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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

REPLY COMMENTS OF SUSTAINABLE POWER GROUP and UTAH ASSOCIATION OF ENERGY USERS REGARDING PROPOSED RFP

The Utah Association of Energy Users (“UAE”) and Sustainable Power Group (“sPower”) submit these Reply Comments to the Public Service Commission of Utah (“Commission”) regarding the Application for Approval of Solicitation Process for Solar Photovoltaic and Thermal Resources (“Application”) filed by Rocky Mountain Power (“RMP” or “Company”) in this docket.

COMMENTS

UAE and sPower provide the following in response to issues raised in the comments filed by the Division of Public Utilities (“Division”), Interwest Energy Alliance (“Interwest”), and VK Clean Energy Partners, LLP (“VK”) in this docket. Moreover, as noted below, UAE and sPower recommend that the Commission set a technical conference as soon as practicable to permit

interested customers, bidders, regulators and the Company to explore potential improvements to the RFP and to better understand cost and risk trade-offs inherent in timing constraints.

A. Requirement for a Build Transfer Bid

UAE and sPower support the comments filed by the Division asserting that the Commission should reject the Company's proposal that each bidder be required to submit both a power purchase agreement ("PPA") bid and a build-transfer agreement ("BTA") bid. The Company offers no support for this proposed requirement and, as the Division notes, it is not in the public interest. The only possible purpose for requiring both types of bids is to force bidders to offer to sell their projects to the Company. The Commission should not permit the Company to structure the solicitation process as a specialized marketplace where the Company is the only customer and where developers are required to sell a product—a BTA—that they do not want to sell. Such a structure is unfair and uncompetitive and will prevent a level playing field designed to maximize competitive bids.

In addition to reducing the number and competitiveness of bids, a requirement that developers offer to sell their projects to the Company also creates an incentive for the Company to select bids on a basis other than what is best for the customers. As the Division notes, the Company has indicated that it will evaluate bids based on the PPA bid prices. This means that BTA bids should be wholly irrelevant to the evaluation process. Nonetheless, the Company wants to force all developers to submit BTA bids at the outset, which the Company will know when it is comparing and evaluating PPA bids. Also, as noted by VK, the RFP states that RMP has broad and absolute discretion to evaluate bids and determine which bids do and do not conform to the RFP and which bids will be selected. There is no process in place to prevent the

Company from evaluating PPA bids based on which corresponding BTA bids represent the greatest profit for the Company, rather than on which PPA bids represent the lowest cost and greatest reliability to the customers in the RFP.

For these reasons, the Commission should reject the Company's proposal to require bidders to submit a BTA. Bidders who wish to do so should, of course, be permitted to submit a BTA. Moreover, any BTA bids that are submitted should be sealed until after winning bids are selected. This way, the Company will not have any incentive to select PPA bids based on the profits represented by the corresponding BTA bids.

B. Level Playing Field

As noted by several commenting parties, before the Commission may approve an RFP it must first determine that the solicitation process “will create a level playing field in which the qualified utility and other bidders can compete fairly” (Utah Code § 54-17-807(6)(b)) and will “create a level playing field that will allow fair competition between the qualified utility and other bidders” (R746-450-3(2)(a)(i)(A)). The Division suggests certain criteria for the Commission to consider in determining whether a solicitation will create a “level playing field.” UAE and sPower agree with several of the criteria suggested by the Division but disagree with one suggestion. The Division suggests that “[t]he greater the number of independent bids that are made, the more level the playing field is likely to be” and that “a high number of independent bids may create a *prima facie* case that the winning bid is competitive.” Division Comments at 7. UAE and sPower disagree with this suggestion.

Under the statute and the associated rule, the Commission may approve a solicitation only if it “*will* create a level playing field.” That is, the Commission must determine—*before* the

RFP is approved and *before* a single bid is submitted in response to the RFP—that the RFP is designed in a way that it will create a level playing field. The Division’s proposal inverts the process, suggesting that the Commission may approve a solicitation without determining that it will create a level playing field and then, later, look back to try to determine if the playing field was level by counting the number of bids submitted.

The number of bids submitted in response to a solicitation is not, but itself, a valid measure of whether the solicitation was fair or created a level playing field. Counting the number of bids received says nothing about the number of bids that might have been received had the playing field been leveled as required by statute. In order to determine whether a solicitation “will create a level playing field,” the Commission must focus on whether the RFP is properly designed in a manner to ensure an equal opportunity for all bidders to bid and to win with the best possible price. Even with a high number of bidders, a solicitation may include conditions or requirements that improperly drive the bid prices higher, such that the winning bid is not reflective of a competitive market price. A solicitation that yields a winning bid with a higher price than bids that might have been received had the RFP been fair and balanced is not in the public interest.

C. Timeline – Interconnection & Transmission Issues

All of the filed comments raise issues related to the timeline of the project and how that timeline intersects with the interconnection and transmission obligations necessary to meet the proposed commercial operation date. For the reasons stated in the initial comments of UAE and sPower, as well as those of the VK and Interwest, the deadlines identified in the RFP are unlikely to result in a robust bidding process because there are very few projects far enough along in the

development to realistically be able to meet those requirements. While UAE and sPower acknowledge that the timing requirements of the customers must be considered, it is important for the customers and the Commission to understand the implications of an abbreviated timeline.

As noted by VK and Interwest, a developer that bids into the RFP is expected to take the risk of the required commercial operation date, while much of that risk stems from whether PacifiCorp will timely complete the required interconnection and transmission studies. While PacifiCorp's OATT sets forth timing expectations, PacifiCorp rarely completes studies within the suggested timelines and routinely takes many additional months. A developer has no control over the length of time that PacifiCorp will take to complete the studies or to construct upgrades identified in the studies, yet the developer is asked to take all of the risks associated with the timely completion of those studies and upgrades. This dynamic will understandably cause bidders to be very conservative, likely leaving only a small handful of projects that can hope to meet the commercial operation date and likely leading to higher prices as a result of the accompanying risks.

D. Request for Technical Conference

UAE and sPower are sensitive to timing constraints of the customers for whom the RFP is being issued. However, given the substantive and serious questions raised by the commenters, UAE and sPower recommend that the Commission set a technical conference as soon as practicable to allow interested customers, bidders, regulators and the Company to discuss and explore potential improvements to the RFP in an effort to level the playing field as required by statute and allow a better understanding of the inherent trade-offs between timing constraints and responsive bids.

CONCLUSION

UAE and sPower respectfully ask the Commission to require the draft RFP to be modified as suggested in their initial comments and these reply comments to ensure that the Company will not enjoy a competitive advantage in connection with market-based solar resources as required by the Act and the Rules. UAE and sPower also respectfully submit that a technical conference may be the most efficient and effective way for the Commission to discharge its obligations under the Act and the Rules, and to allow interested participants to better understand implications and tradeoffs of various RFP elements and requirements.

DATED this 28th day of February, 2019.

Respectfully submitted,

HATCH, JAMES & DODGE



/s/ _____

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Certificate of Service
Docket No. 18-035-47

I hereby certify that a true and correct copy of the foregoing was served by email this 1st day of March, 2019, on the following:

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