

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 September 9, 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

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 the integrating emerging technologies area of focus.

As older electric generation plants retire, new 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 potentially result in lower costs and higher value 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. *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; June 7, 2019 order in Case No. U-20165, p. 79; July 9, 2020 order in Case No. U-18232, p. 44.

The Federal Energy Regulatory Commission (FERC) has 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 found that states may use prices for energy and capacity determinations 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 while taking into account operating characteristics of needed capacity; (3) solicitations that are conducted at regular intervals; and (4) oversight by an independent administrator. *Id.*, ¶ 61,260. 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.¹ Utilities procuring 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 on the alignment of integrated resource and distribution plans 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

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.

for competitive bidding, topics and resources to be included in the workgroup, procedures to ensure a streamlined procurement process, and the implementation of MCL 460.6t(6) within the bidding process.

On October 30, 2020, comments on the October 1 straw proposal were received from several utilities and other stakeholders. On April 1, 2021, the Staff issued a second straw proposal (April 1 straw proposal) that incorporated suggestion 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 a number of utilities and other stakeholders.

On June 22, 2021, the Staff filed a report in the instant case entitled Competitive Procurement: Michigan Public Service Commission Staff Guidance Document (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 provided 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.³

To briefly summarize, in the Competitive Procurement Report, the Staff explained that the purpose of the guidelines was consistent with the Commission's objective for the Competitive Procurement Workgroup in ensuring strong, ownership-neutral market response and value for

³ For ease of reference, the two guideline sets shall be referred to, respectively, as the non-PURPA guidelines and the PURPA guidelines but may also be termed as the guidelines when referring to both sets.

customers through transparency, non-discriminatory access, certainty, and fairness in bidding processes. The Staff further explained that, if the guidelines are fully utilized by a utility, the resulting projects would be presumed to be reasonable and prudent. If a utility opts to forego the guidelines or a portion of the guidelines, the Staff stated that the utility would then be required to provide justification for the divergence and receive Commission approval prior to recovering the costs.

On July 2, 2021, the Commission issued an order in the instant case (July 2 order) seeking comments from interested stakeholders regarding the Staff's Competitive Procurement Report. Specifically, the Commission asked stakeholders to 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 were asked to 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 welcomed additional substantive and detailed comments that offer other methods of effectuating competitive procurement on a going-forward basis. Comments were due on July 30, 2021. Reply comments were due on August 13, 2021.

This order summarizes the comments and reply comments received and provides further guidance on the Commission's intentions for implementation of competitive procurement guidelines.

Comments

Consumers Energy Company (Consumers); DTE Electric Company (DTE Electric); Michigan Energy Innovation Business Council and Advanced Energy Economy (collectively, MEIBC/AEE); Environmental Law & Policy Center, Vote Solar, and the Ecology Center, together as the Joint Clean Energy Organizations (JCEOs), the Association of Businesses Advocating Tariff Equity (ABATE); Michigan Electric and Gas Association (MEGA); and Hemlock Semiconductor Operations LLC (Hemlock) submitted comments in this matter on July 30, 2021.

In its comments, Consumers presents its modifications to aspects of the Staff's guidelines and explains that it supports adoption of the guidelines via Commission order, with the company's changes, to serve as guidelines for procurement rather than mandated, formal rules. Consumers' comments, pp. 2, 34. Consumers requests that, if the company's modifications are not accepted, the Commission allow the utility to propose its own competitive bidding guidelines in its tariffs. *Id.*, p. 34. Consumers goes on to state that mandated rules for competitive bidding fail to provide the flexibility needed by the utility to tailor resource procurement to fit its needs and would infringe upon the company's management decisions. *Id.*, pp. 2-3. The company adds that the guidelines should not require solicitation of all resource types because resource selection is often guided by the utility's integrated resource plan (IRP) which uses extensive modeling to determine reasonable and prudent resource types. *Id.*, p. 3.

As to its modifications to the guidelines, Consumers proposes the following changes:

1. Modifying the definition of “competitive procurement” to include broader language with respect to which resources may be procured;
2. Clarifying the language defining the role of the independent monitor and independent administrator regarding how the costs for the independent monitor would be paid and recovered;
3. Modifying the definitions of “short-term resource” and “long-term resource” to be more general in terms of falling short of or exceeding a five-year duration;
4. Removing the term “ownership neutral” from the defined objective of the guidelines, changing “participants” to “respondents,” and adding the goal of maximizing customer value to the fundamental principles of the objective;
5. Clarifying the guiding principles of the guidelines to clarify that competitive procurement is not the only means to acquire resources;
6. Clarifying the description of competitive procurement to convey that a utility is not legally required to use competitive procurement to acquire all resources and that a procurement should include resources identified in an IRP;
7. Modifying the Oversight and Independence of the Bidding Process provisions to remove language believed to be excessive in prohibiting information sharing, to add language ensuring the utility maintains the management decision in final bid selection, to replace the terms “coordinate” and “customer stakeholders” explaining that the terms are vague and subject to multiple interpretations, to remove the requirement to hold a pre-request for proposal (RFP) meeting with the Staff and potential bidders or to do so only when there is a substantial change since the company’s last RFP, to remove the requirement to release all price and non-price factors to avoid the risk of bid respondents gaming or skewing the ranking of proposals, and to remove the requirement for an independent monitor or independent administrator to participate in every solicitation;
8. Modifying the Open, non-discriminatory treatment of Long-term Resources provision to remove the requirement for ownership neutrality;
9. Modifying the Minimum Request for Proposals (RFP) Requirements and Specification of Evaluation Criteria provision to include flexibility for arrangement allowing for utility ownership (i.e., not only build-transfer agreements (BTAs)), to remove the stipulations regarding terminal value assessments in bid analyses conducted by utilities, to remove any term-length requirements of power purchase agreements (PPAs), and to remove limitations on cost recovery for rate-based assets;
10. Regarding the Additional Guidelines provision, modifying the reference to MCL 460.6t(6) and MCL 460.6t(4) to refer to MCL 460.6t generally and removing repetitive language stating that the solicitation process should be simple and understandable;

11. Altering the PURPA guidelines to be more precise in terms of using only solicitations that include capacity to determine avoided cost rates and capacity needs;
12. Striking language in the PURPA guidelines that requires capacity unfilled by a competitive solicitation to be made available to qualifying facilities (QFs) because, according to Consumers, the rates available to QFs should be addressed in tariffs as opposed to the guidelines and unfilled capacity should not automatically be awarded;
13. Removing from the PURPA guidelines language referring to voluntary green pricing (VGP) programs, renewable portfolio standards (RPS), and informing IRPs because solicitations for VGP and RPS purposes do not seek to fill capacity needs and utilities are not required to use competitive solicitations to acquire capacity that would inform its IRP;
14. Modifying the Oversight and independence of bidding process in the PURPA guidelines to address inconsistencies with this same section in the non-PURPA guidelines;
15. Modifying the Open, non-discriminatory treatment of Long-term Resources in the PURPA guidelines to address inconsistencies with this same section in the non-PURPA guidelines, to clarify that only capacity and/or energy solicitations should serve as the basis for determining utility capacity needs and avoided cost rates, and to remove language regarding QF eligibility for avoided cost rates which should be addressed in utility tariffs;
16. Modifying the Minimum RFP requirements and specifications of evaluation criteria provision in the PURPA guidelines to be consistent with the same provision in the non-PURPA guidelines and removing language pertaining to the terms and conditions for PPA bids matching those of BTAs; and
17. Modifying the Additional Guidelines provision in the PURPA guidelines to be consistent with the same provision in the non-PURPA guidelines.

See, id., pp. 4-33. Consumers includes with its comments, as Attachment A, a complete redlined version reflecting its modifications to both sets of competitive procurement guidelines.

DTE Electric begins its comments with a recitation of its history of issuing RFPs that, according to the company, have become increasingly transparent, and states that it is open to suggestions on how to continue to improve the transparency and efficiency in its RFP process. However, DTE Electric maintains that formal guidelines or rules are not necessary for competitive solicitations. DTE Electric's comments, p. 2. DTE Electric goes on to cite legal precedent in support of its contention that conducting RFPs and other procurement-related activities are a utility

management decision outside of the Commission's authority and avers that the guidelines, if codified as rules, would violate the utility's right to make its own management decisions. *Id.*, pp. 3-5. The company acknowledges that the Commission may issue the competitive procurement guidelines but also states that utilities are not bound by such guidelines. *Id.*, p. 5. Thus, DTE Electric does not support adoption of the guidelines via a rulemaking or through utility tariffs as this represents an inflexible option but finds the Commission adoption of the guidelines to be the least objectionable course of action. *Id.*, p. 6.

In response to the Staff's report, DTE Electric comments that any adopted guidelines should only apply to PURPA avoided cost RFPs and RFPs that include utility self-build/affiliate participation and provides comments on several topics including the independent monitor and administrator, RFP evaluation criteria, and the use of the terminal value adjustment. As to the independent monitor and independent administrator, DTE Electric acknowledges the benefits of using an independent monitor but maintains that any independent monitor or independent administrator must not have final selection authority that would interfere with the utility's management decisions. *Id.*, p. 7. DTE Electric also notes its agreement that, when a utility or affiliate is a bid participant, evaluation and bid teams must be separately staffed and an independent monitor could ensure Code of Conduct compliance. *Id.* Turning to RFP evaluation criteria, DTE Electric argues that minimum RFP requirements are not appropriate as the needs and circumstances of each RFP can vary. The company also does not support complete disclosure of the weighting of factors to stakeholders, explaining:

Too much information, especially with regard to scoresheets and specific scoring criteria, can result in a carefully "reversed engineered" bid that scores well but can misrepresent the true feasibility and cost of a project. Developers also noted if a utility becomes overly prescriptive it gives a false sense of evaluation and also limits creativity by a developer as was discussed at the October Competitive Procurement Workgroup meeting. As applicable, the RFP could describe,

generally, the methodology regarding the application of the financial compensation mechanism, terminal value analysis or any other adjustment factor for utility self-build or build/transfer projects and requirements for federal tax credit treatment. Another non-price factor that frequently arises is contractual terms. DTE [Electric] believes it would be helpful to identify any non-negotiable contract terms up front but also believes there is value in the ability to negotiate some contract terms after the short list of bidders is selected. This does not foreclose the potential for selective use of a standard contract on all terms in an appropriate situation. Factors that are important to one developer may not be as important to another and negotiation in areas of bidder flexibility could lower the contract price. DTE [Electric] has experienced this first-hand. Flexibility in negotiation of key terms and conditions with different developers has repeatedly resulted in lower costs for customers in both PPAs and BTAs. Developers also noted in the October Competitive Procurement Workgroup meeting that developers can live with certain provisions and if you force bidders to the same contract it will lead to a higher pricing and does not allow for developer creativity.

Id., pp. 8-9.

Lastly, DTE Electric explains that the terminal value adjustment is used to assess project cost over the same time frame and to appropriately compare projects with differing life cycles (i.e., a 25-year PPA and a 35-year BTA). The company states that it is supportive of providing developers with the terminal value methodology and how it is applied when evaluating RFPs. *Id.*, pp. 9-10.

MEIBC/AEE first express support for the competitive procurement guidelines but offered further comment on the topics of terminal value analysis, the independent monitor, and the guidelines for PURPA avoided costs and capacity demonstration. MEIBC/AEE's comments, pp. 1-3. Speaking to Subsection 4(f)(3) of the competitive procurement guidelines, MEIBC/AEE believe this provision as written is no longer appropriate and added:

It is now our understanding that providing a price that is "at least" fair market value at exercise would violate IRS [Internal Revenue Service] regulations and, thereby, place at risk access to the Investment Tax Credit. Michigan EIBC/AEE would be grateful for the opportunity to work with Commission Staff to ensure that the section on terminal value analysis is accurate and actionable.

Id., p. 2. As to the independent monitor, MEIBC/AEE ask that the Commission clarify whether, if a utility declines to use an independent administrator, an independent monitor is required in procurements that are not for PURPA compliance. MEIBC/AEE express its support for the use of an independent monitor in such a case. *Id.* With respect to the guidelines for PURPA avoided costs and capacity demonstration, MEIBC/AEE note that because page 7 of the guidelines only speaks to a QF's right to an energy rate outside of the competitive solicitation, it is not clear that QFs are also entitled to the capacity rate equal to the Midcontinent Independent System Operator, Inc. (MISO) planning resource auction (PRA) clearing price. MEIBC/AEE suggest clarification to this point. *Id.*, p. 3.

Responding to the Commission's questions in the July 2 order, MEIBC/AEE state that its preferred option is for the Commission to adopt the draft non-PURPA guidelines and the PURPA guidelines because the involved stakeholder process resulted in guidelines that are "well-thought out, well-reasoned, and well-supported[.]" *Id.* MEIBC/AEE suggest that adoption of the guidelines could be done through a Commission docket with the opportunity to comment by stakeholders. Additionally, MEIBC/AEE recommend that the Commission also adopt a review process to evaluate the efficacy of the guidelines in the future. *Id.*, p. 4. MEIBC/AEE explain that while the Commission may find adoption and the use of a rulemaking useful in terms of giving the guidelines "the full weight and force of a rule[.]" MEIBC/AEE caution that a rulemaking process is lengthy and prevents flexibility in improving the guidelines once the rules are complete. MEIBC/AEE oppose the option of a rulemaking proceeding on its own and the option for utilities to include the guidelines in their tariffs because these options would set aside the significant work done by the stakeholders in the workgroup to develop the competitive procurement guidelines. *Id.*, p. 5.

The JCEOs express support for the competitive procurement guidelines and recommend an expedited opportunity to submit comments and reply comments on the guidelines followed by the Commission's adoption of the guidelines via an order. JCEOs' comments, p. 2.⁴ The JCEOs also ask the Commission to clarify that, while the Commission does not have the authority to require utilities to adopt a particular procurement method, it will presume projects and contracts procured using the guidelines to be reasonable and prudent. *Id.* In addition to adopting the guidelines via Commission order, the JCEOs recommend that the Commission also initiate a formal rulemaking to codify the most important policy principles of the guidelines but not the full set of guidelines in order to leave some flexibility for adjustment in the future. *Id.*, pp. 2-3. The JCEOs lastly note opposition to adoption of the competitive procurement guidelines into utility tariffs explaining that this pathway risks compromising the guidelines by allowing the utility to interpret the guidelines to suit its tariffs. *Id.*, p. 4.

Citing the need for flexibility to accommodate the unique circumstances of its member-utilities, MEGA asks that the Commission maintain the guidelines as an option to demonstrate reasonable and prudent procurement. MEGA's comments, pp. 1-2. In its comments, MEGA also provides feedback on the strawman proposals that were issued in October 2020 and March 2021. Specifically, MEGA asserts that the competitive procurement guidelines should focus on long-term generation resources only and not those resources related to VGP programs, renewable energy credits, or ancillary services. *Id.*, p. 2. MEGA also asks that the Commission provide a clearer definition of a non-affiliated, unbiased entity for the independent monitor and independent administrator.

⁴ While the JCEOs' filed comments are not paginated, the Commission references page numbers in natural order beginning with the first page of the comments.

MEGA also provides responsive comments to the Commission's four options for guideline adoption set forth in the July 2 order. MEGA supports the Commission's adoption of the guidelines as long as the guidelines remain informal and do not preclude a utility from demonstrating the reasonableness and prudence of procurement that does not align with the guidelines. *Id.*, pp. 3-4. MEGA further states that procurement outside of the guidelines should not create a presumption that the utility's resource procurement was not reasonable or prudent. *Id.*, p. 4. If a utility opts to use the competitive procurement guidelines, MEGA asserts that the costs of administering an RFP should be recoverable. *Id.*, p. 5. For the reasons it stated previously, MEGA explains that it does not support a rulemaking or formal adoption of the guidelines. However, MEGA does not oppose a utility's choice to adopt the guidelines into its tariffs but contends that the Commission should not mandate such action as it is not the only means of ensuring reasonableness and prudence. *Id.*, pp. 5-6.

Beginning its comments, Hemlock recommends that the Commission adopt the competitive procurement guidelines with adjustments to the RFP guidelines regarding price and non-price factors considered in a solicitation. Hemlock's comments, pp. 1-4. Specifically, Hemlock requests that any price and non-price factors, including value added criteria, be clearly specified, non-discriminatory, and not show preference to utility ownership in any RFP issued by a utility. Referencing Section 4(b) of the competitive procurement guidelines, Hemlock also avers that the Commission should ensure that price and non-price factors include "specific environmental, social, and governance components with respect to the manufacturing supply chain for generation." *Id.*, pp. 2-3. Next, Hemlock recommends that the Commission include in the guidelines industry standards such as Environmental Product Declarations, Life Cycle Assessment ISO 14040, and the Electronic Product Environmental Assessment Tool used by the Green

Electronics Council/ANSI457 for optional, informational use in RFPs. *Id.*, p. 3. Lastly, Hemlock asks that “RFPs require bid responses to contain information necessary to trace and verify product component sourcing to ensure compliance with applicable laws and SEIA (Solar Energy Industries Association) traceability protocols, as appropriate, which verify origination of material components in the supply chain.” *Id.*

ABATE, in its comments, provides several recommendations for the competitive procurement guidelines. First, ABATE insists that neither the independent monitor nor the independent administrator should be hired or compensated by the utility. Second, ABATE contends that the language stating that when the guidelines are utilized by the utility, “it is presumed that resulting projects are reasonable and prudent” be removed. ABATE’s comments, p. 2. ABATE explains that this assertion overstates the authority of the competitive procurement guidance with the formal process required by the Administrative Procedures Act of 1969, MCL 24.201 *et seq.* (APA), and inappropriately indicates a presumption of reasonableness and prudence that a utility should still be required to demonstrate for rate recovery. Third, ABATE argues that the guidelines should not limit the resources that may be bid into a procurement, namely demand-side programs. *Id.*, p. 3. Fourth, ABATE enumerates several provisions of the guidelines for further clarification. *Id.*, pp. 4-5. ABATE also notes that the comments it provided apply to competitive procurement guidelines for PURPA avoided cost and capacity determination and that the final guidelines should both reflect ABATE’s recommendations and clarifications. *Id.*, p. 5. Lastly, ABATE recommends additional provisions be added to the guidelines that include references to best practices, an explanation of precisely how the guidelines will reduce barriers to utilizing emerging technologies, as well as opportunities for stakeholder review and participation. *Id.*, pp. 6-7.

Reply Comments

Consumers, DTE Electric, ABATE, the JCEOs, Pine Gate Renewables, LLC (Pine Gate), and Hemlock filed reply comments on August 13, 2021.

In its reply comments, Consumers responds to several of ABATE's comments. First, Consumers disagrees with ABATE that the independent administrator and independent monitor should not be hired by the utility and explains that it has conducted successful solicitations in 2019 and 2020 by hiring an independent third-party evaluator to conduct its solicitation and that FERC has not prohibited utilities from hiring independent administrators. Consumers' reply comments, pp. 2-4. Second, Consumers responds to ABATE's argument that there should be no presumption of reasonableness and prudence when the guidelines are utilized arguing that without this presumption, there would be little value to the competitive bidding guidelines. *Id.*, pp. 4-5. Third, the company opposes ABATE's request that the guidelines be revised to allow demand-side resources to participate in competitive bidding insisting that a recent order by FERC⁵ provides for wholesale aggregation of demand-side programs and that a company's IRP should determine the resources sought in a solicitation. *Id.*, pp. 5-6. Fourth, Consumers opposes the changes proposed by ABATE to specific provisions of the guidelines. *Id.*, pp. 6-9. Lastly, the company disagrees with ABATE that the guidelines "should address additional issues necessary for successful and credible competitive procurement processes" arguing that the IRP is sufficient for determining procurement resources, but also acknowledging that bidding processes should be subject to refinement over time. *Id.*, p. 9.

⁵ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (2020).

Responding to Hemlock's request that the utilities specify all price and non-price factors, including value-added criteria, Consumers agrees that bidding factors should be transparent "when practical" but maintains that price and non-price factors are subjective and that the utility should retain the ability to modify and adjust pricing and non-pricing criteria to be able to respond to new circumstances that arise (e.g., a solar production tax credit). *Id.*, pp. 9-10. Next, Consumers argues that Hemlock's request that bid responses contain information necessary to trace and verify product sourcing may be impractical because certain bid items, such as risk tolerance, are inherently subjective. *Id.*, p. 10.

In response to MEIBC/AEE's request to remove the terminal value analysis provision in Section 4(f) of the guidelines, Consumers agrees that the provision is problematic in that it is overly restrictive and unnecessary and argues that the provision should be removed. *Id.*, pp. 10-11. However, Consumers rejects MEIBC/AEE's argument that an independent monitor be used in a non-PURPA procurement if an independent administrator is not used. The company contends that neither are required to conduct a fair solicitation and lists several disadvantages to using an independent administrator or monitor in every solicitation. *Id.*, pp. 11-12. In its initial comments, MEIBC/AEE stated that the guidelines should clarify that a QF not selected in the solicitation should be entitled to the MISO PRA clearing price for capacity. Consumers disagrees with MEIBC/AEE's requested clarification arguing that FERC Order 872 relieves the utility of its obligation to purchase capacity outside of the competitive solicitation process and that avoided cost rates should be addressed in PURPA tariffs. *Id.*, pp. 12-13. In response to MEIBC/AEE's suggestion that the Commission could adopt the guidelines through a comment docket, Consumers agrees that adoption via Commission order is a good option but disagrees that further comment is required considering the extensive opportunities for comment in the stakeholder process and in

response to the July 2 order. Consumers also defends its position that, should the Commission not adopt the guidelines with an order, the utility should be permitted to adopt competitive procurement guidelines in its tariffs. *Id.*, pp. 13-14.

In response to the JCEOs, Consumers repeats its objection to a further comment period and argues that adoption of any of the guidelines in a formal rulemaking is inappropriate and will not allow for modifications or improvements. *Id.*, pp. 14-15. Consumers also reiterates that adoption in its tariffs is a viable option. *Id.*, p. 16.

DTE Electric, in response to comments regarding the use of an independent monitor or administrator, agrees with Consumers and contends that using an independent monitor or administrator should be optional and that there is no reason that either should not be hired by the utility. DTE Electric's reply comments, pp. 2-3. Concerning the release of specific evaluation criteria, the company again agrees with Consumers that providing stakeholders with weighing and scoresheets invites the risk of gaming or skewing the ranking of bids. DTE Electric continues that allowing stakeholders to ask questions and comment on the RFP process will lead to fewer disputes and less disruption in issuing the solicitation than allowing stakeholders to be involved in the development of the RFP and sharing of scoresheets. *Id.*, p. 3. In response to Hemlock, DTE Electric agrees that RFP provisions should enable verification of product origin but argues that the guidelines at issue here do not require the utility to use any pre-specified criteria in its bid scorecard. *Id.*, pp. 3-4.

As to the comments pertaining to terminal value analysis, DTE Electric agrees that how terminal value is applied should be shared with potential bidders but disagrees that the terminal value analysis presents a disadvantage to PPAs. The company contends that terminal value analysis enables the company to properly compare proposals with different term lengths and to

assess the useful life of an asset beyond the depreciable life. *Id.*, p. 4. With respect to the Commission's adoption of the guidelines, DTE Electric maintains that adoption is not necessary at all but that if the Commission does choose to adopt the guidelines, adoption that "keeps the guidelines as a roadmap, one of many ways to meet a reasonableness and prudence standard[.]" is the most acceptable. *Id.*, p. 5. Lastly, because the guidelines are not binding, DTE Electric argues in response to MEIBC/AEE that cost recovery cannot be dependent on the use of the guidelines. *Id.*

Beginning its reply comments, the JCEOs express concern that some of the commenters in this docket went beyond the scope of the questions posed in the July 2 order regarding the procedural path forward and instead used the comment period as an opportunity to reargue the substance of the guidelines and undercut the work of the stakeholder group. The JCEOs contend that it would be unfair for the Commission to make changes to the guidelines based on out-of-scope responses. JCEOs' reply comments, pp. 1-2. Nonetheless, the JCEOs respond to some of the issues raised in initial comments. First, the JCEOs state that after consideration of the consensus arrived at in comments, adoption via Commission order without a rulemaking would be satisfactory. *Id.*, p. 2. Second, in response to ABATE's concerns regarding the presumption of reasonableness and prudence, the JCEOs contend that concerns are inappropriate given that the guidelines do not purport to establish a single, exclusive method to establish reasonable and prudent procurement. The JCEOs express agreement with MEGA's interpretation that the guidelines represent one of many ways to demonstrate reasonableness and prudence and that the utilities are free to justify other means of procurement. *Id.* As to Consumers' and DTE Electric's request for clarification that the guidelines do not establish a legal requirement for competitive bidding, the JCEOs argue that the guidelines already clearly dictate that their use is not required. The JCEOs go on to

propound the benefits of the guidelines including providing a clear and consistent competitive bidding standard and explains that there may be instances where deviation from the guidelines is supported because the utility has convinced the Commission of the merits of its procurement process. In these cases, the guidelines will serve as a baseline with which to compare other processes. *Id.*, p. 3.

Turning to specific revisions to the guidelines requested in some comments, the JCEOs oppose changes to the definition of “Competitive Procurement,” the removal of the term “ownership neutrality,” and changing the non-price factors to limit their use to the differentiation between bids that are otherwise priced equally. *Id.*, p. 4.

Hemlock’s reply comments center on its response to ABATE’s proposal that the guidelines should revise the use of non-price factors to be used only to differentiate bids that are otherwise equivalent in price factor evaluation. Similar to the JCEOs, Hemlock opposes this change and explains that price factors should not necessarily outweigh all other non-price factors which are important for achieving social, environmental, and diversity goals, as well as addressing supply chain reliability and diversity issues. Hemlock’s reply comments, pp. 1-2. As expressed in its initial comments, Hemlock repeats its support for developing RFPs and bid scoring documents in consultation with the Staff and stakeholders. *Id.*, p. 2.

ABATE, in its reply comments, addresses DTE Electric’s and Consumers’ proposals to limit the authority and involvement of the independent administrator and monitor. ABATE argues that the credibility of the competitive bidding process is significantly enhanced by third-party involvement and reducing the role of the independent administrator or monitor will not achieve a neutral procurement process. ABATE’s reply comments, p. 2. ABATE also rejects the proposal by DTE Electric and Consumers to not fully disclose the weighting and factors to stakeholders,

arguing that the disclosure of the utility's bid selection methodology is important to demonstrate the transparency and reasonableness of procurement costs that will ultimately be passed on to customers. *Id.*, pp. 2-3. In response to DTE Electric's comments with regards to ensuring the ability of the utility to negotiate contracts terms with a short list of bidders, ABATE contends this is advisable only if negotiations will lead to lower costs for customers. *Id.*, p. 3.

Turning to Consumers' comments regarding resource types and ownership neutrality, ABATE contends that the inclusion of varied resources will promote cost effectiveness and further the Commission's stated observation in the August 20 order that competitively bid resources can ensure that emerging technologies that may lower costs are considered. *Id.*, pp. 3-4. ABATE also rejects Consumers' request to include "maximizing customer value" into the fundamental principles of the guidelines' objective and argues that minimizing customer costs should be the chief objective citing the August 20 order and the statutory language of MCL 460.6t in support. *Id.*, pp. 4-5. Similarly, ABATE opposes Consumers' proposal to remove the requirement for utilities to describe the benefit to ratepayers of non-price factors because, according to ABATE, these details are necessary for scoring the value of bids and preventing non-price factors from skewing bid results when the bids are otherwise cost equivalent. *Id.*, pp. 5-6. Lastly, ABATE contends that, contrary to Consumers' opposition, explicitly including the principles of consistency, simplicity, understandability, and technology neutrality in the guidelines is consistent with FERC guidance in *Allegheny* and necessary to ensure credibility in the competitive bidding process. *Id.*, pp. 6-7.

Although it did not submit initial comments, Pine Gate filed reply comments in this matter. To begin, Pine Gate recommends that the Commission adopt the competitive procurement guidelines with a few modifications and clarifications and notes that it is generally supportive of

MEIBC/AEE's recommendations for the guidelines set out in its comments. Pine Gate's reply comments, p. 2. Pine Gate goes on to address its concerns regarding recommendations made by DTE Electric and Consumers. First, in response to DTE Electric's claims that adoption of any guidelines is unnecessary and that any guidelines should only apply to PURPA avoided cost RFPs and RFPs involving utility self-build or affiliate participation, Pine Gate requests that the Commission make clear that any long-term resource procurement that does not conform to the guidelines is presumptively imprudent. *Id.*, pp. 2-3. Second, in response to DTE Electric's and Consumers' reluctance to coordinate with the Staff and stakeholders in developing RFPs, Pine Gate asks that the Commission preserve the guidelines as written because they allow bidders the opportunity to improve the RFP process and ensure transparency. *Id.*, pp. 3-4. Next, Pine Gate argues that communication between a utility's development personnel and a utility's procurement personnel should be restricted both during the design phase of the RFP and during the bidding and evaluation phases. Pine Gate also rejects Consumers' proposed change to only restrict communication that would result in an unreasonable advantage, calling such a standard vague and likely to undermine confidence in the RFP process. *Id.*, pp. 4-5. Fourth, Pine Gate rejects the utilities' recommendations to prevent the full disclosure of weighting and factors used for bid scoring. Pine Gate describes DTE Electric's and Consumers' concerns regarding reverse engineered bids unfounded and argues that secret weighting and factors breed suspicion in the RFP awards. *Id.*, pp. 5-6. Fifth, Pine Gate states its preference for form contracts over DTE Electric's suggestion for flexibility in negotiating contract terms after a short list of bidders is selected. Pine Gate contends that:

Negotiable terms make it impossible to compare bid prices on a comparable basis. If the bidder community is able to comment on form contracts to be used during the RFP process, then contract terms can be established based on transparent consideration of how specific terms affect pricing. Negotiations limited to a select

few bidders undermine bidder confidence in the selection process.

Id., p. 6. Lastly, according to Pine Gate, the Commission should remove any reference to an avoided capacity rate of zero in the guidelines and instead, should maintain the existing MISO PRA clearing price for capacity when the utility does not have a capacity need. *Id.*, pp. 7-8.

Discussion

To begin, the Commission would like to thank the Staff, utilities, and other stakeholders for their participation in the Competitive Procurement Workgroup and for the substantial efforts that went into developing the Staff's competitive procurement guidance document. Developing this comprehensive document as an update to the 2008 competitive bidding guidance that addresses emerging technologies and the changing energy resource landscape and incorporates the recent FERC guidance pertaining to competitive bidding has been no small task, and the Commission is appreciative of the work done in this docket.

Considering the comments and reply comments submitted in response to the July 2 order; the nature of the competitive bidding guidelines; and the Commission's past efforts to implement competitive bidding processes in Case Nos. U-15800, U-15806, U-18419, U-18232, and U-20165, the Commission finds that the most preferred path forward to implement an updated competitive

procurement process is to adopt the non-PURPA and PURPA guidelines via Commission order,⁶ with some minor revisions discussed below. The Commission finds that adoption with this order represents an efficient and expeditious option in comparison to a formal rulemaking pursuant to the APA, which can be a time-consuming process that would delay implementation of the guidance for a year or more. Further, adoption via an order allows for the flexibility called for in several of the comments to modify, revise, and improve the guidelines as the Staff, rate-regulated utilities, and other stakeholders gain experience and knowledge through implementation. Additionally, adoption by order achieves the uniformity of a single standard for competitive procurement that may not be achieved if each utility were to adopt guidelines into its tariffs.

While the purpose of the July 2 order was to receive comments on how the Commission would move forward procedurally with the competitive procurement guidance document, the Commission takes this opportunity to address some of the comments pertaining to the substance of the non-PURPA and PURPA guidelines. Namely, the Commission clarifies that the adoption of the guidelines does not make conformity with the guidelines a requirement for all rate-regulated utilities in every resource procurement. As stated in the guidelines, the Commission encourages the use of the competitive procurement guidelines for the solicitation of all long-term resources but is not imposing their use as a requirement for cost recovery. Should a utility opt to conform its

⁶ As explained in the December 4, 2008 order in Case No. U-15800 (December 4 order), the Commission acknowledges that the term “guidelines” has a specific definition in the APA and that the APA specifies a method for the adoption of guidelines. However, the context of Public Act 295 of 2008 indicated that the Legislature did not intend for the Commission to promulgate guidelines for RFPs in accordance with the APA but instead directed the Commission to formulate guidelines in a temporary order. December 4 order, pp. 11-12. The Commission has been operating under the guidelines promulgated in the December 4 order and has found an update to be necessary. Therefore, the adoption of the guidelines in the instant docket is treated as an update to the 2008 guidelines that is not required to be issued pursuant to the method proscribed in the APA, MCL 24.224.

RFP to the competitive procurement guidelines, it will receive the benefit of a presumption that its resulting procurement in accordance with the guidelines is reasonable and prudent. Additionally, to further address concerns regarding the presumption of reasonableness and prudence, the Commission clarifies that the guidelines are intended to set out a standard for the Commission's expectations of a fair, transparent, non-discriminatory bidding process. However, the guidelines do not foreclose the possibility that procurement by other means may also be reasonable and prudent. Per the guidelines, the Commission shall require the utility to justify any deviation from the competitive procurement guidelines and sufficiently demonstrate the reasonableness and prudence of its procurement decision making and actions for the purposes of cost recovery. Lastly, in response to MEIBC/AEE's comment that QFs not selected in the competitive procurement process should be entitled to an avoided energy cost and avoided capacity cost set at MISO PRA, the Commission notes that approving specific avoided cost rates is beyond the scope of this proceeding. While utilities may opt to use a competitive solicitation to set their avoided costs, avoided capacity costs are addressed in each utility's avoided cost review proceeding.

As to the non-PURPA and PURPA guidelines contained in the Competitive Procurement Report filed on June 22, 2021, the Commission finds that the guidelines achieve the Commission's stated intention of setting out a competitive procurement process that reveals available resource options, ensure emerging technologies are appropriately considered, and results in lower costs and higher value for customers. However, the Commission finds that minor revisions are necessary. These revisions, listed and explained below,⁷ consist primarily of clarifying changes or additions

⁷ Added language is presented in bold font, and removed language is indicated by strikethrough font.

that lend precision to the guidelines. The Commission, therefore, finds the following revisions should be adopted into the non-PURPA and PURPA guidelines:

1. Terms that have been defined in the Definitions section of the non-PURPA guidelines and the PURPA guidelines shall be capitalized. This revision eliminates the potential for ambiguity by clearly identifying defined terms.
2. The words “bidders” and “participants” shall be replaced throughout both guidelines with the word “respondents.” The Commission finds “respondents” to be a more specific term that clearly refers to respondents to an RFP.
3. The terms “competitive solicitation(s),” “competitive bidding,” and “procurement” shall be replaced with “Competitive Procurement” or have had “Competitive” added where it is appropriate to refer to Competitive Procurement as it is defined in the guidelines as opposed to a reference to solicitations, bidding, or procurement in general.
4. “Draft” from the “Draft Guidelines” heading in the PURPA guidelines shall be removed. With the adoption of both guidelines sets with this order, the guidelines are no longer considered to be in draft form.
5. The definition of “Independent Monitor” in the non-PURPA guidelines shall be revised to read: “A non-affiliated, unbiased entity hired by the utility or Commission to work with the utility and help develop, **review, and/or provide oversight of the eCompetitive pProcurement** process and to provide independent oversight of the procurement process to ensure that it is fairly designed and administered.” The additional language “review, and/or provide oversight of” more fully and accurately describes the role of the independent monitor as set out in the guidelines.
6. The definition of “Independent Administrator” in the non-PURPA and PURPA guidelines shall be revised to read: “A non-affiliated, unbiased entity without a business interest in the **outcome of the** solicitation or similar solicitations hired by the utility to work with the utility and administer the competitive procurement process. This entity will have final **evaluation and** scoring responsibility for proposals resulting from an RFP and will communicate these results to the utility by redacting any of the bidder’s identifying information until such time as the utility enters negotiations with the bidders.” Subpart 2(c) shall be revised to read: “The IA must be an entity independent from the purchasing electric utility and must not have a business interest in the **outcome of the** solicitation.” The Commission finds the addition of “outcome of the” is more accurate to describe the conflict of interest the guidelines aim to avoid, and the addition of “evaluation and” provides a fuller description of the Independent Administrator’s role.
7. The Objective section in the non-PURPA guidelines shall be revised to read: “Thus, in considering the guidelines contained herein for competitive solicitations, the fundamental principles of minimizing customer costs, **maximizing customer value**, and ensuring reasonable rates **are** is paramount.” The Commission finds that the addition of

“maximizing customer value” aligns with the totality of the Commission’s mission in ensuring safe, reliable, and accessible energy at reasonable rates. While the cost of resources remains a significant factor in evaluation in the RFP process, it is not the sole determinant in project selection. “Maximizing customer value” reflects the consideration of other factors, such as market value, that impact the ultimate cost and value of a project. The inclusion of “maximizing customer value” does not mean that the consideration of customer value take priority over gross cost considerations, but rather that it should be considered along with cost and the assurance of reasonable rates.

8. The Guiding Principles section in the non-PURPA guidelines shall be revised to read: “When making determinations of the reasonableness and prudence of utility energy and capacity resource procurements, the following guidelines shall be used in the Commission’s ~~evaluation~~ **review** of the **Competitive Procurement** processes and resulting bids. This includes resources procured **through a Competitive Procurement process** for Voluntary Green Pricing (VGP) Programs, Renewable Portfolio Standards, to inform Integrated Resource Plans (IRP) or as a result of IRPs, and other ~~e~~**Competitive pProcurement** activities deemed appropriate and reasonable by the Commission.” The Commission finds these revisions add precision to the Guiding Principles and that the substitution of “review” for “evaluation” more closely matches the terminology most commonly used by the Commission.

9. Subpart (2)(a) of the Oversight and Independence of the ~~bidding~~ **Competitive Procurement** Process in the Guidelines section in the non-PURPA and PURPA guidelines shall be revised to read: “If utility affiliates are responding to an RFP through submission of a bid, the utility and utility affiliate must use separate staffing. This includes a prohibition on information sharing between utility affiliates responding to the RFP and utility personnel involved in any aspect of the RFP process (such as **design and** preparation of the RFP, scoring/evaluation of results, or contract negotiation).” The Commission finds that the separating the utility personnel even in the design phase of the RFP will better advance the Commission’s objectives of objectivity and the removal of bias in the process.

10. Subpart (2)(d) of the Oversight and Independence of ~~Bidding~~ **Competitive Procurement** Process in the Guidelines section in the non-PURPA and PURPA guidelines shall be revised to read: “The utility shall work with Staff and customer stakeholders in the development of the scoring sheet and allow for review of the **scoring criteria and the** process used to evaluate and select proposals leading up to or at the pre-RFP meeting.” The Commission finds that the addition of scoring criteria specifies an important aspect of review for the Staff and stakeholders in addition to their review of the competitive procurement process as a whole.

11. Subpart (4)(a), Minimum RFP Requirements and Specification of Evaluation Criteria, in the Guidelines section of the non-PURPA guidelines shall be revised to read: “Consistent with the timeline established for the pre-RFP meeting, minimum eligibility requirements for ~~bidders respondents~~ and ~~Long-term~~ **Resources** will be identified prior to the release of the RFP, although these requirements should not result in discrimination against viable

non-traditional or alternative providers **or proposals** utilizing emerging technologies.” The Commission includes “or proposals” to clarify that discrimination against providers and proposals is prohibited in the guidelines.

12. Subpart (4)(d), Minimum RFP Requirements and Specification of Evaluation Criteria, in the Guidelines section of the non-PURPA guidelines and Subpart (4)(c), Minimum RFP Requirements and Specification of Evaluation Criteria, in the Guidelines section of the PURPA guidelines shall be revised to read: “Templates of Power Purchase Agreements (PPAs), ~~and~~ Build Transfer Agreements (BTAs), **or other contract types** with terms and conditions and identification of what terms and conditions are non- negotiable.” The Commission includes “or other contract types” to clarify that there may be other contract structures, including utility-built and utility-owned projects, that may be considered in the competitive bidding process.
13. Subpart (4)(h), Minimum RFP Requirements and Specification of Evaluation Criteria, in the Guidelines section of the PURPA guidelines shall be revised to read: “To the degree practical, the terms and conditions for PPA bids should mirror those for BTA **or other utility-ownership** contracts and should not include unequal reserve or other requirements.” Similar to the previously listed revision, the Commission includes the “or other utility-ownership” descriptor to clarify that other contract types may be considered in the competitive bidding process.

Apart from the changes specified in this order, the Commission preserves and adopts the non-PURPA and PURPA guidelines as filed by the Staff on June 22, 2021.⁸ The non-PURPA and PURPA guidelines, inclusive of the revisions listed above, are attached to this order as Exhibit A. The Commission notes that the competitive procurement guidelines will become effective immediately with the issuance of this order and will apply prospectively. That being said, the Commission understands that some utilities may be in the process of designing, developing, or issuing an RFP and may be at such a point in the process that compliance with the competitive procurement guidelines is not practical. In such a case, the Commission expects the utility to provide an explanation to that effect in its applicable cost recovery proceeding.

⁸ The Commission has also revised the guidelines to correct any grammatical or clerical errors.

With the adoption of the competitive procurement guidelines, the Commission also finds it appropriate to establish a process for review of the guidelines in order to identify and incorporate modifications and improvements to the guidelines. The guidelines speak to opportunities for potential improvement, stating: “This guidance allows for the continued refinement of bidding processes over time based on feedback from respondents, the Commission, the utility, and stakeholders.” As such, the Commission shall conduct a review of the competitive procurement guidelines on a periodic basis at least every five years. To enable its review, the Commission directs the Staff to issue a survey to utilities, developers, and stakeholders seeking feedback as to how the competitive procurement guidance has worked for solicitations, problems that arose, suggestions for improvements, and any other information deemed relevant by the Staff. No later than September 9, 2026, the Staff shall file in this docket, Case No. U-20852, a report detailing the Staff’s recommendations for modifications to the competitive procurement guidelines based on the Staff’s assessments as well as feedback from utilities, developers, and stakeholders. The Staff may also initiate a review of the competitive procurement guidelines before the September 9, 2026 deadline should a review become necessary.

THEREFORE, IT IS ORDERED that:

A. The competitive procurement guidelines for rate-regulated electric utilities (not for Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 compliance) and the competitive procurement guidelines for rate-regulated electric utilities for Public Utility Regulatory Policies Act of 1978, PL 95–617; 92 Stat 3117 avoided cost and capacity determinations, as filed by the Commission Staff on June 22, 2021, with revisions as described in this order, are adopted and effective with the issuance of this order.

B. As described in this order, the Commission Staff shall issue a survey to rate-regulated utilities, developers, and stakeholders to obtain feedback regarding the performance of the competitive procurement guidelines and any suggested improvements or modifications. No later than September 9, 2026, or as needed prior to that date, the Commission Staff shall file a report in the instant docket detailing any recommendations for modifications to the competitive procurement guidelines.

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

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice 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

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of September 9, 2021.

Lisa Felice, Executive Secretary

Competitive Procurement Guidelines for Rate-Regulated Electric Utilities (Not for PURPA Compliance)

Definitions:

Competitive Procurement – A discretionary process in which the utility may solicit and ultimately contract for, own, or build any combination of energy, capacity, Renewable Energy Credits (REC), ancillary services for grid reliability, generating assets, storage assets, or other supply side resources through a Request for Proposals (RFP) process.

Independent Monitor (IM) – A non-affiliated, unbiased entity hired by the utility or Commission to work with the utility and help develop, review, and/or provide oversight of the Competitive Procurement process and to provide independent oversight of the procurement process to ensure that it is fairly designed and administered. This entity does not have final scoring authority of proposals resulting from an RFP but may help with scoring at the utility's discretion. The utility will maintain final selection of all proposals.

Independent Administrator (IA) – A non-affiliated, unbiased entity without a business interest in the outcome of the solicitation or similar solicitations hired by the utility to work with the utility and administer the Competitive Procurement process. This entity will have final evaluation and scoring responsibility for proposals resulting from an RFP and will communicate these results to the utility by redacting any of the respondent's identifying information until such time as the utility enters negotiations with the respondents. The utility will maintain final selection of all proposals.

Short-term Resource – An asset that has a useful life of less than 5 years from completed construction or contract date.

Long-term Resource – An asset that has a useful life of at least 5 years from completed construction or contract date.

Objective: 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 respondents with confidence in the process. Thus, in considering the guidelines contained herein for competitive solicitations, the fundamental principles of minimizing customer costs, maximizing customer value, and ensuring reasonable rates are paramount. This guidance will be utilized when the utility does not intend to use the competitive solicitation as the means for establishing its Public Utility Regulatory Policies Act of 1978 (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 respondents, the Commission, the utility, and stakeholders.

Guiding Principles: When making determinations of the reasonableness and prudence of utility energy and capacity resource procurements, the following guidelines shall be used in the Commission's review

of the Competitive Procurement processes and resulting bids. This includes resources procured through a Competitive Procurement process 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.

These guidelines do not apply to energy waste reduction programs, demand-side tariff programs administered by utilities, short-term market purchases, or other tariff-based activities.

These guidelines are not intended to restrict the utility's ability to procure resources without use of the 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.

Guidelines:

1. All Long-term Resources, including utility self-build projects, should be procured through Competitive Procurement. Competitive Procurement will be conducted in a manner which is technology neutral to the extent practical. Competitive Procurement processes may be tailored based on the specific energy or capacity resource needs as identified in an approved IRP, Renewable Energy Plan, or VGP program but should not be designed in a way that would exclude cost-competitive options or other projects not specifically identified in the in the above-mentioned proceedings.
2. Oversight and Independence of the Competitive Procurement Process:
 - a. If utility affiliates are responding to an RFP through submission of a bid, the utility and utility affiliate must use separate staffing. This includes a prohibition on information sharing between utility affiliates responding to the RFP and utility personnel involved in any aspect of the RFP process (such as design and preparation of the RFP, scoring/evaluation of results, or contract negotiation).
 - b. There will be no information sharing between the utility development arm and the procurement arm when utility-owned projects are allowed to bid into a solicitation.
 - c. Use of an IA or IM:
 - i. It is preferred that an IA conducts all aspects of the Competitive Procurement process, including scoring of proposals, especially if a utility or its affiliate intends to bid a self-build project into the utility's competitive solicitation.
 - ii. If a utility does not use an IA, it should provide an explanation to Commission Staff (Staff) explaining the reasons for an IA not being used and how compliance with any applicable FERC guidelines was ensured.
 - iii. If the utility intends to conduct a Competitive Procurement process to set avoided costs under PURPA, an IA must be used as described in separate guidance issued for that process.
 - d. The utility shall coordinate with Staff and customer stakeholders in the development of the RFP prior to the pre-RFP meeting. The utility shall work with Staff and customer stakeholders in the development of the scoring sheet and allow for review of the scoring criteria and the process used to evaluate and select proposals leading up to or at the pre-RFP meeting. Staff shall have full access to all redacted information from the utility IA or IM. In addition, the utility shall make utility staff, the IA or IM, and all unredacted proposal and scoresheets available to Staff in order for Staff to conduct a review and

audit of the process prior to the Commission's decision on the application filed for approval of contracts.

- i. At least 30 days prior to issuance of an RFP, the utility will hold the pre-RFP meeting that includes Staff, potential respondents, and stakeholders. The purpose of this meeting is to describe and allow discussion related to the RFP, timeline, and process for the Competitive Procurement.
 - ii. The utility shall release a draft RFP and solicitation documents at least 10 days prior to the pre-RFP meeting.
 - iii. At the pre-RFP meeting, the utility will describe the draft RFP and solicitation documents, including but not limited to:
 1. Minimum eligibility requirements for respondents and resources.
 2. An explanation of each non-price factor to be considered as well as its definition, criteria, value, score, quantification, relative importance, or weighting.
 - iv. At the pre-RFP meeting, the utility will allow potential respondents, Staff, and stakeholders to ask questions of the utility, the IA or the IM, and provide comments or suggested edits to the solicitation documents. The utility should also allow written comments due no later than 10 days after the pre-RFP meeting. The utility will share these written comments with Staff.
 - v. The IA or IM will work with the utility to design the solicitation, administer bidding, and evaluate bids prior to the utility's selection. The utility will provide access to all information necessary for the IA or IM to effectively carry out its roles and responsibilities.
3. Open, Non-discriminatory Treatment of Long-term Resources:
 - a. Utilities should conduct an open, non-discriminatory Competitive Procurement process that fairly considers both third-party and utility ownership structures, resource types or combinations of resource types, sizes/capacities, ancillary services, and cost reducing grid benefits with transparency on how they will be evaluated.
 - b. Bidding is open to all Long-term Resources and solutions that can meet relevant system and program needs (e.g., fuel source, RECs, combinations of Long-term Resources, ancillary services, etc.).
4. Minimum RFP Requirements and Specification of Evaluation Criteria:
 - a. Consistent with the timeline established for the pre-RFP meeting, minimum eligibility requirements for respondents and Long-term Resources will be identified prior to the release of the RFP, although these requirements should not result in discrimination against viable non-traditional or alternative providers or proposals utilizing emerging technologies.
 - b. Price factors, non-price factors, and category weighting to be used for project selection shall be identified clearly in the RFP, and if practical, the RFP should include scoring sheets with applicable weighting of evaluation factors. Price factors include energy, capacity, ancillary services, RECs or other market values not included in energy costs, and adjusted loss factors. Non-price factors may include consideration and incentivization of ancillary environmental and community benefits, brownfield redevelopment, pollinator habitat, local jobs, union labor, and other factors that provide

benefits to the utility, ratepayers, or other citizens of Michigan. Non-price factors can be quantified but any value given should be disclosed to the potential respondents at the pre-RFP meeting.

- i. Each non-price factor and its criteria, value, score, quantity, relative importance, or weighting should not drastically change between solicitations unless clearly identified at the pre-RFP meeting. Before bidding begins, the criteria must be clearly specified, defined, explained, justified, and supported so that respondents to an RFP may credibly assess project costs based on both price and non-price factors and evaluate non-price traits of various alternatives.
 - ii. Utilities are encouraged to include non-price factors in their Competitive Procurements, even if the benefits of those non-price factors or long-term benefits accrue over time.
- c. For each proposed non-price factor, the utility must describe in detail how each non-price factor provides an observable or identifiable ratepayer benefit. In the absence of such description, the applicable non-price factor will not be used in evaluating and selecting Competitive Procurement responses.
- d. Templates of Power Purchase Agreements (PPAs), Build Transfer Agreements (BTAs), or other contract types with terms and conditions and identification of terms and conditions that are non-negotiable. These templates should be drafted to ensure technology neutrality.
- e. If known, evaluation of bids should include consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk.
- f. If available, these data shall be provided to respondents in an accessible format and shall include detailed locational information. If known, evaluation of bids should include consideration of transmission and distribution benefits, including reductions in transmission congestion and loss costs, reduced distribution system losses, deferred or avoided transmission or distribution investments, and other locational benefits as applicable. If available, all transmission and distribution benefits must be shared with all parties as part of the solicitation documents. As applicable, the utility shall identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis, or any other adjustment factor for all projects. The utility shall not conduct a terminal value analysis if:
 1. A respondent submits a bid with a PPA term equal to the presumed useful life the assets over which the utility amortizes its capital costs or the expected operational life (i.e., 35 years); or
 2. The guaranteed BTA cost recovery period is limited to the PPA term (i.e., 20 years); or
 3. A respondent provides the utility the opportunity, at the respondent's discretion, to purchase the project for a firm amount, which shall be a price that the respondent reasonably believes, based on facts and circumstances at the time the price is determined, will at least be fair market value at exercise, provided that at the time of purchase, the firm amount is equal to or greater than the fair market value.

- ii. If a terminal value analysis is conducted, the terminal value for each bid will be calculated as the levelized cost of energy price of the project bid in the RFP.
 - g. As applicable, assumptions for federal tax credit treatment for all projects. These assumptions are at the risk of the resource.
 - h. The RFP shall indicate the duration (years) over which the bid's price and applicable non-price factors will be evaluated. Allowable durations for bids for PPAs will include an option to bid a PPA lasting for the full evaluation period (for example, if projects are evaluated over 35 years, respondents could bid a 35-year PPA).
 - i. The RFP and template PPA shall not include terms and conditions which are commercially unreasonable, unusual in the industry, or would unreasonably favor any party including the utility or its affiliate(s).
5. The Competitive Procurement process shall align with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) and MCL 460.6t(4), where applicable.
6. The Competitive Procurement should be consistent, simple, and understandable for stakeholders and participants, executable, and technology neutral.

Competitive Procurement Guidelines for Rate-Regulated Electric Utilities for PURPA Avoided Cost and Capacity Determination

Definitions:

Competitive Procurement – A discretionary process in which the utility may solicit and ultimately contract for, own or build any combination of energy, capacity, Renewable Energy Credits (REC), ancillary services for grid reliability, generating assets or storage assets through a Request for Proposals (RFP) process.

Independent Administrator (IA) – A non-affiliated, unbiased entity without a business interest in the outcome of the solicitation or similar solicitations hired by the utility to work with the utility and administer the Competitive Procurement process. This entity will have final evaluation and scoring responsibility for proposals resulting from an RFP and will communicate these results to the utility by redacting any of the respondent's identifying information until such time as the utility enters negotiations with the respondents. The utility will maintain final selection of all proposals.

Short-term Resource – An asset that has a useful life of less than 5 years from completed construction or contract date.

Long-term Resource – An asset that has a useful life of at least 5 years from completed construction or contract date.

Objective: 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 and value to customers. 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. This guidance will be utilized when the utility intends to use Competitive Procurement as the means for establishing its Public Utility Regulatory Policies Act of 1978 (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 principles set out in *Allegheny Energy Supply Co, LLC*, 108 FERC 61082 (2004), 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 Procurement 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 Procurement. This guidance allows for the continued refinement of bidding processes over time based on feedback from respondents, the Commission, the utility, and stakeholders.

If a QF is not selected under such a Competitive Procurement, 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.

Guiding Principles: When making determinations on the reasonableness and prudence of all utility energy resource arrangements, the following guidelines will be used in the Commission's evaluation of the process and resulting bids. This will include resources procured for Voluntary Green Pricing (VGP) Programs, for 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.

These guidelines do not apply to energy waste reduction programs, demand-side tariff programs administered by utilities, short-term market purchases or other tariff-based activities.

These guidelines are not intended to restrict the utility's ability to establish its PURPA avoided cost using methods other than Competitive Procurement.

Guidelines

1. All Long-term Resources, including utility self-build projects, should be procured through Competitive Procurements. Competitive Procurement will be conducted in a manner which is technology neutral to the extent practical. Bidding processes may be tailored based on the specific energy or capacity resource needs as identified in an approved IRP, Renewable Energy Plan, or VGP program but should not be designed in a way that would exclude cost-competitive options or other projects not specifically identified in the in the above-mentioned proceedings.
2. Oversight and Independence of the Competitive Procurement Process:
 - a. If utility affiliates are responding to an RFP through submission of a bid, the utility and utility affiliate must use separate staffing. This includes a prohibition on information sharing between utility affiliates responding to the RFP and utility personnel involved in any aspect of the RFP process (such as design and preparation of the RFP, scoring/evaluation of results, and contract negotiation).
 - b. There will be no information sharing between the utility development arm and the procurement arm when utility-owned projects are allowed to bid into a solicitation.
 - c. The utility must use an IA who is responsible for administering the Competitive Procurement, including scoring or proposals. The IA must be an entity independent from the purchasing electric utility and must not have a business interest in the outcome of the solicitation.
 - i. The IA is responsible for scoring of proposals and for providing blind rankings to the utility that could be considered for Commission review. The IA will work with the utility to design the solicitation, administer bidding, evaluate, and rank bids with all identifying information removed prior to the utility's final selection consistent with the oversight principles set out in *Allegheny Energy Supply Co, LLC*, 108 FERC 61082 (2004)).
 - d. The utility shall coordinate with Commission Staff (Staff) in the development of the RFP prior to the pre-RFP meeting. The utility shall work with Staff and customer stakeholders in the development of the scoring sheet and allow for review of the scoring criteria and the process used to evaluate and select proposals leading up to or at the pre-RFP meeting. Staff shall have full access to all redacted information from the utility's IA. In addition, the utility shall make utility staff, the IA, and all unredacted proposal and scoresheets available to Staff so that Staff may conduct a review and audit of the

process prior to the Commission's decision on the application filed for approval of the contracts.

- i. At least 30 days prior to issuance of an RFP, the utility will hold the pre-RFP meeting that includes Staff, potential respondents, and stakeholders. The purpose of this meeting is to describe and allow discussion related to the RFP, timeline, and process for the competitive solicitation.
 - ii. The utility shall release a draft RFP and solicitation documents at least 10 days prior to the pre-RFP meeting.
 - iii. At the pre-RFP meeting, the IA will describe the draft RFP and solicitation documents, including but not limited to:
 1. Minimum eligibility requirements for respondents and resources.
 2. An explanation of each non-price factor to be considered as well as its definition, criteria, value, score, quantification, relative importance, or weighting shall be provided at the pre-RFP meeting.
 - iv. At the pre-RFP meeting, the IA shall allow potential respondents, Staff, and stakeholders to ask questions of the IA, and provide comments or suggested edits to the solicitation documents. The IA should also allow written comments due no later than 10 days after the pre-RFP meeting. The IA will share these written comments with the utility and Staff.
 - v. The IA will arrange a post-RFP meeting with the utility and Staff in which the selection process is detailed. The utility shall provide access to all information for the IA to effectively carry out its roles and responsibilities.
 - vi. The IA shall provide the utility with sufficient information to conduct a thorough internal review without disclosing the respondent's identity.
 - vii. The IA shall provide scores for all subjective factors, such as the ability of the respondents to complete the project on time, financial health and credit worthiness of respondent, experience, etc.
 - viii. The IA shall produce a ranked list of bid projects, based on the RFP's evaluation factors, weighting, and scoring sheets, for review by the utility and the Staff.
 - ix. The utility shall arrange a post-RFP meeting with the IA and Staff in which the selection process is detailed.
3. Open, Non-discriminatory Treatment of Resources:
 - a. The IA, on behalf of the utility, should conduct an open, non-discriminatory Competitive Procurement process that fairly considers both third-party and utility ownership structures, resource types or combinations of resource types, sizes/capacities, ancillary services, and grid benefits with transparency on how they will be evaluated.
 - b. Bidding is open to all resources and solutions that can meet relevant system and program needs (e.g., fuel source, dispatchability, RECs, combinations of resources, ancillary services, etc.).
 - c. PURPA QFs may bid into each solicitation. If not selected on its merits and the utility's capacity needs have been met through the Competitive Procurement process, the PURPA QF is eligible to enter into a contract at the utility's energy only avoided energy cost rate after completion of the competitive bidding process.
4. Minimum RFP Requirements and Specification of Evaluation Criteria:

- a. Consistent with the timeline established for the pre-RFP meeting, minimum eligibility requirements for respondents and resources will be identified with or prior to the release of the RFP.
- b. Price factors, non-price factors, and category weighting to be used for project selection will be identified clearly in the RFP, and if practical, the RFP will include scoring sheets with applicable weighting of evaluation factors. Price factors include energy, capacity, ancillary services, RECs or other market values not included in energy costs, and adjusted loss factors. Non-price factors may include consideration and incentivization of ancillary environmental and community benefits, brownfield redevelopment, pollinator habitat, local jobs, union labor, and other factors that provide benefits to the utility, ratepayers, or other citizens of Michigan.
 - i. Each non-price factor and its criteria, value, score, quantity, relative importance, or weighting should not drastically change between solicitations unless clearly identified at the pre-RFP meeting. Before bidding begins, the criteria must be clearly specified, defined, explained, justified, and supported so that respondents to an RFP may credibly assess project costs based on both price and non-price factors and evaluate non-price traits of various alternatives.
- c. Templates of Power Purchase Agreements (PPAs), Build Transfer Agreements (BTAs), or other contract types with terms and conditions and identification of what terms and conditions are non-negotiable.
- d. If known, evaluation of bids should include consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk.
 - i. If available, these data shall be provided to respondents in an accessible format and shall include detailed locational information.
- e. If known, evaluation of bids should include consideration of transmission and distribution benefits, including reductions in transmission congestion and loss costs, reduced distribution system losses, deferred or avoided transmission or distribution investments, and other locational benefits as applicable. If available, all transmission and distribution benefits must be shared with all parties as part of the solicitation documents.
- f. As applicable, the utility shall identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis or any other adjustment factor for all projects.
 - i. The utility shall not conduct a terminal value analysis if:
 - 1. A respondent submits a bid with a PPA term equal to the presumed useful life of the assets over which the utility amortizes its capital costs or the expected operational life (i.e., 35 years); or
 - 2. The guaranteed BTA cost recovery period is limited to the PPA term (i.e., 20 years); or
 - 3. A respondent provides the utility the opportunity, at the respondent's discretion, to purchase the project for a firm amount, which shall be a price that the respondent reasonably believes, based on facts and circumstances at the time the price is determined, will at least be fair

market value at exercise, provided that at the time of purchase, the firm amount is equal to or greater than the fair market value.

- ii. If a terminal value analysis is conducted, the terminal value for each bid will be calculated as the levelized cost of energy price of the project bid in the RFP.
 - g. As applicable, assumptions for federal tax credit treatment for all projects.
 - h. To the degree practical, the terms and conditions for PPA bids should mirror those for BTA contracts or other utility-ownership contracts and should not include unequal reserve or other requirements.
 - i. The RFP shall indicate the duration (years) over which the bid's price and non-price factors will be evaluated. Allowable durations for bids for PPAs will include an option to bid a PPA lasting for the full evaluation period (for example, if projects are evaluated over 35 years, respondents could bid a 35-year PPA).
 - j. The RFP and template PPA shall not include terms and conditions which are commercially unreasonable, unusual in the industry, or would unreasonably favor the utility or its affiliate(s).
- 5. The Competitive Procurement process shall align with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) and MCL 460.6t(4), where applicable.
 - 6. The Competitive Procurement process should be consistent, simple, and understandable for stakeholders and participants, executable, and technology neutral.


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STATE OF MICHIGAN)

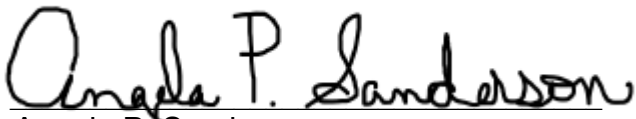
Case No. U-20852

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on September 9, 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 9th day of September 2021.



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

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