

Engels J. Tejada, #11427
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Office: (801) 799-5900
Fax: (801) 799-5700
EJTejada@hollandhart.com

Michelle Brandt King (*pro hac vice to be filed*)
Abby Briggerman (*pro hac vice to be filed*)
Holland & Hart LLP
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
Telephone: (303) 290-1600
Email: MBKing@hollandhart.com
ACBriggerman@hollandhart.com

Attorneys for VK Clean Energy Partners LLP

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF SOLICITATION PROCESS FOR SOLAR PHOTOVOLTAIC AND THERMAL RESOURCES	Docket No. 18-035-47
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**VK CLEAN ENERGY PARTNERS LLP'S COMMENTS REGARDING
ROCKY MOUNTAIN POWER'S 2019 RENEWABLE RESOURCE
UTAH REQUEST FOR PROPOSALS**

VK Clean Energy Partners LLP (“VK Clean Energy”), by and through its undersigned counsel Holland & Hart LLP, and pursuant to Utah Admin. Code R746-450-3(2)(a)(ii), and the deadlines established by the Utah Public Service Commission (“PSC” or “Commission”) in this proceeding, hereby provides the below comments regarding Rocky Mountain Power’s (“RMP” or “the Company”) 2019 Renewable Resource Utah Request For Proposals (“2019R Utah RFP”), seeking up to approximately 205,000 MWh per year, for up to 25 years, of new geothermal, solar photovoltaic and/or wind resources able to achieve commercial operation between June 30, 2020

and December 31, 2021. VK Clean Energy appreciates the opportunity to comment on RMP's 2019R Utah RFP and welcomes the Commission's consideration of VK Clean Energy's concerns and recommended relief.

VK Clean Energy states as follows:

COMMENTS

This proceeding is set against the backdrop requirements of Utah Code Ann. 54-17-807(6)(b), which requires that RFPs:

“...**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...”¹

RMP acknowledges the requirement that any imposed interconnection and transmission requirements must be equally applicable to all bidders (arguably including the Company), and suggests that “projects proposing to interconnect or deliver to various locations on the Company's transmission system will have the impacts of those interconnection or delivery locations **objectively considered** in the selection process.”² However, as drafted, the 2019R Utah RFP puts RMP's proverbial thumb on the evaluating scale by affording RMP virtually unlimited discretion on the process and outcome, and by shifting all risk to the developers submitting bids into the RFP. Although VK Clean Energy appreciates the intention and goals underlying the 2019R Utah RFP, VK Clean Energy recommends the following to improve upon RMP's proposed process for evaluating the bids received, and for ensuring the level-playing field and fair competition contemplated by Utah law:

¹ Emphasis supplied.

² See e.g., 2019R Utah RFP pp. 1, 2, 8, 9, 9-10, 11, 13, 14, 25, 26, Appendix G p. 4, Appendix p. 5.

- The Commission should consider requiring RMP to employ a Commission-approved Independent Evaluator to oversee the process and ensure its transparency;
- The Commission should audit RMP’s process and require RMP to report upon its evaluation of all bids received, identifying with specificity the reasons for the rejection of each bid;
- The Commission should require RMP to provide bidders with detail as to any bases for the rejection of their bids, and wherever possible, an opportunity to cure any deficiencies within a timely manner;
- The Commission should require RMP to remove certain unfair criteria from its minimum eligibility requirements;
- The Commission should thus require RMP to report on all instances where the bidder who has not, to RMP’s satisfaction, secured interconnection and transmission requirements, but has in fact asked RMP to timely perform the necessary studies.

Fundamentally, VK Clean Energy supports that this RFP is open to off-system projects, as this helps ensure that the RFP will consider and evaluate all projects that may meet the customers’ sustainability goals. Accordingly, VK Clean Energy strongly supports the RFP’s inclusion of off-system projects.

A. RMP’s Reliance on its Sole Discretion Undermines a Level-Playing Field and Fair Competition, and is an Unacceptable Substitute for a Transparent Process

Notwithstanding the foundational requirements framing RMP’s 2019R Utah RFP, the RFP is replete with opportunities for RMP to formulate and rely on subjective conclusions, at its unchecked “sole discretion.” This approach offends the requirements of a “level-playing field,” fair competition, and objective consideration of the bids,³ and should be rejected.

³ Utah Code Ann. 54-17-807(6)(b).

To illustrate but a handful of examples, RMP's "sole discretion" dictates as follows:

- "Proposals must demonstrate to the Company and Participating Customers' satisfaction, and as determined **in their sole discretion**, that the proposed project(s) can successfully interconnect, obtain transmission service, and achieve commercial operation within the timeframe listed in Section 2."⁴
- "Rocky Mountain Power, in consultation with the Participating Customers, reserves the right, without limitation or qualification and **in its sole discretion**, to reject any or all bids, and to terminate or suspend this RFP in whole or in part at any time."⁵
- "Rocky Mountain Power further reserves the right without qualification and **in its sole discretion** to decline to enter into any agreement with any bidder for any reason, including, but not limited to, change in regulations or regulatory requirements that impact Rocky Mountain Power, and/or any collusive bidding or other anticompetitive behavior or conduct of bidders."⁶
- "Rocky Mountain Power may **in its sole discretion do any one or more** of the following:
 1. Determine which proposals are eligible for consideration in response to this RFP.
 2. Issue additional subsequent solicitations for information, and conduct investigations with respect to the qualifications of each bidder.
 3. Supplement, amend, or otherwise modify this RFP, or cancel this RFP with or without the substitution of another RFP.
 4. Negotiate with bidders to amend any proposal.

⁴ 2019R Utah RFP, p. 1 (Emphasis supplied).

⁵ *Id.* at p. 9 (Emphasis supplied).

⁶ *Id.* at pp. 9-10 (Emphasis supplied).

5. Select and enter into agreements with the bidders who, **in Rocky Mountain Power's sole judgment**, are most responsive to the RFP and whose proposals best satisfy the interests of Rocky Mountain Power and its customers, and not necessarily on the basis of price alone or any other single factor.
 6. Issue additional subsequent solicitations for proposals.
 7. Waive any irregularity or informality on any proposal to the extent not prohibited by law.
 8. Reject any or all proposals in whole or in part.
 9. Vary any timetable.
 10. Conduct any briefing session or further RFP process on any terms and conditions.
 11. Withdraw any invitation to submit a response.”⁷
- “...Rocky Mountain Power reserves the right to negotiate only with those entities who propose transactions that Rocky Mountain Power believes **in its sole discretion** to have a reasonable likelihood of being executed”);⁸
 - “PacifiCorp is committed to following a fair process in selecting the winning proposal. However, PacifiCorp reserves the right, **in its sole discretion**, to terminate the consideration of the Project and any discussions with you or any other parties (such as your lenders) relating to the Project at any time and for any reason without incurring any liability for costs or expenses incurred by you in the course of, or as a result of, your participation in the bidding process or negotiations respecting the Project, including but not limited to any costs or expenses related to or arising from the preparation or submission of your proposal, your legal fees, transmission or environmental studies or

⁷ *Id.* at p. 25 (Emphasis supplied).

⁸ *Id.* at p. 26 (Emphasis supplied).

reviews, expenses of any third party incurred at your behest, your participation in discussions with PacifiCorp, the Project, or any development costs incurred by you in connection with this process.”⁹

- “PacifiCorp reserves the right to engage in discussions with multiple parties simultaneously with respect to this RFP or any other matter, and to accept or reject any type of proposal of any party **in its sole discretion.**”¹⁰

Given the potential for RMP’s sole discretion to sully the transparency of the process, VK Clean Energy respectfully requests that the Commission require RMP to engage the services of an Independent Evaluator to oversee the bidding process and ensure the fairness and level-playing field contemplated by Utah law. VK Clean Energy accepts that the Company is not required to conduct the RFP under the oversight of an Independent Evaluator. Yet, nothing precludes the engagement of an impartial party who can oversee the process and guard against unfair competition and advantage. In the alternative, VK Clean Energy respectfully requests that the Commission audit RMP’s process and require RMP to report on its evaluation of all bids received, identifying with specificity all reasons for rejecting bids received, with supporting and detailed reasoning for its decisions. Here too, not only should RMP provide bidders with detail as to any bases for the rejection of their bids, but, wherever possible, should afford bidders an opportunity to cure any deficiencies within a timely manner. To the extent there are concerns about chilling competition through the disclosure of such information, VK Clean Energy suggests that such risks can be remedied by the execution of Commission-approved protective orders. Absent oversight, whether by an Independent Evaluator or audit by the Commission, all

⁹ *Id.* at Appendix G, p. 4 (Emphasis supplied).

¹⁰ *Id.* at Appendix G, p. 5 (Emphasis supplied).

leverage and advantage lie with RMP, at the expense of a fair, transparent, and level-playing field.

B. Certain Minimum Eligibility Requirements should be Eliminated

In Section F of the 2019R Utah RFP, RMP provides a non-exhaustive list of 29 minimum eligibility requirements for bidders.¹¹ As RMP indicates, its assessment of a bidder's satisfaction of these requirements to even be eligible for consideration, will be determined in its sole discretion, and subject to RMP's conclusion that the bid is non-conforming and should be disqualified. Certain of these minimum criteria are facially unfair and should be removed from RMP's qualifying metrics.

According to RMP's list, bids will not be considered notwithstanding the merits of the bid, if:

“Bidder is in current material litigation or has threatened material litigation against Rocky Mountain Power/PacifiCorp . . . Rocky Mountain Power/PacifiCorp will consider on a case-by-case basis whether the bidder should be excluded if the bidder is threatening litigation against or in active litigation with the company.”¹²

What this means is that if a bidder attempts to defend or assert a claim with respect to RMP or PacifiCorp of a material nature in an entirely separate context, it risks its project being barred altogether from consideration in this 2019R Utah RFP. This minimum eligibility criteria should be eliminated because a bidder's exercise of legal recourse should not be cause for punishment in subsequent bids. In the interest of fair competition, the Commission may want to consider

¹¹ *Id.* at pp. 8-9.

¹² *Id.* at para. 9.

requiring RMP to conduct its bid evaluation with all names of bidders redacted from view, even to the Company.

While VK Clean Energy believes Section F.9 should be eliminated entirely, if it is not, rather than RMP being able to consider on a case-by-case basis whether the bidder should be excluded if the bidder is threatening litigation against or in active litigation with the company, RMP should be required to consult with the IE to determine if the bidder should be excluded if the bidder is threatening litigation against or in active litigation with the company. Lastly, while the “material litigation” criteria excludes “bidder complaints before a state regulatory utility commission,” it does not exclude bidder complaints before the Federal Regulatory Energy Commission. If Section F.9 is not eliminated entirely, there is no reasonable basis for not also excluding bidder complaints before the Federal Energy Regulatory Commission.

C. Cost-Effective Resources that Can Interconnect to the Company’s Transmission System should be Considered, Irrespective of Location

RMP states in its RFP that it will evaluate bids based on customer cost, location within the State of Utah, deliverability, and transmission access and interconnection status, among other criteria.¹³ Consideration of these criteria may produce disparate outcomes, depending on how they are weighted. As drafted, the RFP is unclear as to whether the resources to be considered must be physically located in Utah, or whether delivery may be made to RMP’s eastern control area, PACE, or otherwise connect to the Company’s transmission system. Were RMP to only consider projects located in Utah, this criterion would hamstring development and full consideration of cost-effective resources that can deliver output by March 2020. RMP thus should be required to give due consideration to all cost-effective resources that can demonstrate their ability to deliver their output to the Company’s transmission system.

¹³ 2019R Utah RFP p. 3.

D. Demonstration of Firm Transmission with Off-System Resources Unfairly Burdens Developers, At RMP's Unilateral Whim and Process

The Company's requirement that a bidder with an off-system resource demonstrate that it has secured firm transmission with a transmission reservation unduly limits consideration of what would otherwise be eligible bids. To be eligible for consideration, bidders must demonstrate:

The proposed project has either: (1) requested a direct interconnection with PacifiCorp's transmission system and executed an interconnection feasibility study or system impact study (SIS) agreement with PacifiCorp's transmission function; or (2) requested interconnection with a third party's system, executed an interconnection feasibility study agreement with the third party transmission provider, and requested long term, firm third-party transmission service from the resource's point of interconnection with the third party's system to the proposed point of delivery on PacifiCorp's system.¹⁴

VK Clean Energy supports this RFP's inclusion of off-system projects, however recommends that bidders merely demonstrate that firm third-party transmission to the point of delivery on PacifiCorp is available, not that transmission service is requested. A request for transmission service typically requires a developer to provide a deposit, and bidders should not be required to make such a deposit with the transmission provided to merely bid into the RFP. If the bidder can demonstrate that firm transmission service is available, this should be sufficient for purposes of

¹⁴ *Id.* at p. 17.

making a bid. Demonstration of a request for transmission service is more appropriate if the bidder makes the short-list.

E. Demonstration of Completed Interconnection System Impact Study for Best and Final Offers

The Company states when it “requests Best and Final Offers we will require a completed interconnection system impact study (SIS) (for projects directly interconnected to the Company’s system) or a completed third-party interconnection SIS and a completed third-party transmission service study (for projects using third-party transmission) to determine the actual direct assigned cost for the interconnection or transmission services.”¹⁵ This requirement unfairly holds bidders to requirements that cannot be met without RMP’s timely cooperation. Section 42.4 of RMP’s OATT requires it to use “Reasonable Efforts to complete the Interconnection System Impact Study within ninety (90) Calendar Days after the receipt of the Interconnection System Impact Study Agreement or notification to proceed, study payment, and technical data.” However, RMP has been unable to produce System Impact Study Reports within 90 calendar days recently as a general matter, and bidders should not be penalized if RMP cannot produce such studies in a timely manner.

Moreover, were a bidder to challenge the delays in the needed studies, as violating State requirements or PacifiCorp’s Open Access Transmission Tariff (“OATT”), then the bidder may be ineligible for consideration in the RFP as engaging in litigation.¹⁶ This puts bidders relying on RMP’s timely turnaround of interconnection studies or transmission requirements in the untenable position of relying on RMP, without any channels of defense or advocacy.

Finally, this requirement feeds into RMP’s self-asserted right to negotiate only with those entities who propose transactions that RMP believes (again, in its sole discretion) have a

¹⁵ *Id.* at p. 18.

“reasonable likelihood of being executed.”¹⁷ If RMP wishes to bar a project from consideration, it can game the interconnection requirements and timeline as justification to showing the project is unlikely to be executed. This puts too much developer fate in RMP’s hands.

VK Clean Energy recommends that, if this requirement remains in the RFP, that RMP be required to finalize all System Impact Studies of bidders within 90 calendar days, and not request Best and Final Offers until such time that RMP is able to provide the necessary System Impact Studies. Bidders have little available recourse to overcome the requirement to produce interconnection studies. If this recommendation is not accepted, VK Clean Energy recommends in the alternative that RMP at least be required to report to the Commission a list of all projects that submitted bids that RMP was unable to produce a System Impact Study Report within 90 calendar days.

In conclusion, VK Clean Energy appreciates the opportunity to inform the Commission’s record in this proceeding, and respectfully requests that the Commission incorporate the recommendations above into the Company’s 2019.

Respectfully submitted this 13th day of February, 2019.

HOLLAND & HART LLP

By: /s/ Engels J. Tejada
Engels G. Tejada #11427
222 South Main Street, Suite 2200
Salt Lake City, UT 84101-2001
Telephone: (801) 799-5800
Email: EGTejada@hollandhart.com

Michelle B. King (*pro hac vice to be filed*)
Abby Briggerman (*pro hac vice to be filed*)
Holland & Hart LLP
6380 South Fiddlers Green Circle, Suite 500
Greenwood Village, CO 80111
Telephone: (303) 290-1600
Email: MBKing@hollandhart.com
ACBriggerman@hollandhart.com

**ATTORNEYS FOR VK CLEAN
ENERGY PARTNERS**

CERTIFICATE OF SERVICE

I hereby certify that I will cause a true and correct copy of the foregoing to be served via email to the following persons on February 13, 2019:

PacifiCorp

Yvonne Hogle (yvonne.hogle@pacificorp.com)

Jana Saba (jana.saba@pacificorp.com)

Jacob A. McDermott (jacob.mcdermott@pacificorp.com)

Utah Dockets (utahdockets@pacificorp.com)

Data Request Response Center (datarequest@pacificorp.com)

Division of Public Utilities

Chris Parker (chrisparker@utah.gov)

William Powell (wpowell@utah.gov)

Erika Tedder (etedder@utah.gov)

Patricia Schmid (pschmid@agutah.gov)

Justin Jetter (jjetter@agutah.gov)

Office of Consumer Services

Michele Beck (mbeck@utah.gov)

Cheryl Murray (cmurray@utah.gov)

Steven Snarr (stevensnarr@agutah.gov)

Robert Moore (rmoore@agutah.gov)

Utah Clean Energy

Hunter Holman (Hunter@utahcleanenergy.org)

Kate Bowman (kate@utahcleanenergy.org)

Sarah Wright (sarah@utahcleanenergy.org)

Sustainable Power Group

Gary A. Dodge (gdodge@hjdllaw.com)

Phillip J. Russell (prussell@hjdllaw.com)

Western Resources Advocates

Sophie Hayes (sophie.hayes@westernresources.org)

Nancy Kelly (nkelly@westernresources.org)

Steven S. Michel (smichel@westernresources.org)

Callie Hood (callie.hood@westernresources.org)

Salt Lake City Attorney's Office

Megan J. DePaulis (megan.depaulis@slcgov.com)

Tyler Poulson (tyler.poulson@slcgov.com)

/s/ Engels J. Tejada-----