and an explanation supporting the RFP’s scope shall also be provided. This explanation shall include all specifically

defined generating characteristics required (i.e., peak, baseload, geographic location, etc.) for resource proposals and should also specifically identify, if applicable, the ~~interconnection and/or delivery points~~ geographic area that would most benefit the transmission ~~and distribution~~ systems in terms of reliability. ENO shall also identify a reasonable range of capacity (in megawatts) that it intends to include as the range sought in the RFP.

The Company shall also explain whether the RFP will contain sufficient flexibility in the eligibility of resources to meet the capacity and energy need and whether the capacity and energy need could be met through one or more resources without pre-determined limitations on locations, fuel source, technologies, project structures or other constraints, in order to attract competitive options that allow the lowest reasonable cost resource(s) to be selected. If it is anticipated that the RFP will not contain sufficient flexibility to meet ENO's identified need, then the Company shall explain, in detail, why the RFP should be drafted more narrowly to attract resources that would meet ENO's need.

An all-source RFP should be utilized if there is a general need for additional capacity and there are no specific resource characteristics identified by ENO that would prohibit the use of an all-source solicitation. The Company shall state in the NOI whether an all-source solicitation may be made in the proposed RFP. If an all-source solicitation cannot or should not be made, then ENO shall provide a detailed explanation to the Council and its Advisors as to why certain resources will not meet ENO's needs for new generating capacity.

2. A clear and thorough explanation as to how ENO intends to achieve wide participation by potential respondents, including a description of the specific methods to be used for publicizing and distributing the RFP notice and draft RFP documents.
3. A detailed proposed schedule of milestone events and dates including a reasonable time period for the Company to conduct the RFP process and for ENO to perform its due diligence and negotiations with the selected bidder(s). This proposed schedule, beginning upon public issuance of the RFP and ending upon the filing of an application by ENO seeking Council approval of the selected resource(s), shall not exceed a period of twenty-four ~~twelve~~ ~~(12)~~ 24 months except for extraordinary or unforeseen circumstances. If the Company is unable to make a filing at the Council seeking approval of a selected resource(s) within this ~~12~~ 24-month period as a result of extraordinary or unforeseen circumstances, ENO shall notify the

Council, immediately upon learning that a filing within the ~~12~~24-month period cannot be made and provide a detailed explanation to the Council and its Advisors, subject to any material designated by the Company as Highly Sensitive Protected Material (“HSPM”). ENO shall also circulate a public version of the written detailed explanation to the Official Service List in Council Docket No. UD-18-05.

C. Compliance with the New Orleans’ DBE Goals

Future RFPs for new resources shall contain a provision that requires a comprehensive narrative from all respondents detailing the respondent's plan to have the addressable spend associated with their proposals comply with ~~provisions of~~ 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 ("DBE") and goals for the City of New Orleans. A copy of this Code provision shall be included in the RFP. ENO shall consider each bidder’s response as part of the overall evaluation criteria in its selection of the winning bid(s).

D. Independent Monitor

1. After the Council adopts these rules and prior to the issuance of ENO’s next RFP for either a generating resource or PPA, the Council shall issue a Request for Qualifications (“RFQ”) for the purpose of determining one or more qualified respondents who could perform the duties of an Independent Monitor (“IM”) consistent with the criteria outlined in the RFQ. Once the qualified respondent(s) have been identified by the Council, through its RFQ process, the Council, or its designee, shall create a list of qualified potential IMs from whom ENO shall request bids through its RFP process for the selection of an IM.

The Council may, in its discretion, conduct subsequent RFQs every five (5) years to update the list of qualified respondents who could perform the duties of the IM. Once bids are received by the Company, ENO shall make the selection of the IM. ENO shall inform the Council, in writing, within seven (7) days of its selection of the IM.

In a subsequent RFP conducted pursuant to these rules, ENO shall solicit bids from the list of qualified respondents (IMs) which will have already been determined by the Council through the above RFQ process and any updates thereto.

ENO shall be exempted from the requirement to use a Council-pre-qualified IM when (i) the Council does not have a current list of pre-qualified IMs,

or none of the IMs from the Council's pre-qualified list are available to work during the anticipated timeline of an RFP, and (ii) ENO has an immediate need to issue an RFP either (a) to comply with any time-sensitive Council policy goals (e.g., the addition of a certain amount of renewable resources prior to a given date), or (b) to ensure the continued reliability of electric service to ENO's customers. If ENO anticipates that this exemption will apply to an RFP, ENO shall notify the Council of its intent to proceed under the exemption and include an explanation of why ENO believes operating under this exemption is necessary. This exemption shall not eliminate the requirement that ENO employ an IM to perform the duties outlined in these rules.

2. The IM shall be responsible for performing duties such as oversight, review, monitoring and reporting throughout several phases of the RFP (for future resources) process as specifically defined in the scope of work for IM services, including but not necessarily limited to the following phases and activities:
 - (a) RFP Development
 - (b) Proposal Solicitation (RFP Issuance, Bidder Registration and Proposal Submission)
 - (c) Receipt of Proposals
 - (d) Proposal Evaluation and Selection
 - (e) Due Diligence and Contract Negotiations
3. The IM and the Council's Advisors may communicate with each other on matters relating to the RFP process without restriction. Such communications may be confidential as needed and do not require the participation of Entergy Services, LLC ("ESL") or ENO. The IM shall make public, periodic written reports to ENO and the Council, subject to any confidentiality agreements between ESL or ENO and the IM, as part of and at the conclusion of each phase of the RFP process. The IM will also provide a public final report to the Council subject to any confidentiality agreements between ESL or ENO and the IM, stating the IM's analysis of and conclusions regarding the RFP process, including any suggestions for improvement. The confidential versions of the periodic reports and the final report shall be provided to the Councils' Advisors contemporaneously with the public versions provided to the Council.

E. Periodic Status Reporting by ENO

Subsequent to ENO's issuance of the NOI, the Company shall provide a written update to the Council's Advisors and all other parties to Docket No. UD-18-05 that have properly executed ENO's Non-Disclosure Certificate (pursuant to the Council's approved Protective Order) every sixty (60) days regarding the status of the RFP process. These periodic status reports shall be held confidential in accordance with the Council's approved Protective Order for utility regulatory proceedings and shall be subject to the conditions identified in section V(B), below. The status reports shall be submitted throughout the entire RFP process and shall provide the current status of the process, including a detailed explanation of any meaningful developments in the process within the prior 60-day period. The status reports shall also include an explanation of any delays or events that could cause a delay in the overall RFP process. The obligation to issue periodic reports shall terminate upon the filing of an application with the Council for approval of a selection from the RFP at issue.

IV. Development of Final RFP Documents

A. Draft RFP Comment Process

ENO shall post all draft RFP documents to a public website for the purpose of allowing the Council, the Council's Advisors, potential bidders, and other members of the public the opportunity to comment on the documents.

1. Draft RFP documents posted to the public website shall include:
 - (a) a description of the need to be met;
 - (b) a general description of the criteria used to evaluate bids, including "non-price" factors;
 - (c) a link to the most recent Integrated Resource Plan ("IRP") documents;
 - (d) a description of any requirements or preferences for transmission arrangements and deliverability, including a description of how transmission issues will be incorporated into bid evaluations;
 - (e) information about the requirements of resources sought, including dispatchability requirements;

- (f) draft model contracts, term sheets, and scope books outlining the technical requirements resources must meet, to inform potential contract negotiations; and
- (g) a draft confidentiality agreement to be used for the process.

- 2. A period of thirty (30) days after the draft documents have been posted to the public website shall be established for the Council, the Council's Advisors, potential bidders, and other members of the public to submit written questions to ENO regarding the draft documents. Answers shall be posted on a rolling basis but not later than 15 days after the conclusion of the 30-day period for submission of written questions. Questions may be submitted related to a variety of topics, including ENO's proposed timeline, the RFP's scope, technical aspects of the RFP, proposal requirements and evaluation criteria. Other inquiries regarding non-price factors such as locational value, reliability, transmission/distribution impacts, and resource diversity may also be submitted.

B. Public Meeting and Technical Conference

ENO shall host a minimum of one public meeting and one technical conference ([a single meeting may be considered a public meeting and technical conference](#)) for the purpose of allowing the Company to further explain the draft documents and receive additional questions, concerns and feedback from the Council, the Council's Advisors, stakeholders and members of the public.

V. Issuance and Post Issuance of the RFP

A. Safeguard Provisions

- 1. Safeguard provisions are necessary in the RFP process to assure a fair and competitive solicitation. ENO has participated as a self-bidder in prior RFP processes and may participate as a bidder in future RFPs. [When ENO or an affiliated entity does participate in RFPs as a self-bidder,](#) the following safeguards shall be implemented and maintained throughout the solicitation, selection and negotiation processes:

- (a) separation of the self-build team from the evaluation team;
- (b) application of a Code of Conduct and Affiliate Rules;
- (c) designation of an RFP Administrator as a single point of contact with bidders;

- (d) submission and lock-down of the self-build several days before other proposals were submitted;
- (e) requirement that all bidders, including the self-build, submit the same proposal information to ensure each proposal was consistently evaluated;
- (f) use of bidder, proposal, and project ID numbers to eliminate any potential bias in the evaluation;
- (g) blinding of bid information and redaction of bidder names, by the IM, of other non-pertinent information when distributing information to the bid evaluation teams;
- (h) protection of the confidentiality of non-public information received from bidders in connection with the RFP;
- (i) inclusion of an active role for the IM, as specified in section III.D.2.

B. Periodic Reporting by the IM

At the conclusion of each phase in the RFP process, as listed in section III, D, 2 above, the IM will prepare one or more interim reports and a final report (including confidential and public versions) at the conclusion of the RFP process stating the IM's analysis of and conclusions regarding each phase of the RFP process, including any expected delays in the schedule, reasons for the delays and any suggestions for improvement. These reports shall be subject to the Council's approved protective order and any other confidentiality agreements that may be executed by the negotiating parties. The confidential versions of the reports shall be provided to ENO, the Council's Advisors and any stakeholder that has affirmatively demonstrated no affiliation with any (i) for-profit companies that either compete with bidders or are themselves bidders in RFPs for generating resources, (ii) trade organizations that are composed of and represent the interests of such for-profit entities, and/or (iii) accept direct financial contributions from and, at times, directly advocate for the interest of such entities. The public versions of these interim reports and the public final report shall be provided to the Council, the Council's Advisors and the Official Service List in Docket No. UD-18-05. The public reports shall also be posted on ENO's public RFP website and the Council's website upon release by the IM.

VI. Effectuation of Rules

ENO shall include any and all contractual provisions in its agreements or contracts with bidders, counterparties, or IMs to effectuate compliance with these rules.