

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion, to)	
commence a collaborative to consider best practices)	
to ensure cost-effective development of new energy)	Case No. U-20852
resources and to limit procurement barriers for)	
emerging technologies, including processes for)	
competitive bidding.)	
_____)	

At the August 20, 2020 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Sally A. Talberg, Commissioner
Hon. Tremaine L. Phillips, Commissioner

ORDER

Introduction and Purpose

In 2019, the Commission, with the support of Governor Gretchen Whitmer, launched MI Power Grid, a multi-year initiative to maximize the benefits of the transition to clean, distributed energy resources for Michigan residents and businesses. *See*, October 17, 2019 order in Case No. U-20645. Three areas of focus make up the MI Power Grid initiative: optimizing grid investments and performance, customer engagement, and integrating emerging technologies. Competitive procurement of new resources falls under integrating emerging technologies. As older electric generation plants retire, new resources will need to be brought online to replace them. Competitively bidding new resources can help reveal what options are available, ensure

emerging technologies can be considered as part of utility planning and procurement, and result in lower cost for customers.

As part of its core mission to ensure that energy is reliable and accessible at reasonable rates, the Commission has taken steps to implement competitive bidding by the utilities under its jurisdiction. In the December 4, 2008 order in Case No. U-15800 (December 4 order), the Commission identified issues with The Detroit Edison Company's (Detroit Edison)'s¹ request for proposals (RFP) and bid evaluation process with respect to its renewable energy plan (REP) required by 2008 PA 295 (Act 295), and directed the company to file a description of an Act 295 compliant RFP, specifying as follows:

The filing shall contain, at a minimum, a description of how Detroit Edison will implement a transparent bidding process that evaluates projects using criteria based on capacity and availability of transmission, a potential developer's required capital structure, developer experience, access to capital, and credit worthiness. In addition, the process shall provide sufficient notice (*e.g.*, 90-120 days) to potential bidders. The filing shall also describe a clear and reasonable ranking method that Detroit Edison proposes to use in evaluating bids and the means that Detroit Edison will employ to assure that any bidders who are company affiliates are not afforded a competitive advantage over independent developers.

December 4 order, pp. 14-15.

In Case No. U-15806, the Commission restated this guidance as to what a competitive bid process should look like in the context of an REP and approved Detroit Edison's proposed RFP framework that contained the following elements: a description of the products sought; a timeline for pre-bid and bid solicitations; biddings instructions with specific information sought; a questionnaire soliciting information about the bidder's experience, financial strength, and access to credit; a confidentiality agreement; and pro forma contracts. August 25, 2009 order in

¹ Detroit Edison is now known as DTE Electric Company (DTE Electric).

Case No. U-15806 (August 25 order), pp. 3, 8. In the August 25 order, the Commission stated that “if problems arise [with the RFP] in the future, the Commission may revisit this issue.” *Id.*, p. 8.

In more recent cases, the Commission revisited the RFP and competitive bidding framework as problems arose and issued further guidance on its expectations for the form competitive bidding should take. Those notable cases include: Case No. U-18232, DTE Electric’s 2018 REP; Case No. U-18419, DTE Electric’s certificates of necessity (CON) in connection with the addition of a natural gas combined cycle generating facility to its fleet; Case No. U-20165, Consumers Energy Company’s (Consumers’) integrated resource plan (IRP) case; Case No. U-20471, DTE Electric’s IRP case; and Case No. U-20645, the docket establishing MI Power Grid.

In DTE Electric’s CON case, Case No. U-18419, the Commission explained the need for ensuring a fair competitive bidding process and the need for further research by the Commission Staff (Staff) and Commission guidance on this issue:

[T]he Commission adopts in part the [Michigan Department of the] Attorney General’s recommendation that the Commission provide more oversight of future RFPs that may be used to support a CON or IRP. Specifically, the Commission agrees that any proposed RFP should be submitted to the Commission at least 90 days before issuance for review by the Staff. As the energy industry continues to evolve and new technology solutions emerge, including solutions that may involve greater engagement of end-use customers or integration with the transmission or distribution system, it is also important to ensure that RFPs are truly open to allow a broad range of potential solutions to be considered. While this will make the bid evaluation process more complicated, it can avoid RFPs inadvertently placing barriers on options such as energy storage that could provide multiple values or attributes.

The Commission expects competitive bidding to be of increasing importance for the selection of resources and the approved amounts under the pre-approval provisions of CONs and IRPs. Accordingly, the Commission directs Staff to research approaches and best practices for RFP and competitive bidding in other

jurisdictions.

April 27, 2018 order in Case No. U-18419, p. 106.

Also notable among these cases were the Commission's comments in DTE Electric's REP case, Case No. U-18232, in which the Commission took issue with a number of aspects of the company's RFP and directed as follows:

For future solicitations, the Commission expects a process that is both more independent and more robust, informed by stakeholder input through the MI Power Grid Competitive Procurement Workgroup, including better defining the utility's role in RFP development and administration, incorporating best practices from other jurisdictions, and addressing barriers to emerging technologies or business models related to the procurement process. *See*, October 17, 2019 order in Case No. U-20645, p. 7; and April 27, 2018 order in Case No. U-18419, pp. 106, 127. Based on the input from parties to this case, the Commission envisions that the Competitive Procurement Workgroup should explore issues such as: (1) use of third-party bid administrators; (2) use, types, and transparency of price and non-price factors and associated weighting; (3) resource type specification (*e.g.*, wind or solar only) versus all source bidding or explicit allowance for hybrid resources (*e.g.*, solar plus storage); (4) ownership structures; (5) locational considerations (*e.g.*, within or outside regional transmission organization resource zones); (6) consideration of transmission capabilities or limitations and interconnection readiness; and (7) the potential need for utilities to implement protective measures between the employees who are developing an RFP, developing a company-generated bid, and selecting the winning bids.

July 9, 2020 order in Case No. U-18232, p. 44.

Bidding has also evolved for other utilities, including the new competitive procurement process employed by Consumers to arrange for solar energy supplies as set forth in the company's IRP settlement approved by the Commission in Case No. U-20165. While not establishing Commission precedent, this settlement agreement also provided for an independent administrator and a process to obtain input from stakeholders prior to the RFP being issued to develop best practices for bidding. *See*, June 7, 2019 order in Case No. U-20165, p. 79. With these orders and others, the Commission laid the groundwork for a collaborative process to develop comprehensive competitive bidding rules or guidance.

The Federal Energy Regulatory Commission (FERC) has also recently addressed competitive bidding in its order reforming the implementation of the Public Utilities Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 (PURPA). *See*, 172 FERC ¶ 61,041 (July 16, 2020) (FERC Order 872).² Specifically, FERC determined that states may use prices for energy and capacity determined pursuant to a competitive solicitation process conducted using procedures to ensure that such solicitation is transparent and non-discriminatory, including the following features: (1) an open and transparent process that provides equally to all potential bidders substantial and meaningful information regarding transmission constraints, congestion levels, and interconnections (subject to appropriate confidentiality safeguards); (2) bidding open to all sources to satisfy the utility’s electric capacity needs, taking into account operating characteristics of needed capacity; (3) bids conducted at regular intervals; and (4) oversight by an independent administrator.³ *Id.*, pp. 233-234. Solicitations must also satisfy the factors set out in *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082, 61,415 (2004), which include transparency, definition, evaluation, and oversight.⁴ Utilities procuring all capacity through competitive solicitations will be presumed to have zero capacity costs beyond what was procured

² The effective date of FERC Order 872 is 120 days from the date of publication in the Federal Register. As of the date of this order, FERC Order 872 has not yet been published in the Federal Register.

³ These factors will be codified at 18 CFR 292.304(b)(8). FERC Order 872, p. 233.

⁴ These factors are described as follows: (1) transparency means the competitive solicitation process should be open and fair; (2) definition means the product or products sought through the competitive solicitation should be precisely defined; (3) evaluation means evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) oversight means an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company’s selection. *Allegheny*, at 61,417.

through the auction for purposes of determining avoided costs. *See*, FERC Order 872, pp. 236-237 (noting that utilities must still purchase energy from qualifying facilities).

Discussion

To build upon this groundwork, the Commission directs the Staff to convene a competitive bidding collaborative, which will be referred to as the Competitive Procurement Workgroup, with the participation of rate-regulated utilities and stakeholders for the purpose of developing recommended competitive bidding rules or guidance that also align with the comprehensive planning processes being developed through the MI Power Grid collaborative launched contemporaneously with this order in Case No. U-20633. The Commission's objective for the Competitive Procurement Workgroup is to ensure strong, technology-neutral market response and value for ratepayers through transparency, non-discriminatory access, certainty, and fairness in bidding processes. Rather than issuing a series of *ad hoc* determinations to update bidding guidance in response to past experiences with RFPs, the Commission prefers to establish new guidance or rules for future bidding so that regulated utilities, the Staff, potential bidders, and stakeholders know in advance the expected parameters and practices. A strong set of competitive bidding rules or guidance should also streamline the regulatory approval processes, particularly for new contracts resulting from a conforming bid process.

As the Staff's prior research on best practices suggests, there are fairly well-established protocols for competitive bidding in other jurisdictions and the Commission expects to draw on experiences and lessons from Michigan and elsewhere, particularly on ways to ensure fairness and independence with bidding by utilities or utility affiliates and to ensure openness and transparency in the ability to consider newer technologies or combinations that have not historically been covered by RFPs, such as energy storage and hybrid resources. To focus

discussions among stakeholders in this workgroup, the Commission suggests the following high-level principles for consideration to be further fleshed out by the Staff with input from stakeholders. The Commission notes that many of these concepts, listed as follows, are also covered by FERC Order 872:

1. Open, non-discriminatory treatment of resources regardless of ownership structure, resource type or size, and location.
2. All potential bidders provided with information on the minimum RFP requirements and specification of evaluation criteria.
3. Oversight and independence of RFP process, including defined the use and role of a third-party administrator/evaluator.
4. Inclusion of the Staff and stakeholders in the process and continuous improvement in bidding processes as the energy industry evolves.

Based on these principles, the Commission expects workgroup sessions focused on the following topics:

1. Use, suitability, and expectations for all-source bidding and ways to address potential procurement barriers to emerging technologies.
2. Alignment and timing of processes and regulatory review/approvals for procurement and resource and distribution planning. This includes timing and processes to determine resource need, the use of mandatory RFPs under the IRP statute, MCL 460.6t(6), and contract approvals as well as the timing and mechanics for any Staff, stakeholder, and Commission review of RFP documents and results. The Commission expects this discussion to be coordinated with the collaborative initiated in Case No. U-20633, due to the important linkages between planning and procurement.
3. Independence issues (i.e., different models for the use and role of third-party administrator/evaluator; separation of utility roles).

4. Minimum information that must be included in the RFP package, such as template contracts and price and non-price factors and other evaluation criteria for PPAs, build transfer, and other ownership structures.⁵

The Commission does not intend for this list of topics to be exhaustive or to limit the workgroup's discussion of a competitive bidding framework from including other pertinent principles or topics.

The Staff shall inform participating rate-regulated utilities and stakeholders of the dates, times, and locations of the Competitive Procurement Workgroup via the workgroup's listserv.⁶ Meeting agendas and materials will be distributed via the listserv as well. The Commission notes that due to the COVID-19 pandemic and the state of emergency declared by Governor Whitmer,⁷ the Commission is conducting its workgroups virtually and will continue to do so until further notice. Following the initial meeting of the workgroup, the Staff shall issue, no later than October 1, 2020, a strawman proposal seeking written comments from the workgroup participants on the principles or topics to be addressed that are in contention or are missing from those mentioned above. The Staff shall then use the comments submitted to identify information needs and plan subsequent workgroup sessions, which will be communicated to the workgroup participants.

⁵ To clarify, the Commission is not expecting to define the actual factors or criteria such as defining the required showing for financial viability or project experience. Rather, the Commission aims to identify the types of information that need to be transparent and disclosed to all potential bidders in the RFP.

⁶ Interested persons may sign up for email updates regarding Competitive Procurement on the Commission's website, available at <https://www.michigan.gov/mpsc/0,9535,7-395-93307_93312_93320_94544-508668--,00.html>.

⁷ On August 7, 2020, the Governor issued Executive Order 2020-165, extending the state of emergency and state of disaster through September 4, 2020.

At the conclusion of the Competitive Procurement Workgroup, the Staff shall file proposed competitive procurement guidance or rules for consideration by the Commission.

THEREFORE, IT IS ORDERED that, the Commission Staff shall commence a Competitive Procurement Workgroup with the participation of rate-regulated utilities and stakeholders for the purpose of developing recommendations for competitive bidding rules or guidance as described in this order.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so by the filing of a claim of appeal in the appropriate court within 30 days of the issuance of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Sally A. Talberg, Commissioner

Tremaine L. Phillips, Commissioner

By its action of August 20, 2020.

Lisa Felice, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

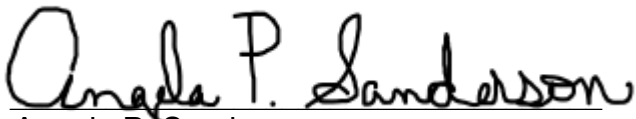
Case No. U-20852

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on August 20, 2020 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 20th day of August 2020.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

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