

July 13, 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.

I. INTRODUCTION

On May 31, 2018, the Utah Public Service Commission (“Commission”) filed a Notice of Proposed Rulemaking and Request for Comments related to H.B. 261, codified in the Utah Code as Section 54-17-807 (“Section 807”). Utah Clean Energy (“UCE”) submitted comments to the Commission on June 29, 2018, and appreciates the opportunity to submit reply comments and draft rule language now.

Many of the parties who submitted comments to the Commission on June 29, 2018 identified a need for rules designed to help facilitate a fair solicitation and acquisition process under Section 807. Some of the common themes included 1) establishing a timeline for the solicitation that allows all interested parties to submit competitive bids; 2) ensuring that the risks, restrictions, and benefits associated with an RFP are equal for all parties; 3) requiring a rigorous evaluation of bids to avoid bias; and, more generally, 4) using the existing rules for Parts 2, 3, and 4 of the Energy Resource Procurement Act (“ERPA”) as a template for the proposed rules under Section 807.

UCE’s reply comments below focus on a few of the points discussed in the comments filed on June 29 but largely provide draft rule language incorporating the themes listed above for the Commission’s consideration.

II. COMMENTS

Independent Evaluator

A requirement for an independent evaluator (“IE”) to help develop and administer the solicitation will address many of the concerns raised by the parties who submitted comments on June 29. In our initial comments, UCE provided a more detailed explanation of how involving

an IE in the solicitation can increase the reliability and credibility of the process. The purpose of this discussion is to clarify our initial comments.

While Section 807 does not expressly require an IE to participate in this process, UCE believes the Commission's rules can and should require an IE for Section 807 solicitations that will establish a competitive market price. Section 807 requires the Commission to adopt rules consistent with Title 63G, Chapter 3 that, in part, address factors the Commission determines relevant for protecting the public interest when implementing Section 807. Subsection 4(b) states that the requirements in Part 2 of the ERPA do not apply to Section 807, except as otherwise provided in subsection (3)(c) and (d).¹ Subsection 4(b) does not state that the requirements in Part 2, including the requirement for an IE, shall not apply. However, the Commission may impose Part 2 requirements if it finds them relevant for protecting the public interest.

The Commission should require an IE to participate in solicitations under Section 807 that establish a competitive market price because doing so will mitigate the amplified risk of prejudice and harm created by subsection 9. Subsection 9 of Section 807 allows a utility to seek approval to acquire multiple energy resources without going through a new solicitation process if a competitive market price has been established by a prior recent resource acquisition under Section 807. Subsection 9 elevates the importance of ensuring that the initial solicitation process is fair because the price established through the initial solicitation will act as a benchmark for additional resources subject to fewer vetting requirements. An IE's involvement in the initial solicitation is necessary to establish objectivity and credibility and ensure this benchmark price is fair. As Sustainable Power Group said in its June 29 comments, "[i]t is always problematic when one competitor is also the judge."² The risk of bias in the solicitation process is compounded because subsection 9 enables the utility to acquire multiple additional resources based on one solicitation. To address this risk, the Commission's rules should require an IE to participate in all solicitations that will establish a competitive market price.

Subsection 5(b)(i) is Subject to Commission Review and Modification, Without a Presumption of a Level Playing Field

Rocky Mountain Power (the "Company") stated in its June 29 comments that proposed solicitations falling under subsection 5(b)(i)—those related to subsection 3(a) and (b) resources—should not be subject to commission modification. The Company's argument relies

¹ Section 54-17-807(4)(b) "Except as provided in Subsections (3)(c) and (d), the following do not apply to an application submitted under [Section 807]: Part 2, Solicitation Process."

² Sustainable Power Group June 29, 2018 Comments, page 2, paragraph 2.

on the distinction between the language used in subsections 5(b)(i) and (b)(ii). Subsection 5(b)(i) states that proposed evaluation criteria will be “determined by the customer” and subsection 5(b)(ii) states that proposed evaluation criteria will be “proposed by the qualified utility.”³ The Company also argued that because the customer determines the evaluation criteria for resource solicitations under subsection (3)(a) or (b), there should be a rebuttable presumption that the solicitation will result in a level playing field.⁴

The distinction between evaluation criteria determined by customers and criteria proposed by the Company is not intended to control the Commission’s ability to modify a proposed solicitation. It is intended to establish that customers will determine the evaluation criteria for applications soliciting resources under Subsection (3)(a) or (b), and the Company for solicitations under 3(c) or (d). In fact, subsection (6)(b), which applies to any solicitation application brought under Section 807, requires the Commission to determine “that the solicitation and evaluation processes to be used will create a level playing field in which the qualified utility and other bidders can compete fairly, including with respect to interconnection and transmission requirements imposed on bidders by the solicitation within the control of the commission and the qualified utility . . . and will otherwise serve the public interest.” This requirement describes a pre-approval analysis that the Commission must perform in every solicitation brought under Section 807. The Commission’s ability to modify resource proposals under subsection 3(a) or (b) is not intended to impede the customer’s ability to direct project requirements and specifications, but rather to enable the Commission to ensure a fair bidding process. If the Commission determines that the evaluation criteria for a resource application under Subsection (3)(a) or (b) is not in the public interest or does not create a level playing field, it should modify the criteria to ensure that the proposal complies with the statutory requirements.

Further, the Commission must perform an analysis to determine that the solicitation and evaluation process to be used will create a level playing field *before* it may approve an application, which precludes a presumption that a proposed solicitation application creates a level playing field until after the Commission has completed the analysis. Even if this analysis was not a statutory prerequisite to approval, the fact that a customer determines the evaluation criteria does not mean the solicitation will be reasonably designed to create a level playing field. The Commission’s analysis related to whether a proposal creates a level playing field and is in

³ Rocky Mountain Power June 29, 2018 Comments, page 3 Section 5 (“The use of the word “determined” shows that the law does not contemplate Commission modification of these criteria.”).

⁴ *Id.* at page 3 Section 6 (“The rules should establish a rebuttable presumption that Specific Customer Solar Resource solicitations will result in a level playing field.”).

the public interest is a necessary component to ensuring a fair process for all solicitations under Section 807.

III. DRAFT LANGUAGE

The following sections contain draft language for the Commission's rules related to the solicitation approval process under Section 807. These drafted rules are based on the existing rules for Parts 2 of the ERPA— R746-420. Any changed, added, or removed language is in italics and bold.

Solicitation

I – General Provisions

- 1) A Soliciting Utility filing for approval of a proposed Solicitation and Solicitation Process in accordance with Part 8 Section 807 the Energy Resource Procurement Act (Act) shall file a request for approval of the proposed Solicitation and Solicitation Process (Application) which shall include testimony and exhibits which provide:
 - a. A description of the Solicitation Process the Soliciting Utility proposes to use;
 - b. A copy of the complete proposed Solicitation with appendices, attachments and draft pro forma contracts if applicable;
 - c. Information to demonstrate that the filing complies with the requirements of the Act and Commission rules;
 - d. Descriptions of the criteria and the methodology, including any weighting and ranking factors, to be used to evaluate bids, ***including an explanation for why each criterion and factor is being included;***
 - e. Information directing parties to all questions and answers regarding the Solicitation and Solicitation Process posted on an appropriate website;
 - f. Information on how participants in the pre-issuance Bidders' conference should submit advance written questions to the Soliciting Utility that are to be addressed at the pre-issuance Bidder's conference;
 - g. A list of potentially interested parties to whom the Soliciting Utility has sent or will send notices of the filing of the request for approval of the proposed solicitation with the Commission; and
 - h. Other information as the Commission may require.

- 2) Pre Bid-Issuance Procedures. Prior to applying for approval of a proposed Solicitation:
 - a. The Soliciting Utility shall give advance notice to the Commission as soon as practicable that it intends to conduct a Solicitation Process but not later than 60 days prior to the filing of the draft Solicitation and Solicitation Process to enable

- the Commission to promptly hire an Independent Evaluator, *if applicable as directed by section (III)(1)*;
- b. The Soliciting Utility shall hold a pre-issuance Bidders' conference in Utah, with both in-person and conference call participation at least 15 days prior to the time the Solicitation is filed for approval. Interested persons may attend this conference. The Soliciting Utility shall ensure that all questions and answers, made at the pre-issuance Bidder's conference, are provided or recorded in writing to the extent practicable;
 - c. At the pre-issuance Bidder's conference, the Soliciting Utility should describe to the attendees in attendance the process, timeline for Commission review of the draft Solicitation and opportunities for providing input, including sending comments and/or questions to the Independent Evaluator, *if applicable as directed by section (III)(1)*; and
 - d. No later than the date of filing of the proposed Solicitation, the Soliciting Utility shall issue a notice to potential bidders regarding the timeline for providing comments and other input regarding the draft Solicitation.
- 3) Process for Approval of a Solicitation.
- a. Comments on the Soliciting Utility's Application shall be filed with the Commission within 45 days after the filing of the Application. The Independent Evaluator shall provide comments within 55 days after the filing of the Application, *if applicable as directed by section (III)(1)*. The Soliciting Utility shall file reply comments within 65 days after the filing of the Application.
 - b. An Approved Solicitation and related documents shall be posted on an appropriate website as determined by the Commission order approving the Solicitation. Notice of the website posting of a Solicitation shall be sent to the potential bidders identified by the Soliciting Utility and as otherwise directed by the Commission.
 - c. All material modifications to the terms and schedule of the Approved Solicitation must be approved by the Commission.

II – Solicitation Process

- 1) General Requirements of a Solicitation Process.
 - a. All aspects of a Solicitation and Solicitation Process must be fair, reasonable and in the public interest.
 - b. A proposed Solicitation and Solicitation Process must be reasonably designed to:
 - i. Comply with all applicable requirements of the Act and Commission rules;

- ii. Be in the public interest taking into consideration:
 - 1. Whether they are reasonably designed to lead to the acquisition, production, and delivery of electricity at the lowest reasonable cost to the retail customers of the Soliciting Utility located in this state;
 - 2. Long-term and short-term impacts;
 - 3. Risk;
 - 4. Reliability;
 - 5. Financial impacts of the Soliciting Utility; and
 - 6. Other factors determined by the Commission to be relevant.
- iii. Be sufficiently flexible to permit the evaluation and selection of those resources or combination of resources determined by the Commission to be in the public interest. ***This includes, to the extent practicable, allowing bids from the largest variety or combinations of technologies capable of meeting the defined need;***
- iv. Be designed to solicit a robust set of bids to the extent practicable; and
- v. Be commenced sufficiently in advance of the time of the projected resource need to permit and facilitate compliance with the Act and the Commission rules ***and to allow a reasonable bidder to assemble and submit a competitive bid.*** The utility may request an expedited review of the proposed Solicitation and Solicitation Process if changed circumstances or new information require a different acquisition timeline. The Soliciting Utility must demonstrate to the Commission that the timing of the Solicitation Process will nevertheless satisfy the criteria established in the Act and in Commission rules.

2) Screening and Evaluation Criteria.

- a. In preparing a Solicitation and in evaluating bids, the Soliciting Utility shall develop and utilize, in consultation with the Independent Evaluator (if then under contract ***and if applicable as directed by section (III)(1).*** and the Division of Public Utilities, screening ***and evaluation*** criteria, ranking factors and evaluation methodologies that are reasonably designed to ensure that the Solicitation Process is fair, reasonable and in the public interest.
- b. Reasonable initial screening ***and evaluation*** criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of and initial rankings based upon the following factors:
 - i. Cost to utility ratepayers;
 - ii. ***(**Same as R7469-420-3(2)(b)(ii) – (xiv)**)***

- xv. ***Whether a project bid includes a property tax abatement from the local jurisdiction and the potential impact the project will have on that jurisdiction.***
 - c. In developing the initial screening ***and evaluation*** criteria, the Soliciting Utility, in consultation with the Independent Evaluator (if then under contract ***and if applicable as directed by section (III)(1)***), and the Division of Public Utilities, shall consider the assumptions included in the Soliciting Utility's most recent Integrated Resource Plan (IRP), any recently filed IRP Update, any Commission order on the IRP or IRP Update and in its Benchmark Option.
 - d. ***Once the screening and evaluation criteria are approved by the Commission and the Solicitation is issued, the screening and evaluation criteria may not be changed without obtaining 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.***
- 3) Screening Criteria - Request for Qualifications and Request of Proposals.
- a. ***~~Prior to the deadline for responding to the RFP,~~*** The Soliciting Utility may utilize a RFQ ***if it includes in its initial application to the Commission the screening and evaluation criteria it proposes to use.***
 - b. ***~~The Independent Evaluator will provide~~*** Each of the bidders ***will be given*** a Bid number once the Soliciting Utility, in consultation with the Independent Evaluator ***if applicable as directed by section (III)(1)***, has determined that the bidder has met the criteria under the RFQ.
 - c. ***If the Soliciting Utility does not evaluate the RFQ responses in consultation with an Independent Evaluator, as a part of the acquisition process under 807(7)(b) it must show that the evaluation criteria, and the application of those criteria were fair, reasonable and non-discriminatory.***
 - d. ***RFQ screening criteria must be designed to isolate the bids most consistent with the public interest and may not be discriminatory.*** Reasonable RFQ screening criteria may include, but are not necessarily limited to, reasonable and nondiscriminatory evaluation of the following factors:
 - i. Credit requirements and risk;
 - ii. Non-performance risk;
 - iii. Technical experience;
 - iv. Technical and financial feasibility; and
 - v. Other reasonable screening criteria that are applied in a fair, reasonable and nondiscriminatory manner.

- e. The RFQ should instruct each potential bidder to state in its RFQ response whether it is an affiliate of the Soliciting Utility or will contract with an affiliate of the Soliciting Utility.
- 4) Disclosures. If a Solicitation includes a Benchmark Option, the Solicitation shall include at least the following information and disclosures:
- a. Whether the Benchmark Option will or may consist of a Soliciting Utility self-build or owned option (Owned Benchmark Resource) or if it is a purchase option (Market Benchmark Resource);
 - b. If an Owned Benchmark Option is used, a description of the facility, ~~fuel type~~, technology, efficiency, location, projected life, transmission *and interconnection* requirements and operating and dispatch characteristics of the Owned Benchmark Option. If a Market Benchmark Option is used, the Soliciting Utility must disclose that a market option will be utilized and any inputs that will be utilized in the evaluation;
 - c. A description and examples of the manner in which resources of differing characteristics or lengths will be evaluated;
 - d. That bids will receive Bid numbers from the Soliciting Utility or Independent Evaluator *if applicable as directed by section (III)(1)*. The blinded personnel will not have access to any information concerning the relationship between the Bid numbers and the Blinded bids until after selection of the final short list;
 - e. Assurances that resource evaluations will be conducted in a fair and non-preferential manner in comparison to the Benchmark Option;
 - f. Assurances that ~~the Benchmark Option will be validated by the Independent Evaluator and that~~ no changes to any aspect of the Benchmark Option will be permitted ~~after the validation of the Benchmark Option by the Independent Evaluator or the Commission and prior to the receipt of bids under the RFP and that the Benchmark Option will not be subject to change~~ unless updates to other bids are permitted; and
 - g. Assurances that the non-blinded personnel will not share any non-blinded information about the bidders with employees or agents of a Soliciting Utility or its affiliates who are or may be involved in the development of a Solicitation, the evaluation of bids, or the selections of resources (Evaluation Team) until after selection of the final shortlist.
- 5) Disclosures Regarding Evaluation *Criteria and* Methodology. A Solicitation shall include a clear and complete description and explanation of the methodologies to be used in the evaluation and ranking of bids, including a complete description of:

- a. All evaluation procedures;
 - b. ***Each evaluation criterion and*** factors and weights to be considered in the RFQ ***and in the*** initial screening and final evaluation of bids, ***including an explanation for why each criterion and factor or weight is included;***
 - c. Credit and security requirements;
 - d. Pro forma power purchase and other agreements; and
 - e. The Solicitation schedule.
- 6) Disclosures Regarding Independent Evaluator, ***if applicable as directed by section (III)(1)***. The Solicitation shall describe the Independent Evaluator's role ***in a manner consistent with Section 54-17-203***, including:
- a. An explanation of the role of the Independent Evaluator;
 - b. Contact information for the Independent Evaluator; and
 - c. Directions and encouragement for potential bidders to contact the Independent Evaluator with any questions, comments, information or suggestions.
- 7) General Requirements. The Solicitation Process must:
- a. Satisfy all applicable requirements of the Act and Commission rules and be fair, reasonable and in the public interest;
 - b. Clearly describe the nature and all relevant attributes of the requested resources;
 - c. Include clear descriptions of the amounts and types of resources requested, the required timing of deliveries, acceptable places of delivery, pricing options, transmission ***and interconnection*** constraints, requirements and costs that are known at the time, scheduling requirements, qualification requirements, bid and selection formats and procedures, price and non-price factors and weights, credit and security requirements and all other information reasonably necessary to facilitate a Solicitation Process in compliance with the Act and Commission rules;
 - d. Utilize an evaluation methodology for resources of different types and lengths which is fair, reasonable and in the public interest and which is validated by the Independent Evaluator;
 - e. Ensure that bidders will timely receive the data and information determined by the Soliciting Utility, in consultation with the Independent Evaluator or as directed by the Commission, to be necessary to facilitate a fair and reasonable competitive bidding process and all information reasonably requested by bidders;
 - f. Impose credit requirements and other participation and bidding requirements that are non-discriminatory, fair, reasonable, and in the public interest;
 - g. Permit a range of commercially reasonable alternatives to satisfy credit and security requirements;

- h. Permit and encourage negotiation with final short-list bidders for the benefit of ratepayers taking into account increased value but also not unreasonably increasing risks to ratepayers;
 - i. Provide reasonable protections for confidential information of bidders; subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;
 - j. Provide reasonable protections for confidential information of the Soliciting Utility, subject to disclosure pursuant to appropriate protective order to the Independent Evaluator and otherwise as required by the Commission;
 - k. Ensure that if any information that may affect the Solicitation Process is to be shared by the Soliciting Utility with any bidder or with the employees or agents of a Soliciting Utility or its affiliates who may be involved in the development or submission of a Benchmark Option used in a Solicitation (Bid Team), excluding confidential, proprietary or competitively sensitive Benchmark- or bid-specific information or negotiations, that the same information is shared with all bidders in the same manner and at the same time.
- 8) Process Requirements for Benchmark Option. In a Solicitation Process involving the possibility of a Benchmark Option:
- a. The Evaluation Team, including non-blinded personnel, may not be members of the Bid Team, nor communicate with members of the Bid Team during the Solicitation Process about any aspect of the Solicitation Process, except as authorized herein.
 - b. The names and titles of each member of the Bid Team, the non-blinded personnel and Evaluation Team shall be provided in writing to the *Commission in the application and to the* Independent Evaluator *if applicable as directed by section (III)(1)*.
 - c. The Evaluation Team may solicit written comments on matters of technical expertise from the members of the Bid Team. All such communications to or from the Bid Team must be in writing. The Independent Evaluator *if applicable or the Division of Public Utilities if there is no Independent Evaluator* must participate in all such communications between members of the Bid Team and Evaluation Team and must retain a copy of all such correspondence to be made available in future Commission proceedings. The Independent Evaluator *or the Division of Public Utilities* must also make available to the bidder about whose bid the Bid Team's technical expertise was sought a written copy of the correspondence between the Evaluation and Bid Teams. Any response to such correspondence from the bidder must be in writing to the Independent Evaluator *or the Division of Public Utilities* and must be conveyed to the Evaluation Team. The

Independent Evaluator *or the Division of Public Utilities* must provide its own or third party verification of the reasonableness of any technical information solicited from the Bid Team or bidder before it may be used in any evaluation.

- d. There shall be no communications regarding blinded bid information, either directly or indirectly, between the non-blinded personnel and other Evaluation Team members until the final shortlist is determined except as authorized herein, which communications shall be done in the presence of the Independent Evaluator *or the Division of Public Utilities*. The non-blinded personnel must not reveal to other Evaluation Team members, either directly or indirectly in any form, any blinded information regarding the identity of any of the bidders.
- e. The Evaluation Team shall have no direct or indirect contact or communication with any bidder other than through the Independent Evaluator *or the Division of Public Utilities* until such time as a final shortlist is selected by the Soliciting Utility.
- f. Each member of the Bid Team and Evaluation Team, including non-blinded personnel, shall promptly execute a commitment and acknowledgment that he or she agrees to abide by all of the restrictions and conditions contained in these Commission rules. These acknowledgments shall be filed with the Commission within 10 days of their execution.
- g. Should any bidder or a member of the Bid Team attempt to contact a member of the Evaluation Team, such bidder or member of the Bid Team shall be directed to the Independent Evaluator *or the Division of Public Utilities* for all information and such communication shall be reported to the Independent Evaluator *or the Division of Public Utilities* by the Evaluation Team within seven business days.
- h. All relevant costs and characteristics of the Benchmark Option must be audited and validated by the Independent Evaluator *or the Division of Public Utilities* prior to receiving any of the bids and are not subject to change during the Solicitation except as provided herein.
- i. All bids must be considered and evaluated against the Benchmark Option on a fair and comparable basis.
- j. Environmental risks and weight factors must be applied consistently and comparably to all bid responses and the Benchmark Option.
- k. The Solicitation must allow power purchase contract terms equivalent to the projected facility life of the Benchmark Option. ~~*The Commission may waive this requirement during review of the draft Solicitation and Solicitation Process for good cause shown*~~
- l. If the Soliciting Utility is subject to regulation in more than one state concerning the acquisition, construction, or cost recovery of a significant energy resource, the Soliciting Utility shall explain the degree to which it has taken into account the

likelihood of resource approval and cost recovery in other jurisdictions in exercising its judgment in selecting the Benchmark Option.

9) Issuance of A Solicitation.

- a. The Soliciting Utility shall issue the approved Solicitation promptly after Commission approval of the Solicitation and Solicitation Process.
- b. Bidders shall be directed to submit bids directly to the Evaluation Team with the Soliciting Utility or the Independent Evaluator *if applicable as directed by section (III)(I)* in accordance with the schedule contained in the Solicitation.
- c. The Soliciting Utility shall hold a pre-Bid conference in Utah, with both in-person and conference call participation available, at least 30 days before the deadline for submitting responsive bids.

10) Evaluation of Bids.

- a. The *Evaluation Team with the Soliciting Utility or the Independent Evaluator if applicable as directed by section (III)(I)* shall "blind" all bids and supply blinded bids to the Soliciting Utility and make blinded bids available to the Division of Public Utilities subject to the provisions of an appropriate Commission-issued protective order.
- b. The *Evaluation Team with the Soliciting Utility or the Independent Evaluator if applicable* shall supply such information regarding bidders and bids to non-blinded personnel as is necessary to enable such personnel to complete required credit and legal evaluations.
- c. The Soliciting Utility must cooperate fully with the Independent Evaluator *if applicable*.
- d. Subject to an appropriate confidentiality agreement approved by the Commission, the Soliciting Utility shall timely provide to the Independent Evaluator *if applicable* and the Division of Public Utilities full access to all relevant personnel of the Soliciting Utility, together with all data, materials, models and other information, including confidential information and forward pricing curves, used or to be used in developing the proposed Solicitation, preparing the Benchmark Option, or screening, evaluating or selecting bids.
- e. The Soliciting Utility, monitored by the Independent Evaluator *if applicable*, shall conduct a thorough evaluation of all bids in a manner consistent with the Act, Commission Rules and the Solicitation.
- f. The Independent Evaluator *if applicable* shall pursue a reasonable combination of auditing the Soliciting Utility's evaluation and conducting its own independent evaluation, in consultation with the Division of Public Utilities, such that the

Independent Evaluator can fulfill its duties and obligations as set forth in the Act and in Commission Rules.

- g.** The Soliciting Utility, the Division of Public Utilities and the Independent Evaluator *if applicable* may request further information from any bidder. Any communications with bidders in this regard shall be conducted only through the Independent Evaluator. The Soliciting Utility shall be informed in a timely manner of the content of any communications between the Independent Evaluator and a bidder, but Communications shall be conducted on a confidential or blinded basis.
- h.** *When an Independent Evaluator is involved*, in order to facilitate both an independent evaluation function and an auditing function, the Independent Evaluator shall have access to all information and resources utilized by the Soliciting Utility in conducting its analyses. The Soliciting Utility shall provide the Independent Evaluator with complete and open access to all documents, information, data and models utilized by the Soliciting Utility in its analyses. The Independent Evaluator shall be allowed to actively and contemporaneously monitor all aspects of the Soliciting Utility's evaluation process in the manner it deems appropriate so that the Soliciting Utility's evaluation process is transparent to the Independent Evaluator. The Soliciting Utility shall have an affirmative responsibility to respond promptly and fully to any request for reasonable access or information made by the Division of Public Utilities or the Independent Evaluator. To the extent the Independent Evaluator determines through its audit or independent evaluation that its evaluation and the Soliciting Utility's yield different results, the Independent Evaluator shall notify the Soliciting Utility and the Division of Public Utilities and attempt to identify reasons for the differences as early as practicable. Where practicable, the Soliciting Utility, the Division of Public Utilities and the Independent Evaluator shall attempt to reconcile such differences. If the differences cannot be reconciled to the Independent Evaluator's satisfaction, the Independent Evaluator will promptly notify the Commission.
- i.** The Independent Evaluator *if applicable or the Division of Public Utilities* shall be responsible for unblinding all bids included on the final short-list and providing relevant contact information to the Soliciting Utility for final negotiations with these short-listed bidders. The Independent Evaluator *or the Division of Public Utilities* shall monitor any negotiations with short-listed bidders.
- j.** The Division of Public Utilities and the Independent Evaluator may, through the Independent Evaluator, ask the PacifiCorp Transmission group to conduct reasonable and necessary transmission analyses concerning bids received. Any such analyses shall be provided to the Division of Public Utilities, the

Independent Evaluator and the Soliciting Utility. The Soliciting Utility may, in a general rate case or other appropriate Commission proceeding, include and the Commission will allow, recovery in the Soliciting Utility's retail rates of any reasonable amounts paid by the Soliciting Utility for those analyses.

11) The Soliciting Utility shall publish a summary of the bids on its website once the solicitation process is complete. The summary shall include 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.

III – Independent Evaluator

- 1) An Independent Evaluator must be involved in the design and implementation of a solicitation process that may establish a competitive market price under Part 8 Section 807 of the Act.***
- 2) The functions of the Independent Evaluator are as described in R746-420-6(2).***
- 3) Communications involving the Independent Evaluator are as described in R746-420-6(3).***
- 4) The Independent Evaluator shall provide reports consistent with R746-420-6(4)***

IV. CONCLUSION

Utah Clean Energy appreciates the opportunity to submit reply comments and draft language.

Sincerely,

/s/ Hunter Holman

Hunter Holman
Staff Attorney
Utah Clean Energy

cc: Chris Parker from the Division of Public Utilities;
Michele Beck from the Office of Consumer Services; and

Joelle Stewart from Rocky Mountain Power.