

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)	
resources and to limit procurement barriers for)	Case No. U-20852
emerging technologies, including processes for)	
competitive bidding.)	
_____)	

At the July 2, 2021 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER AND NOTICE OF OPPORTUNITY TO COMMENT

History of Proceedings

In 2019, with the support of Governor Gretchen Whitmer, the Commission 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.

As older electric generation plants retire, new energy resources will need to be brought online to replace them. Competitive procurement of new energy resources can help reveal available resource options, ensure emerging technologies can be considered as part of utility planning and procurement, and result in lower costs for customers. As part of its core mission to ensure that

energy is reliable and accessible to Michigan residents at reasonable rates, the Commission has taken steps to implement guidelines for competitive bidding by the utilities under its jurisdiction via the MI Power Grid framework under the integrating emerging technologies sub-focus. *See*, December 4, 2008 order in Case No. U-15800, pp. 14-15; August 25, 2009 order in Case No. U-15806, pp. 3, 8; April 27, 2018 order in Case No. U-18419, p. 106; July 9, 2020 order in Case No. U-18232, p. 44; June 7, 2019 order in Case No. U-20165, p. 79.

The Federal Energy Regulatory Commission (FERC) also recently addressed competitive bidding in its order reforming the implementation of the Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 (PURPA). *See*, 172 FERC ¶ 61,041 (July 16, 2020) (FERC Order 872). Specifically, FERC determined that states may use prices for energy and capacity that are determined pursuant to a competitive solicitation process. However, FERC asserted that the states shall ensure that the competitive solicitation process is transparent, is non-discriminatory, and includes 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) solicitations that are open to all sources, to satisfy the utility’s electric capacity needs, taking into account operating characteristics of needed capacity; (3) solicitations that are conducted at regular intervals; and (4) oversight by an independent administrator (IA). *Id.*, ¶ 61,260. Solicitations must also satisfy the factors set forth in *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082, at ¶ 61,415 (2004) (*Allegheny*), which include transparency, definition,

evaluation, and oversight.¹ Utilities that procure all capacity through competitive solicitations will be presumed to have zero capacity costs beyond what was procured through the auction for purposes of determining avoided costs. *See*, FERC Order 872, ¶ 61,041 (noting that utilities must still purchase energy from qualifying facilities).

To build upon this groundwork, in the August 20, 2020 order in the instant docket (August 20 order), the Commission directed the Commission Staff (Staff) to convene a competitive bidding collaborative, referred to as the Competitive Procurement Workgroup. Rate-regulated utilities and other stakeholders participated in the Competitive Procurement Workgroup to develop recommended competitive bidding rules or guidance that also align with the comprehensive planning processes being developed through the MI Power Grid collaborative launched 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.

The Competitive Procurement Workgroup held its first stakeholder meeting on September 14, 2020.² On October 1, 2020, the Staff issued a straw proposal (October 1 straw proposal) through the Competitive Procurement Workgroup, which requested stakeholder input on draft guidelines for competitive bidding, topics, and resources to be included in the workgroup, procedures to

¹ 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.

² Additional stakeholder meetings were held on October 22, 2020; January 12, 2021; February 18, 2021; and March 17, 2021.

ensure a streamlined procurement process, and implementation of MCL 460.6t(6) within the bidding process.

On October 30, 2020, comments on the October 1 straw proposal were received from the Association of Businesses Advocating Tariff Equity (ABATE); Consumers Energy Company (Consumers); DTE Electric Company (DTE Electric); the Ecology Center, Environmental Law and Policy Center, Solar Energy Industries Association, and Vote Solar (Environmental Coalition); Hemlock Semiconductor Operations LLC; Indiana Michigan Power Company (I&M); Michigan Biomass; Michigan Electric and Gas Association (MEGA); Michigan Energy Innovation Business Council and Advanced Energy Economy (MEIBC/AEE); and Pine Gate Renewables, LLC (Pine Gate).

On April 1, 2021, the Staff issued a second straw proposal (April 1 straw proposal) through the Competitive Procurement Workgroup that incorporated suggestions from the October 30, 2020 comments and provided: (1) draft competitive procurement guidelines for rate-regulated electric utilities and (2) draft competitive procurement guidelines for rate-regulated electric utilities for PURPA avoided cost and capacity determinations. On April 30, 2021, comments on the April 1 straw proposal were received from ABATE, Consumers, DTE Electric, the Environmental Coalition, I&M, MEGA, MEIBC/AEE, and Pine Gate.

The Commission Staff's Competitive Procurement Report

On June 22, 2021, the Staff filed a Competitive Procurement report in the instant case (Competitive Procurement report), which was the result of the August 20 order, the October 1 and April 1 straw proposals, and the October 30, 2020 and April 30, 2021 comments. In the Competitive Procurement report, the Staff provides draft competitive procurement guidelines for

rate-regulated electric utilities (not for PURPA compliance) and draft competitive procurement guidelines for rate-regulated electric utilities for PURPA avoided cost and capacity determinations.

Beginning with the draft competitive procurement guidelines for rate-regulated electric utilities (not for PURPA compliance), the Staff explains that:

This guidance document will be used by the Commission to ensure strong, ownership-neutral market response and value for customers through transparency, non-discriminatory access, certainty, and fairness in bidding processes. When utilized by utilities, it is presumed that resulting projects and contracts are reasonable and prudent. In the event utilities diverge from the guidance included in this document, it is expected the utility will provide sufficient justification in order to receive Commission approval and recovery. The guidance document is intended to provide utilities with clarity regarding Commission expectations and participants with confidence in the process. Thus, in considering the guidelines contained herein for competitive solicitations, the fundamental principle of minimizing customer costs and ensuring reasonable rates is paramount. This guidance will be utilized when the utility does not intend to use the competitive solicitation as the means for establishing its Public Utilities [sic] Regulatory Policies Act (PURPA) avoided costs or as a basis for determining an avoided capacity cost of zero outside the competitive solicitation process. This guidance allows for the continued refinement of bidding processes over time based on feedback from bidders, the Commission, the utility, and stakeholders.

Competitive Procurement report, p. 1.³

Next, the Staff provides detailed draft guidelines for the Commission's use when making determinations about the reasonableness and prudence of utility energy and capacity resource procurements. *See*, Competitive Procurement report, pp. 2-5. The Staff states that the guidelines would apply to "resources procured for Voluntary Green Pricing (VGP) Programs, Renewable Portfolio Standards, to inform Integrated Resource Plans (IRP) or as a result of IRPs, and other competitive procurement activities deemed appropriate and reasonable by the Commission." *Id.*, pp. 1-2. However, the Staff notes that the guidelines would not apply to energy waste reduction

³ Because the Competitive Procurement report is not paginated, the Commission clarifies that page 1 starts in natural order with the first page of the report.

programs, demand-side tariff programs administered by utilities, short-term market purchases, or other tariff-based activities. The Staff asserts that “[t]hese guidelines are not intended to restrict the utility’s ability to procure resources without use of competitive procurement process in certain situations, such as, but not limited to where authorized by law, or to obtain short-term energy or capacity related products from the RTOs [regional transmission organizations].” *Id.*, p. 2.

Similar to the competitive procurement guidelines for rate-regulated electric utilities, the Staff explains that the purpose of the competitive procurement guidelines for rate-regulated electric utilities for PURPA avoided cost and capacity determinations is to ensure strong, ownership-neutral market response and value for customers through transparency, non-discriminatory access, certainty, and fairness in bidding processes. The Staff asserts that, if the guidelines are utilized by a utility, the resulting projects should be presumed to be reasonable and prudent. The Staff avers that, if a utility opts to forego the guidelines, the utility shall provide justification for the divergence and receive Commission approval prior to recovering the costs. In addition, the Staff states that:

This guidance will be utilized when the utility intends to use competitive solicitation as the means for establishing its PURPA avoided costs and as a basis for determining an avoided capacity cost of zero outside the competitive solicitation process[.] This guidance document is intended to provide utilities with clarity regarding Commission expectations and participants with confidence in the process. This process conforms to the *Allegheny* Principles and will serve as the means for establishing the utility’s PURPA avoided costs. These guidelines are similar to the Competitive Procurement Guidelines for Rate-Regulated Electric Utilities but require an IA to provide final scoring for proposals and require the utility to allow PURPA Qualifying Facility (QF) projects to bid into each solicitation. However, in the event that a competitive solicitation concludes with unfilled capacity, the utility must make this unfilled capacity available to PURPA QFs at the PURPA avoided cost established by the Commission based upon the competitive solicitation. This guidance allows for the continued refinement of bidding processes over time based on feedback from bidders, the Commission, the utility, and stakeholders.

If a QF is not selected under such a competitive solicitation, it is entitled to a PURPA avoided energy rate outside of the competitive solicitation and would receive the utility's most recently approved avoided energy cost payment.

Id., p. 6.

The Staff provides detailed draft guidelines for the Commission's use when making determinations on the reasonableness and prudence of utility energy resource arrangements and for evaluation of the process and resulting bids. *See*, Competitive Procurement report, pp. 7-10. The Staff states that the guidelines would apply to "resources procured for Voluntary Green Pricing (VGP) Programs, Renewable Portfolio Standards, to inform Integrated Resource Plans (IRP) or as a result of IRPs, and other competitive procurement activities deemed appropriate and reasonable by the Commission." *Id.*, p. 7. Similar to the competitive procurement guidelines for rate-regulated electric utilities, the Staff notes that the competitive procurement guidelines for rate-regulated electric utilities for PURPA avoided cost and capacity determinations would not apply to energy waste reduction programs, demand-side tariff programs administered by utilities, short-term market purchases, or other tariff-based activities. The Staff asserts that "[t]hese guidelines are not intended to restrict the utility's ability to establish its PURPA avoided cost using methods other than Competitive Procurement." *Id.*

Discussion

Through this order, the Commission seeks comments from interested stakeholders regarding the Staff's Competitive Procurement report. Specifically, stakeholders should provide substantive comments about whether the Commission should: (1) adopt the draft competitive procurement guidelines for rate-regulated electric utilities (not for PURPA compliance) and the draft competitive procurement guidelines for rate-regulated electric utilities for PURPA avoided cost and capacity determinations, as set forth in the Competitive Procurement report; (2) initiate a

rulemaking proceeding for competitive procurement; (3) adopt the draft competitive procurement guidelines in the Competitive Procurement report (both for PURPA compliance and not for PURPA compliance) *and* initiate a rulemaking proceeding for competitive procurement; or (4) allow the utilities to adopt the competitive procurement guidelines in their tariffs. In addition, stakeholders should provide comments about how the guidelines and/or rules should be applied and whether there should be considerations for small and multi-state utilities. Finally, the Commission welcomes additional substantive and detailed comments that offer other methods of effectuating competitive procurement on a going-forward basis.

Any person may submit written or electronic responsive comments to this order. Comments must be filed with the Commission and must be received no later than 5:00 p.m. (Eastern time (ET)) on July 30, 2021. Reply comments must be filed with the Commission and must be received no later than 5:00 p.m. (ET) on August 13, 2021. Written comments should be sent to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be emailed to mpscedockets@michigan.gov. All comments should reference Case No. U-20852. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure; and all comments will be filed in Case No. U-20852.

THEREFORE, IT IS ORDERED that interested persons may file comments in this docket regarding the Commission Staff's June 22, 2021 Competitive Procurement report and the Commission's procedure for competitive procurement, as set forth in this order, by 5:00 p.m. (Eastern time) on July 30, 2021, and reply comments may be filed in this docket by 5:00 p.m. (Eastern time) on August 13, 2021.

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

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of July 2, 2021.

Lisa Felice, Executive Secretary


PROOF OF SERVICE

STATE OF MICHIGAN)

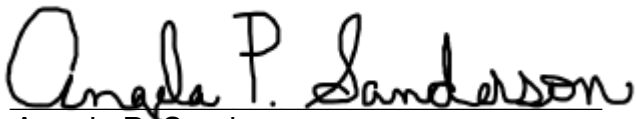
Case No. U-20852

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on July 2, 2021 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 2nd day of July 2021.



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

GEMOTION DISTRIBUTION SERVICE LIST

kadarkwa@itctransco.com
tjlundgren@varnumlaw.com
lachappelle@varnumlaw.com
awallin@cloverland.com
bmalaski@cloverland.com
mheise@cloverland.com
vobmgr@UP.NET
braukerL@MICHIGAN.GOV
info@VILLAGEOFCLINTON.ORG
jgraham@HOMEWORKS.ORG
mkappler@HOMEWORKS.ORG
psimmer@HOMEWORKS.ORG
frucheyb@DTEENERGY.COM
mpsc.filings@CMSENERGY.COM
jim.vansickle@SEMCOENERGY.COM
kay8643990@YAHOO.COM
vickie.nugent@wecenergygroup.com
jlarsen@uppcocom
estocking@uppcocom
dave.allen@TEAMMIDWEST.COM
bob.hance@teammidwest.com
tharrell@ALGERDELTA.COM
tonya@CECELEC.COM
bscott@GLENERGY.COM
sculver@glenergy.com
kmarklein@STEPHENSON-MI.COM
debbie@ONTOREA.COM
ddemaestri@PIEG.COM
dbraun@TECMI.COOP
rbishop@BISHOPENERGY.COM
mkuchera@AEPENERGY.COM
todd.mortimer@CMSENERGY.COM
igoodman@commerceenergy.com
david.fein@CONSTELLATION.COM
kate.stanley@CONSTELLATION.COM
kate.fleche@CONSTELLATION.COM
mpscfilings@DTEENERGY.COM
bgorman@FIRSTENERGYCORP.COM
rarchiba@FOSTEROIL.COM
greg.bass@calpinesolutions.com
rabaey@SES4ENERGY.COM
cborr@WPSCI.COM
gpirkola@escanaba.org
crystalfallsmgr@HOTMAIL.COM
felicel@MICHIGAN.GOV
mmann@USGANDE.COM
mpolega@GLADSTONEMI.COM
dan@megautilities.org

ITC
 Energy Michigan
 Energy Michigan
 Cloverland
 Cloverland
 Cloverland
 Village of Baraga
 Linda Brauker
 Village of Clinton
 Tri-County Electric Co-Op
 Tri-County Electric Co-Op
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 Lisa Felice
 Michigan Gas & Electric
 City of Gladstone
 Integrys Group

GEMOTION DISTRIBUTION SERVICE LIST

lrgustafson@CMSENERGY.COM

daustin@IGSENERGY.COM

krichel@DLIB.INFO

cityelectric@BAYCITYMI.ORG

jreynolds@MBLP.ORG

bschlansker@PREMIERENERGYLLC.COM

ttarkiewicz@CITYOFMARSHALL.COM

d.motley@COMCAST.NET

mpauley@GRANGERNET.COM

ElectricDept@PORTLAND-MICHIGAN.ORG

gdg@alpenapower.com

dbodine@LIBERTYPOWERCORP.COM

leew@WVPA.COM

kmolitor@WPSCI.COM

ham557@GMAIL.COM

BusinessOffice@REALGY.COM

landerson@VEENERGY.COM

cmcarthur@HILLSDALEBPU.COM

mrzwiwers@INTEGRYSGROUP.COM

Teresa.ringenbach@directenergy.com

christina.crable@directenergy.com

angela.schorr@directenergy.com

ryan.harwell@directenergy.com

johnbistranin@realgy.com

kabraham@mpower.org

mgobrien@aep.com

mvorabouth@ses4energy.com

suzy@megautilities.org

tanya@meagutilities.org

general@itctransco.com

lpage@dickinsonwright.com

Deborah.e.erwin@xcelenergy.com

mmpeck@fischerfranklin.com

CANDACE.GONZALES@cmsenergy.com

JHDillavou@midamericanenergyservices.com

JCAltmayer@midamericanenergyservices.com

LMLann@midamericanenergyservices.com

karl.j.hoesly@xcelenergy.com

kerri.wade@teammidwest.com

dixie.teague@teammidwest.com

meghan.tarver@teammidwest.com

sarah.jorgensen@cmsenergy.com

Michael.torrey@cmsenergy.com

adella.crozier@dteenergy.com

camilo.serna@dteenergy.com

Michelle.Schlosser@xcelenergy.com

dburks@glenergy.com

Lisa Gustafson

Interstate Gas Supply Inc

Thomas Krichel

Bay City Electric Light & Power

Marquette Board of Light & Power

Premier Energy Marketing LLC

City of Marshall

Doug Motley

Marc Pauley

City of Portland

Alpena Power

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Consumers Energy

DTE Energy

DTE Energy

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Great Lakes Energy

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kabraham@mpower.org

Michigan Public Power Agency

shannon.burzycki@wecenergygroup.com

Michigan Gas Utilities Corporation

kerdmann@atcllc.com

American Transmission Company

handrew@atcllc.com

American Transmission Company

phil@allendaleheating.com

Phil Forner