

June 29, 2018

VIA ELECTRONIC FILING

Public Service Commission of Utah
Heber M. Wells Building, 4th Floor
160 East 300 South
Salt Lake City, Utah 84111

Re: **Docket No. 18-R450-01**—In the Matter of Proposed Rulemaking Concerning Utah Code Ann. § 54-17-807, Solar Photovoltaic or Thermal Solar Energy Facilities, Enacted May 8, 2018.

On May 31, 2018, the Public Service Commission (“Commission”) issued a Notice of Proposed Rulemaking and Request for Comments related to Utah Code Ann. § 54-17-807, the enacted form of 2018 H.B. 261, Renewable Energy Amendments. The Commission requested comments from interested parties to aid the Commission in promulgating rules that will facilitate and govern the process established in section 54-17-807 (“Section 807”). During the 2018 Utah General Legislative Session, Utah Clean Energy (“UCE”) was involved with H.B. 261 from the time it was proposed to its enactment. UCE appreciates the opportunity to submit the following comments on the proposed rulemaking process.

I. Comments

H.B. 261 was intended to increase the use of Utah’s solar resources by enabling utilities to obtain the same tax incentives and financial benefits afforded to non-utility owners of solar resources. During the 2018 general legislative session, a number of stakeholders held discussions focused on finding a balance between, on the one hand, allowing utilities the same benefits as non-utility owners of solar resources and, on the other hand, ensuring that the bill did not go too far and prejudice non-utility parties. For example, if non-utility owners are assessed greater network upgrade costs or are not offered the same PPA contract duration as a utility-owned facility, this could imbalance the level playing field contemplated by H.B. 261. Essentially, the parties sought to create a clear, fair process for soliciting and acquiring solar resources, and one that inspires confidence among the public that the energy resources serving Utah are just, reasonable, and in the public interest.

Section 807 contains provisions that are designed to facilitate this balance. Subsection (6)(b) requires the Commission to determine whether the proposed “solicitation and evaluation processes to be used will create a level playing field in which the qualified utility and other bidders can compete fairly . . . and will otherwise serve the public interest.” Further, subsection (7)(c) only allows the Commission to approve a utilities ownership of an energy resource under subsection (3)(c) and (d) if the “utility’s bid is the lowest cost ownership option for the qualified utility.”

Even with these statutory requirements, there are distinctions between the process outlined in Section 807 and the ordinary solicitation and acquisition provisions in section 54-17 Parts 2 and 3 of the Energy Resource Procurement Act (“ERPA”) that create a need for the Commission’s rules to help ensure a fair, even playing field for everyone. One such distinction is that the ordinary solicitation and acquisition processes in Parts 2 and 3 in the ERPA do not apply to Section 807.¹ This creates an issue because many of the provisions from Parts 2 and 3 that are not present in Section 807 are designed to protect the public interest. The most notably absent provisions from Section 807 are the requirements for an independent evaluator to participate in the solicitation process and the six factors listed as considerations in the Commission’s public interest analysis. The Commission’s rules under Section 807 are necessary then to ensure that the solicitation process under Section 807 is objectively fair and maximizes the chances of finding resources that are just, reasonable, and in the public interest.

A. Independent Evaluator

The Commission’s rules should require an independent evaluator to participate in the solicitation process under Section 807. This is perhaps the most important public protection in the solicitation process under Part 2 of the ERPA. An independent evaluator’s report affords the Commission and interested parties an objective, expert opinion regarding whether the solicitation design will gather competitive bids through a fair process. Buy-in from an independent evaluator in the solicitation design and evaluation will also lend credence to the resource selected at the end of the process, which may reduce the amount of discord among the interested parties.

While Section 807 does not expressly require an independent evaluator, the distinction between resources with nameplate capacities below and over 300 MW supports the conclusion that an independent evaluator is necessary.² The original solicitation and resource acquisition processes under Parts 2 and 3 make a similar distinction. For approval of a “significant energy resource decision”—resources in excess of 100 MW³—the utility must comply with Part 3 of the ERPA, which requires an independent evaluator. For approval of a “resource decision”—resources that do not constitute significant energy resources⁴—the utility must comply with Part 4, which does not require an independent evaluator. The requirement that larger resource decisions be subject to the additional scrutiny of an independent evaluator under Part 3 suggests that the same requirement should be present for larger resources decisions under Section 807.

As a part of the independent evaluator’s functions, it should include a recommendation as to whether the proposed solicitation and evaluation process will create a level playing field for

¹ Utah Code Ann. Section 54-17-807(4)(b), (c).

² *Id.* at 807(3)(c), (d). Section 807(3)(c) requires a utility soliciting a resource with a nameplate capacity that does not exceed 300 MW to comply with Part 4 of the ERPA, while Section 807(3)(d) requires a utility soliciting a resource with a nameplate capacity exceeding 300 MW to comply with Section 807 generally.

³ *Id.* at 102(4)(a).

⁴ *Id.* at 401(1)(b).

bidders. Similar to [R746-420-1\(4\)\(b\)\(i\), \(ii\)](#), the independent evaluator should provide the Commission with a report prior to the approval of the solicitation process. This report should contain the independent evaluator's conclusion as to whether it believes the process is reasonably designed to create an equal playing field for bidders, and include any recommendations that may improve the process or evaluation. The Commission may then use this information to make its decision about the adequacy of the proposed solicitation.

B. Evaluation Criteria

The Commission's rules should require the utility to provide a complete list of evaluation criteria along with an explanation for why each criterion was included, and any weighting and ranking factors applicable to the criteria. This will help enable "a level playing field in which the qualified utility and other bidders can compete fairly."⁵ Non-utility bidders will be disadvantaged if the utility is not required to list the evaluation criteria, or the utility proposes multiple methods of evaluating a criterion without stating which method it will ultimately use, because the utility will be the only party able to bid responsively to the evaluation criteria, increasing the chances that the utility bid will be selected. As such, if the evaluation criteria includes a utility's proprietary modeling or evaluation techniques, the bidders must be given enough information to know how these techniques will affect their bids.

Further, the utility should explain the reasoning behind the inclusion of each evaluation criterion and any weighting and ranking factors applicable to the criteria. These explanations will allow bidders to fully understand how competitive their bid is and to narrowly tailor their bid to the most important considerations. This may increase competition and maximize the chances that only competitive bidders will submit a response. For example, if the utility is soliciting a resource with specific grid support capabilities such as increasing grid reliability or flexibility in a particular region, explaining what the resource must provide and why may help encourage competitive bids. These explanations will also allow the Commission, an independent evaluator, and interested parties to better determine whether evaluation criteria are reasonably designed to identify the best bid.

The Commission's rules should also impose a requirement on the utility to propose a timeline for the solicited resource that any reasonable bidder can meet. If, for example, the utility proposes an evaluation criteria that a bidder's project must be capable of interconnecting within a prescribed timeline, the timeline must allow a non-utility owned project a reasonable amount of time to interconnect. This standard will ensure that proposed timelines are not biased in favor of utility projects, which may have an easier time meeting the utility's proposed timelines.

⁵ *Id.* at 807(6)(b).

Once the solicitation process begins, the details of the solicitation and evaluation criteria should be locked in. This requirement assures bidders that they will not be disqualified because of a late addition to the solicitation process that pushes their bid out of contention. Understanding that some changes may be inevitable, changes to the solicitation could be made if the utility obtains unanimous consent from the Division of Public Utilities, Office of Consumer Services, and any intervening parties to the solicitation process, or if the Commission approves the changes after a separate hearing and public comment period.

C. Robust Number of Competitive Bids

A requirement that the solicitation process obtain a robust number of competitive bids, to the extent practicable, allows the utility, Commission, and interested parties to gain an understanding of the true market prices for a solicited resource. Such an understanding is in the public interest because it provides credibility to the winner of the solicitation—the more bids you review the more likely it is that the lowest solicited bid represents the lowest cost resource.

Another way to inject credibility into the solicitation process and achieve a robust response is to encourage RFPs that solicit a variety of technologies capable of meeting a defined need. The costs and capabilities of energy resource technologies are changing quickly and traditional assumptions about the best resources to meet a give need may be out of date. The RFP process will return a larger spread of options by maximizing the number of technologies eligible to bid, which increases the chances that the best possible project is selected.

D. A Summary of the Results Should be Made Public

The Commission's rules should require the utility to make a summary of the bids available to the public once the solicitation process is complete. The summary should include as much information as possible, but at a minimum the number of bids received, type of generation technology represented by the bids, ownership structure, term length for each project, median project MW for each technology, high, low and median bid price for each technology, and if any of the bids contain storage capacity, high, low and median bid price and battery capacity in both MW and MWh for each technology with storage capacity.

Increasing public awareness of the actual bid prices for solar energy generating technologies will improve public confidence in the solicitation and resource acquisition processes by helping the public understand why the winning resource was selected. By limiting the categories of information that the utility must publish to technology type, capacity, and price, no specific information will be tied to individual bidders and the company will not be forced to publish any proprietary information related to the solicitation or evaluation of the bids. Further, bidders will be able to better understand the market in which they are bidding in, which could lead to more competitive solicitations and overall reduced prices for future resources.

E. Public Interest Analysis Should be Consistent with Parts 2, 3, and 4 of ERPA

The Commission's rules should clarify that the public interest analysis under Section 807 will be consistent with the public interest analysis under sections 54-17-201, 302, and 402. Specifically, when determining whether a utilities acquisition of the resource identified in the solicitation process is in the public interest, the Commission will consider:

- A) Whether it will most likely result in the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of an affected electrical utility located in this state;
- B) Long-term and short-term impacts;
- C) Risk;
- D) Reliability;
- E) Financial impacts on the affected electrical utility; and
- F) Other factors determined by the commission to be relevant.

II. Summary

H.B. 261 was originally designed to increase the use of Utah's solar supply by affording utilities an equal opportunity to leverage tax incentives and financial benefits associated with owning solar resources. UCE encourages the Commission to adopt rules that supplement the protections contained Section 807 that are meant to ensure a level playing field for all bidders. The comments and recommendations discussed above will help craft an RFP process that is fair, transparent, and one that inspires confidence among the public that the energy resources serving Utah are just, reasonable, and in the public interest.

Sincerely,

/s/ Hunter Holman
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