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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Proposed Rulemaking Concerning Utah Code Ann. § 54-17-807,)
Solar Photovoltaic or Thermal Solar Energy Facilities,) DOCKET NO. 18-R450-01
Enacted May 8, 2018)

RESPONSE COMMENTS OF THE INTERWEST ENERGY ALLIANCE
JULY 13, 2018

The Interwest Energy Alliance submits these comments in response to the initial comments filed on or before June 29, 2018 in this proceeding, including draft rule language recommended for implementation of HB- 261, codified as Utah Code Ann. § 54-17-807 (“Section 807”).

Interwest appreciated Rocky Mountain Power’s initial comments which provided context and perspective about how the different parts of the statute can be coordinated together. The initial comments from other stakeholders included high-level recommendations that the commission maintain protections to ensure that the opportunity for the utility to own the resources acquired under Section 807 does not harm customers, through solicitations that are fair and result in least-cost resource acquisitions in the public interest.

1. Utah Clean Energy.

Interwest generally supports the initial comments submitted by the Utah Clean Energy.

Utah Clean Energy (“UCE”) notes as follows:

... 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 of the ERPA do not apply to Section 807. 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.

UCE comments, June 29, 2018, Sec. I, p. 2, citing to Utah Code Ann. Sec. 54-17-807(4)(b), (c). In order to insert market protections that are not included in the statute, but which would otherwise

be available through application of the ERPA, UCE includes five basic recommendations for Section 6 solicitations (summarized here for brevity):

- a) require an independent evaluator to review the RFP and bid review processes and results for fairness;
- b) require the utility to publish 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”;
- c) encourage RFPs that solicit a variety of technologies capable of meeting a defined need, maximizing the types of technologies which will be eligible to bid, ensuring a more robust response;
- d) require a summary of the results to be made public, to increase confidence in the solicitation process; and
- e) conform the Section 807 public interest analysis to make it consistent with Parts 2, 3 and 4 of the ERPA.

Interwest supports these recommendations, and notes they are consistent with Interwest’s initial comments. Interwest’s initial comments included goals to help ensure that the results of the solicitation were in the public interest. Interwest and UCE included recommendations to provide transparency to a wide variety of bidders so that they are able to respond with sufficient detail and tailored bids suited to meet the utility’s needs. See, e.g., UCE’s recommendations listed in (a), (b) and (c) above. These recommendations will promote bidder confidence and result in a more robust response, driving greater efficiency and ensuring that the best resources available in the market are presented for consideration, including those which may ultimately be owned by the utility. UCE’s recommendations listed under (d) provide transparency which can be accomplished while protecting confidentiality, and (e) incorporates the 6-part public interest analysis used for other generation acquisitions. The utility and the public will have greater confidence in the results if these recommendations are included in the rules implementing Section 807.¹

¹ Interwest notes that requiring a public summary of bid results at some point after a solicitation is complete and projects are approved is a standard provision in other states which have strong protections leading to low-cost renewable bids in robust solicitations, including Public Service Company of Colorado’s (“PSCo’s”) well-reported recent Electric Resource Plan results. See, e.g., D. Roberts, “In Colorado, a glimpse of renewable energy’s insanely cheap future”, <https://www.vox.com/energy-and-environment/2018/1/16/16895594/colorado-renewable-energy-future>. PSCo publicly reported average prices in real time. In Colorado, actual bid prices are to be revealed 18 months after the bid process is closed. See Colorado Public Utilities Commission Rules related to confidentiality, including C.C.R. Rule 7-723-3613(i) and (j). <https://www.colorado.gov/pacific/dora/electricrules>.

2. Rocky Mountain Power.

Interwest generally supports Rocky Mountain Power's requests that portions of the commission review under Section 807 be "streamlined".² Rocky Mountain Power discusses Section 6(b), and the standards under which the commission must determine that the proposed solicitation will create a level playing field for the company and other bidders.³ Rocky Mountain Power suggests that this be a "rebuttable presumption" because the specific customers for which the solicitations are proposed under Section 6(b) are paying all costs of acquisition and have little incentive to use solicitation criteria that unfairly favor a particular bidder. This assumes, however, that the individual customer designs most of the solicitation criteria and materials, which Interwest suggests is unlikely. Rather, although customers know their own renewable energy goals and how their businesses use electricity, it seems logical that the utility and the renewable energy industry together are more aware of what advanced technologies are available in the market and how they can serve each type of customer. Therefore, it seems probable that the utility, perhaps working with individual companies with which it has ongoing relationships, will develop a solicitation, sometimes particularly designed to meet a large customer's needs. This particularity can serve a customer, but it can also prevent market participations who are not involved in the private negotiations from bringing forth other cost-effective advancements for full and fair consideration. Therefore, Interwest questions whether a "rebuttable presumption" is appropriate, and recommends instead that the commission fall back on its usual standards available under the ERPA for this determination. Robust solicitations bring cost savings.

Rocky Mountain Power further notes under Section (8) that a utility may conduct a solicitation process approved under subsection (6), but not acquire a resource derived from the solicitation.⁴ Within 6 months thereafter, a utility may then file an application with the commission seeking approval to acquire another energy resource similar to which the energy resource for which a competitive market price was established without going through a new solicitation. Therefore, a utility may use the solicitation to formulate its own proposal to own a resource. The competitive market price must be "reasonable" and the acquisition must be in the public interest.

This section of the statute fulfills Utah's desire for utilities to own solar and solar thermal resources using federal tax credits as expressed in Section 807. Procedures for these determinations should allow for diligent inquiry, so as to reveal the quantitative and qualitative values associated with utility ownership. The application should include analysis of the modeling of the proposed project, which can be vetted by stakeholders. The public interest analysis must be thorough, and the "reasonableness" standard must ensure that these solicitations are perceived

² Rocky Mountain Power's comments, "Section (3)", p. 2.

³ Rocky Mountain Power's comments, "Section (6)", p. 3.

⁴ Rocky Mountain Power's comments, "Section 8", p. 4.

as real opportunities to compete merely than market research conducted for the utility's own business purposes. Without such protections, the Utah market may become *de facto* non-competitive and less robust due to bidder and public skepticism. A public hearing, opportunity for public comment, including review of the results of the solicitation and opportunities presented thereby (with confidentiality protections approved by the commission), along with a stringent public interest analysis which conforms to parts 2, 3 and 4 of the ERPA will be essential to help protect Utah's consumers from a weakening competitive environment. Therefore, the rules should include the public interest standards set forth in Sec. 54-17-402(3)(b). In order to allow the utility to benefit from any data and analysis it can provide related to the specific benefits of utility ownership for purposes of this determination, the commission could consider adding "including, but not limited to, the benefits of utility ownership of the proposed project", in order to highlight the interests of utility ownership when considering Sec. 54-17-402(3)(b)(vi) "other factors determined by the commission to be relevant." The public interest standard would then be:

- (i) whether it will most likely result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of any energy utility located in this state;
- (ii) long-term and short-term impacts;
- (iii) risk;
- (iv) reliability;
- (v) financial impacts on the energy utility;
- (vi) other factors determined by the commission to be relevant, including, but not limited to, the benefits of utility ownership of the proposed project.

Confidentiality remains an important element of competitive resource acquisition. Preservation of the confidentiality of proprietary information is critical. However, confidentiality can inadvertently result in limitations on diligent inquiry related to whether utility decisions are in the public interest. Therefore, the rules should enable staff and stakeholder to thoroughly analyze bid results and independent consultant reports made conveniently available to professionals who sign non-disclosure agreements under standardized protective orders issued by the commission. Parties can be allowed to protest improper use of these protections and bring questions to the commission for resolution if necessary. If the utility decides not to acquire from a solicitation, but then to acquire within 6 months thereafter, the materials to be distributed should include bid prices, modeling results, and adequate information to allow for comparison of cost-effectiveness of the bids and the utility project(s), with sufficient time for review prior to written comments. When confidential materials are distributed in accordance with protective orders approved by the commission, parties can help the commission to make a fully-informed decision about whether the acquisitions are in the public interest. These requirements should be included in addition to the requirement for a public summary as recommended by UCE.

Interwest appreciates this opportunity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed by email this 13th day of July, 2018, and served on the following:

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