Sept 13, 2024

Via Electronic Mail

Aisha Collier
Assistant Clerk of Council
Room 1E09, City Hall
1300 Perdido St
New Orleans, LA 70112

Re: Resolution and Order Community Solar Program (Docket No. UD-18-03)

Dear Ms. Collier,

Together New Orleans and the Alliance for Affordable Energy respectfully co-submit the attached comments regarding Resolution and Order Docket No. UD-18-03 pertaining to the City's updated Community Solar Program. Please do not hesitate to reach out with any questions related to this filing.

Sincerely,

Broderick Bagert, Jr.
Together New Orleans

Logan Atkinson Burke
Alliance for Affordable Energy

Before the
Council of the City of New Orleans

RESOLUTION AND ORDER ESTABLISHING A DOCKET AND OPENING A RULEMAKING PROCEEDING TO ESTABLISH RULES FOR COMMUNITY SOLAR PROJECTS

(Docket No. UD-18-03)

September 12, 2024

COMMENTS OF TOGETHER NEW ORLEANS AND THE ALLIANCE FOR AFFORDABLE ENERGY ON COMMUNITY SOLAR RULES

As directed by the procedural schedule established by Resolution No. R-24-310 (Docket No. UD-18-03) to address certain issues regarding community solar program implementation, Together New Orleans and the Alliance for Affordable Energy ("the Parties") respectfully file the following comments regarding the Community Solar rules, initially approved on March 28, 2019, by Resolution No. R-19-111, and amended November 2, 2023, by Resolution R-23-507, and Entergy New Orleans' ("ENO") Community Solar Generation Forms ("CSG-4" and "CSGF").

Our comments are updated to take into account the productive discussions that occurred in the Aug 27 technical conference hosted by the Council Utility Regulatory Office ("CURO").

Form CSG-4, Section 3.3: Subscriber Lists

A clause in Form CSG-4 allows ENO to "refuse to accept" additions, deletions or changes to subscriber lists. In the technical conference, ENO clarified that the rules for striking subscribers are very clear. We therefore retract our previous request that the right to strike be contestable, and amend it with a request that 30 days before the Utility plans to strike a subscriber, the Utility notify the Subscriber Organization and the Subscriber, so they have a

chance to cure. Sometimes problems can arise from simple misunderstandings or missing information and can easily be remedied; we want to give this a chance before disrupting a subscriber's savings.

> Suggested revised language: *"ENO reserves the right to refuse to accept any additions, deletions or changes to the Monthly Subscription Information to the extent such addition, deletion or change results in non- compliance with any of such conditions. If a subscriber will be struck, the Utility shall give both the Subscriber and the Subscriber Organization 30 days notice so that the potential default can be cured."*

Form CSG-4, Section 4.2: Renewal

The current 20-year term is much shorter than the useful life of a project, which can be expected to operate for 30-35 years. To be clear, the Parties do not expect that pricing will remain identical, but if the Council wishes for this community solar program to endure beyond 20 years, a mechanism for bill credits to continue beyond 20 years must be enshrined. We recognize that, PURPA[1] ensures that Utilities will buy *electricity* from generators, but that is different from distributing *community solar bill credits.* The goal here is to ensure that well-maintained projects aren't forced to shut down before the end of their useful lives.

A recently released policy guidebook by Coalition for Community Solar Access[2] notes the following:

> *A community solar installation will continue to provide electricity to the grid as long as the installation remains interconnected. The costs of developing a solar installation are largely up front costs and require certainty over long term compensation in order to secure financing. As such, bill credits should be provided indefinitely until a project informs the utility that credits should stop accruing. By ensuring this structure, states can minimize the costs and maximize the life and value of these generating assets by ensuring providers receive a predictable and stable value stream for the full operational life of the project. Regulators may want to consider a set term length (e.g.e 25 years) for projects to*

[1] Public Utility Regulatory Policies Act, 1978. https://www.ferc.gov/media/public-utility-regulatory-policies-act-1978

[2] 2024, Policy Guidebook: Expanding Solar Access through Informed Policy Decisions. Page 16.

access a specific credit rate but projects should be able to continue to access the future credit rate from the end of that term until the community solar project owner elects to stop providing credits.

Suggested additional language for CSG-4 Section 4.2: "*Subscriber Organizations shall be allowed to continue to operate and Subscribers shall continue to receive bill credits, during negotiation and after the end of the initial term without interruption until the Subscriber Organization elects to stop providing credits."*

Execution of Interconnection Agreements

The Parties believe ENO's recommendation to create two interconnection queues is sound. Additionally, The Parties appreciate ENO's suggestion to execute the Interconnection Agreement after studies but before construction.

The Parties had also wanted PPAs to get signed before construction, in order to reassure banks that projects had a secure path to revenue, but if ENO can provide a letter for banks stating that community solar projects following the rules will get their PPAs signed, that should serve to give developers and financiers the certainty they require.

Form CSG-4, Section 4.5: Deposits

The Parties continue to believe it is not reasonable or appropriate to charge a deposit to hold space in the interconnection queue, especially since it has now become clear that ENO will require 100% payment for interconnection upgrades up front. This level of capital investment in the grid should serve as adequate risk capital without the need for additional deposits. If the Council allows a deposit to be applied, the Council should also reserve the right to waive it.

ENO's new deposit timeline is better than originally proposed, but the Parties remain concerned that developers may still be punished for delays in interconnection upgrades that are entirely in ENO's control. For example, a developer could have their project fully built in 18, 24 or 36 months, but if interconnection upgrades or witness testing / commissioning (processes

ENO entirely controls) take longer, the developer would have to unnecessarily raise capital, and potentially lose it, through no fault of their own.

No one is suggesting they would do so, but under the current structure, ENO has a significant financial incentive to delay progress on projects in order to collect six-figure deposits. So the point is, anything the Council can do to decouple the deposit timeline from processes ENO controls will reduce unfairness and conflicts of interest. If a Deposit is ultimately deemed necessary, the Parties believe that SunConnect's suggestion is a good compromise: the Deposit should be due *after the greater of* a) 12 months post-ENO's completion of their work, or b) the 18/24/36-month timeline ENO suggested in Section 10 of their Aug 26th letter.

Form CSG-4, Section 4.6: Repair timelines under sunny-day circumstances

After robust discussion in the technical conference, the Parties are no longer pushing for longer repair timelines across the board. However, they maintain that ENO should not have sole discretion to terminate agreements based on circumstances outside of a CSG facility owner / operator's control, such as supply shortages or holdups in port, that owner/operators are making their best efforts to cure.

We suggest that the Council direct ENO to put in a best-efforts clause, in which CURO is the arbiter, in Form CSG-4 Section 4.6 such as:

> Suggested revised language: *The Subscriber Organization shall make best efforts to maintain the CSG Facility and the individual components thereof in good working order at all times during the Term of this Agreement. If, during the Term of this Agreement the CSG Facility or any of the individual components of the system should be damaged or destroyed such that the extent of the damage affecting output exceeds twenty (20) percent of the CSG Facility's nameplate rating, the Subscriber Organization shall provide ENO written notice of such damage, a description of the equipment damaged, the corresponding reduction to the CSG Facility's output, and the anticipated duration of repairs to the facility to return the facility to its original nameplate rating. If, after such damage, the CSG Facility is not returned to its original nameplate rating within one hundred and eighty (180) days, and cannot prove to CURO's satisfaction that they are*

exercising due diligence to repair the issues, ENO shall have the right, exercisable at its sole option, to terminate this Agreement upon not less than thirty (30) days written notice, with no further obligation of the Parties to perform hereunder following the effective date of such termination. In all other situations, if the CSG Facility is out of operation for more than ninety (90) consecutive days during the Term of this Agreement and cannot prove to CURO's satisfaction that they are exercising due diligence to repair the issues, ENO shall have the right to terminate this Agreement by providing written notice to Subscriber Organization anytime during the period following the expiration of such ninety (90 days) and before the CSG Facility has been made fully operational again.

Form CSG-4, Section 4.8: Annual recertification of low-income subscribers

Annual recertification for low-income subscribers is overly onerous and unnecessary, and recertification is not required in many jurisdictions with successful community solar programs. The significant attrition that will occur with every step of additional paperwork should outweigh presumptive concerns about potential abuse. If recertification is done via low-burden approaches like geographical eligibility (e.g. automatically approving any customers who live in low-income census tracts), frequent re-certifications are less of an issue, but that approach hasn't been approved in New Orleans.

This report by the Lawrence Berkeley National Labs about low-income certification strategies found that fraud accounted for only 0.5% of cases.[3] Savings are generally small, meaning that a burden on customers would create notable barriers to involvement relative to the benefit, and a rapid mobility of wealth for LMI consumers is, unfortunately, a generally unreasonable assumption. If the Council is serious about serving low-income people via community solar, the Parties believe that striking this requirement is crucial.

Suggested revised language: *"~~By May 1 of each year, the Subscriber Organization shall re-certify in writing to the Company the Low-Income Subscriber status of all Subscribers to its CSG Facilities that are designated as such.~~"*

[3]https://live-lbl-eta-publications.pantheonsite.io/sites/default/files/income_verification_strategies_berkeley_lab.pdf

Form CSG-4, Section 6.3: Repair timelines after Force Majeure events.

Similar to the discussion about sunny-day repair timelines in Section 4.6, the Parties believe that a good-cause exception for force majeure events is appropriate. Some language about this appears in the clause, but it is up to ENO to determine whether the Subscriber Organization is exercising due diligence to cure. The Parties understand ENO's need to differentiate between projects that are genuinely working to get back online as soon as possible (whose self-interest, incidentally, is a more powerful incentive than any rules) versus deadbeat projects that need to get cleared out, however we believe it should be up to the Council to judge whether projects are demonstrating veritable efforts to come back online.

Suggested revised language: *In the event that any delay or failure of performance caused by conditions or events of Force Majeure continues for an uninterrupted period of three hundred sixty five (365) days from its occurrence or inception, as noticed pursuant to Section 6.2(a)(i) above, the Party not claiming Force Majeure may, at any time following the end of such three hundred sixty five (365) day period terminate this agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. The Party not claiming Force Majeure shall ~~may, but shall not be obligated to,~~ extend such three hundred sixty five (365) day period, ~~for such additional time as it, at its sole discretion deems appropriate,~~ if the affected Party is exercising due diligence in its efforts to cure the conditions or events of Force Majeure, as determined by CURO.*

Form CSG-RPAR: Site Control

There appeared to be consensus at the technical conference that site control could include an email from the landowner confirming they agree with a developer researching their parcel. This would be acceptable to the Parties.

Form CSG- RPAR: Application process

The technical conference concluded that hosting capacity maps would probably not be granular enough to be useful, and that the initial engineering study done via the pre-app would give developers the information they need.

However, estimate sheets for common upgrades, which ENO said they would consider providing, would be useful - see one example in the footnote below.[4]

The timelines and costs published on ENO's website are helpful, but they are not binding; it would help if they were, particularly if deposit timelines aren't uncoupled from study timelines. Some projects in Delaware have taken 3 years to get studied.

Some developers have learned that the Facilities Study, which is not specified on ENO's interconnection study matrix, might cost as much as $75-100K on top of the $20K that developers will have already paid for their system impact study. In Illinois, the facilities study is capped at $10,000 by statute. In New York, the facilities study costs $8,000 and developers typically receive a refund for unspent engineering hours. The Coalition for Community Solar Access has shared that in other jurisdictions, developers typically spend $20-30K all-in for studies, rather than the $120K+ ENO is currently proposing to charge, which is more in line with utility-scale than distributed generation. As developers go through the application process and its costs become clearer, the Parties will continue to monitor how ENO's process compares to other jurisdictions.

Schedule CSGF: Clarity in the rate calculation

The Parties appreciate ENO's clarity around the credit rate and have no further comments on this issue.

Community Solar Rules, Section XIII: Customer Protections

In order to further ensure safe program implementation and strengthen confidence in the Community Solar market in New Orleans, the Parties urge adoption of several additional

[4] https://dps.ny.gov/statewide-interconnection-technical-documents.

nationwide best practices for customer financial and marketing protections to Section XIII of the Council's Community Solar Rule

Clauses to be added to Section XIII of the Community Solar Rules:

- *Subscriber Organizations and marketers will not employ flat fees beyond the monthly cost for the solar energy credited to the electric bill, such as termination fees, sign-up fees, and security deposits.*
- *Contract summary disclosure should be maximum 2 pages in minimum 12-point typeface, in a language understood by the customer. It should allow the customer to terminate early without penalty and clearly state how to cancel the contract. It should explain how the subscription can be moved to another address or transferred to a different subscriber. It should also clearly show the expected bill savings percentage rate.*
- *Marketers must ascertain the primary language of their potential or actual subscribers and offer documents in a language they understand.*
- *Contracts, contract summaries and disclosures shall be available both electronically and on paper.*
- *Marketers must consider methods for reaching out to and enrolling households that are unbanked, lack credit cards and / or have low credit scores, and/or have no internet access.*

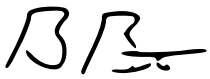
Net Crediting

The Parties continue to believe that net crediting is an <u>essential</u> linchpin to this program. We look forward to working with ENO to implement net crediting.

Conclusion

The Parties appreciate the Council's consideration of these comments and we look forward to seeing the opportunity of community solar fully realized in Orleans Parish.

RESPECTFULLY SUBMITTED:



Broderick Bagert, Jr., Together New Orleans

DocuSigned by:
Logan Atkinson Burke
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Logan Atkinson Burke, Alliance for Affordable Energy

Before

The Council of the City of New Orleans

Re: RESOLUTION AND ORDER ESTABLISHING A DOCKET AND OPENING A RULEMAKING PROCEEDING TO ESTABLISH RULES FOR COMMUNITY SOLAR PROJECTS (Docket No. UD-18-03)

CERTIFICATE OF SERVICE

I do hereby certify that I have, this, September 13, 2024 served the foregoing correspondence upon all other known parties of this proceeding by electronic mail.

Broderick Bagert, Jr., Together New Orleans

DocuSigned by:
Logan Atkinson Burke
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Logan Atkinson Burke, Alliance for Affordable Energy