

# Competitive Procurement Stakeholder Input

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### **Topics of consideration:**

1. All source bidding (vs specific technologies)
2. Minimum RFP requirements (What items should be included in the RFP)
3. Complying with FERC Order 872 (PURPA issues and the Allegheny Case)
4. Oversight of the bidding process (Independent Administrator)
5. Code of conduct issues
6. MPSC and Stakeholder Involvement (the concept of third-party review)
7. Pre-IRP vs Post-IRP RFPs and adherence to MCL460.6(t)(6)

### **Summary for each commenter**

#### **Hemlock Semiconductor Operations LLC (HSC)**

- Non-price factors (ESG metrics)
- Life Cycle Assessments should be conducted
- Publicly available selection matrix

#### **AEE comments**

- RFP should address need determined in IRP
- Could be a lost opportunity in the future if we don't include demand side and EWR.
- Net value (considering non-price points) may be the best way to do all source
- FERC Order 872 is unclear whether competitive solicitation can be used to fulfill PURPA
- FERC Order 872 may not apply such as regular interval RPS and independent evaluator
- Wants more detail on how the Alleghany principles apply
- Utility should identify which items are non-negotiable

- Requiring transmission and distribution costs in upgrade prices is unreasonable
- Need to know FCM methods
- No affiliate bids if the utility conducts the bid evaluation
- **MI EIBC and AEE strongly believe that utility/utility staff should not be involved in bid evaluation if a utility or affiliate project is being considered.**
- Clarify who would pay an IA
- Clarify authority of IA in final bid determinations
- IA only makes sense if the utilities are evaluating utility and affiliate projects themselves.
- RFP documents should **only** be reviewed by utility running RFP, staff, and IA.
- Staff should review “Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement.”
- Staff should consider talking with Ric O’Connell of GridLab, an expert in competitive procurement.
- MI EIBC and AEE prefer Option 1 or Option 2. The Commission should consider a hybrid option.
- Option 2 in which the pre-IRP RFP is considered an RFI, and it should be tech-neutral.

### **I&M comments**

- Competitive bidding requirements should not impede I&M other retail jurisdictions.
- No changes should “impose excessive administrative costs”
- Commission should exempt multi-jurisdictional utilities
- Too Long of a process will lead to risk
- Consider multistate utility issues
- “Energy resources” “long term” and short term” need defining (5 years suggested)
- Use an FCM
- Don’t use the FERC 872 order broadly
- Affiliate code of conduct covers affiliate bids.
- Does not want an IE/M making business decision for the Company
- Use an option in which the pre-IRP RFP is considered an RFI

### **DTE comments**

- Guidelines should only apply to PURPA avoided costs RFPs and RFPs that include utility and affiliate self-build.
- Guidelines should not be used for short-term capacity procurement
- There should be no mandatory requirements for VGP or RPS.
- DTE does not support complete bid disclosure to stakeholders
- RFPs should be considered transmission and distribution availability, interconnection, and system upgrades: and an interconnection study required.
- IA’s should not be responsible for the entire evaluation process.
- Wants more detail on how the Alleghany principles apply
- A post-RFP after auction review (AAR) with the parties would be beneficial
- Rigid timelines are not needed
- Option 3 is preferred and timelines for options are provided.

## MI Biomass comments

- Energy diversity must be recognized within competitive bidding process.
- SEA Phase II – Integration of Resource/Distribution/Transmission Planning workgroups final findings should be integrated with the final guidelines. Zachary Hedemann of the MPSC specifically should be invited to present on this topic.

## Consumer's comments

- Staff should review and format these guidelines similar to those in case no. U-15800.
- Consumers does not support mandated competitive bidding guidelines.
- Guidelines should be used to encourage reasonable bidding practices
- **Staff's proposal for formal rules would violate MCL 460.6s and MCL 460.6t**
- Item 2b “must be open” should be changed to “may” for more flexibility, especially considering IRP and other resources requirements
- Clarify how this process interacts with FERC Order 870 competitive bidding
- Consumers supports minimum eligibility requirements for screening proposals
- Consumers does not support releasing price and non-price factors for all solicitations due to high risk.
- PPA templates would be costly to include in every solicitation
- Consumers supports federal tax benefit consideration in solicitations.
- Separation between utilities and utility-affiliates should be utility specific.
- Clarify if Item 5b refers to the Commission or to Commission Staff.
- Consumers does not support mandatory stakeholder review.
- Access to bid materials should be restricted to Staff.
- Option 3 is the most consistent with current IRP law.

## MEGA comments

- Clarify who would pay for IA
- Clarify requirements for utilities in multiple jurisdictions
- Clarify role for the IA
- Correct “parties” in #7 to something more specific.
- Process should only apply to generation resources, not RECs or other market products
- Bidding should be restricted to long-term resources (5 years or longer) to prevent burden
- Guidelines should allow flexibility around VGP resource procurement.

## ELPC, SEIA, and Vote Solar comments

- Clarify that all energy **and capacity** resources should go through comp. Procurement process
- Guidelines should provide minimum compliance characteristics
- Supports use of both reasonable price and non-price factors
- Although, non-price factors must be transparent, well-defined, and will communicated
- Not clear on why the FCM should be considered as part of the process

- Not clear on why federal tax treatment should be specifically addressed
- Supports use of an independent evaluator to administer and oversee process
- Prefer IE to include final project selection through a ranking process
- Provisions should exist for sharing sensitive information
- Discourage allowing affiliate transactions that are entered outside of an RFP
- A specific NDA should be used by all parties in this process
- Use of non-price environmental and public health factors
- Reduction in air pollution emissions
- Environmental impacts of project siting
- Use of blighted or brownfield sites
- RFP could be used as a mechanism for transferring information
- None of the three options avoid all timing issues
- Larger concerns with Options 1 and 2
- Suggests option 3 is baking into the procedure

### **Pinegate Renewables comments**

- Rate-basing generation assets is a n outmoded concept
- All generation should be procured through comp. Solicitation
- Utilities (or their non-regulated affiliates) should be allowed to participate (with a cap on awards) and recover costs in the same wat as third parties.
- Utilities and their affiliates should not then be able to compete against independent power producers for the PPA portion of the procurement
- Distribution network upgrade costs should be paid for by the utility and recovered from ratepayers
- Requiring that the cost be included in bids is problematic
- Utilities with the same cost recovery mechanism as third parties should be entitled to the same utilization of tax credits
- Independent administrator is preferable to independent evaluator
- Unacceptable for the utility to make the award decisions if it or its affiliates are market participants
- Unnecessary for third parties to review the bids
- Actual procurement should be made after the approval of the IRP
- A post-IRP RFP can serve as the pre-IRP RFP for the next cycle
- Supports an approach similar to proposed Option 1 or Option 2

### **ABATE Comments**

- The guidelines should ultimately focus on lowering customer costs
- Clarify the details and requirements for non-price evaluation
- Clarify issues surrounding hiring an independent auditor
  - Whether an auditor can be requested or mandated by interested parties in certain situations
  - The process of auditor selection
  - Auditor scope
  - Auditor authority

- Applicable funding source
- Clarify details of stakeholder involvement in review and input
- Staff should seek input from independent third-party administrators who conduct and evaluate RFPs.
- Option 2 is the preferred option

## Hemlock Semiconductor Operations LLC (HSC)

Paul Rausch

- 1. In addressing the draft guidelines below, please indicate your support, opposition, proposed modification, or request for clarification on specific items. Are there any additional guidelines that should be included?**

HSC recommends that energy resources take into consideration opportunities to combat the climate crisis in relation to Gov. Whitmer's recent Executive Order No. 2020-182. Accelerating the deployment of solar energy resources will meet the needs for rapid de-carbonization.

HSC would like to provide additional input to guideline 4(b). To ensure that projects have the most beneficial impact possible, non-price factors including Environmental, Social and Governance (collectively ESG) metrics should be included.

- Environmental – Embodied carbon (supply chain emissions) should be considered in solar RFPs to select projects with lowest environmental impact. 3<sup>rd</sup> party LCAs for solar modules in accordance with ISO 14040/14044 should be part of RFP solicitation. This data is readily available from panel manufacturers as other jurisdictions (specifically France and South Korea) already require this information as part of the bidding process for solar deployment.
- Social – Considerations for where equipment supply chain components are manufactured should be considered to insure fair standards of labor for workers, regardless of technology.
- Governance – Supply chain resiliency and domestic manufacturing should be considered to gain economic impacts for Michigan based companies.

- 2. Please identify topics that need additional research and/or discussion as part of the workgroup process (e.g., use of independent evaluator, sample scoring criteria or Request for Proposals (RFP)).**

Please consider non-price factors such as ESG targets listed above in the solution selection matrix for RFP selection. There has been extensive work started by others in the industry. Attached is a link to an example: [https://c1.sfdcstatic.com/content/dam/web/en\\_us/www/assets/pdf/sustainability/sustainability-more-than-megawatt.pdf](https://c1.sfdcstatic.com/content/dam/web/en_us/www/assets/pdf/sustainability/sustainability-more-than-megawatt.pdf)

- 3. Are there additional experts or resources that we should consider as part of the workgroup process?**

Life Cycle Assessments (LCA) done in accordance with ISO 14040/14044

Dr. Annick Ancil at Michigan State University has extensive knowledge and expertise in the embodied carbon in the solar supply chain.

- 4. What processes should be instituted to ensure streamlined review of winning projects resulting from a procurement process that conforms to these guidelines?**

Publicly available selection matrix that includes non-price factors in addition to costs at the time of RFP solicitation

## Michigan Energy Innovation Business Council (MI EIBC) and Advanced Energy Economy (AEE)

Laura Sherman  
Ryan Katofsky

### Responses to Staff Inquiries:

- 1. In addressing the draft guidelines below, please indicate your support, opposition, proposed modification, or request for clarification on specific items. Are there any additional guidelines that should be included?**

#### Objective and Guiding Principles

We generally support the stated objectives and guiding principles laid out in the Staff Draft Guidelines, in particular the drive towards transparency and non-discriminatory access. Although Staff did not fully elaborate on what it meant by transparency, we see this as applying to at least two aspects of a competitive bidding framework: (i) transparency with respect to the process itself (as indicated in Item 2a of the Draft Guidelines), and (ii) the provision of information about the needs to be met by the solicitation.

With some exceptions, we generally support a technology-neutral approach to resource acquisition, provided that all needs are fully considered, including those related to emissions reductions that are consistent with the recent executive actions by Governor Whitmer on carbon neutrality. However, it is important to consider, as outlined further below, how a technology-neutral approach would apply to the different planning processes. For example, in an IRP, a utility determines, based on scenario modeling, the most prudent, least cost course of action to meet its generation needs. If all available technologies are appropriately considered and modeled, an IRP can therefore represent a technology-neutral consideration of all available sources. An RFP issued after an IRP, therefore, need not be open to all technologies, but instead, should serve to meet the needs identified in the approved IRP.

With respect to the exclusion of EWR and demand side programs from the proposed guidelines, we understand that this is a practical consideration from the point of view of program integrity and continuity, but over the longer term, this may represent a lost opportunity to drive deeper energy efficiency achievement and leverage cost-effective customer-sited resources. We recommend that the Commission reconsider this exclusion as it explores issues around planning and other innovations as part of MI Power Grid. As technologies continue to evolve and improve, and the ability to manage customer loads and behind-the-meter resources increases, the Commission should look for ways to increase the participation of all demand-side resources for meeting system needs.

#### All-source bidding

As stated above, as a general principle, we support a technology-neutral approach to resource acquisition so as to ensure the most robust market response and to drive down costs to true market pricing through competition. However, fully “all-source” bidding processes can effectively be exclusionary for certain renewable resources (e.g., solar PV or solar plus storage hybrid systems) that cannot always compete in Michigan on a pure price basis. As a result, the factors used to evaluate bids and structure RFPs should reflect the full range of desired performance characteristics, and not just “system needs” as described in Item 2b in the Draft Guidelines. The Draft Guidelines appear to recognize this when it includes the



consideration of non-price factors (Item 4b). We strongly encourage the Commission to direct utilities to consider policy objectives, and in particular the recent executive actions related to greenhouse gas reductions.<sup>1</sup> This will create an RFP framework that is technology-neutral while also aiding Michigan in reaching carbon-neutrality by 2050. As stated by Fritz Kahrl of Lawrence Berkeley National Laboratory at the September 14, 2020 stakeholder meeting, a net value framework is a more “meaningful metric than cost.”<sup>2</sup> There are different ways that these important considerations can be included in the bidding and evaluation process. For example, the evaluation framework could include a carbon price in evaluating bids, or the RFP could specify that resources must be emissions-free.

As described above, it is important to consider, how a technology-neutral approach would apply to the different planning processes. An RFP issued after an IRP need not be open to all technologies, but instead, should serve to meet the needs identified in the approved IRP. In other cases, such as with voluntary green pricing programs, it would obviously make sense for utilities to make specific technology requirements part of the RFP process.

### Competitive bidding guidelines

With respect to guidelines set in previous FERC cases, the Commission should explicitly describe which principles should be adhered to and how the utilities should comply. Specifically, with respect to FERC Order 872, it is unclear if all of the requirements included in that Order to allow a utility to use competitive solicitation to determine PURPA avoided cost should be applied to all competitive bidding. For example, does the Commission intend to require that RFPs be conducted at “regular intervals”? In addition, as discussed below, it is critical that the Commission and stakeholders carefully consider the role of and rules around an independent evaluator or independent administrator. It is not immediately apparent that the requirements set forth in FERC Order 872 for an independent administrator should apply to all competitive bidding processes.

In addition, it is unclear how the Commission intends to apply the Allegheny principles. Given that these were established in a 2004 FERC Order, it would be instructive to understand whether or not these principles are already used to guide Commission review of RFP processes and selection results. Michigan EIBC and AEE agree with the broad principles of transparency, non-discrimination, fair evaluation, and third-party oversight of competitive bidding. However, it is important in these guidelines for the Commission to specifically describe how the broad Allegheny principles will be applied to the evaluation of competitive bidding processes in Michigan.

### Template PPA

It is important to carefully consider how bidders interact with the utility in terms of a proposed contract. In some cases, utilities have required bidders to mark up a template contract, indicating which changes are “necessary” and which items are simply “valuable.” This is extremely time consuming for bidders (these

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<sup>1</sup> Michigan Executive Order 2020-182 (September 23, 2020).

<sup>2</sup> Fritz Kahrl, “All-Source Competitive Solicitations: State and Electric Utility Practices”, Michigan Public Service Commission Workshop on Competitive Procurement, September 14, 2020, Grid Modernization Laboratory Consortium.

template contracts can be hundreds of pages in length) and counter-productive because it involves a self-negotiation process. No real negotiation involves a party making decisions on individual line item changes in a vacuum. Instead, the changes should be considered as a whole along with other changes being proposed. For example, a bidder may find a specific change “necessary” on its own, but when considered in the context of three other changes that are more reasonable to the utility, that same bidder may be willing to leave out the first change. Instead, it may be helpful for the utility to identify in the RFP which provisions in a contract are non-negotiable. Providing this information to all bidders would increase transparency, decrease wasted time, and improve the accuracy of bid prices.

#### Transmission and distribution constraints

It is unclear how an RFP would contemplate or score transmission and distribution constraints when these will vary widely across the utility’s territory and for projects of different sizes. Given the timeline for these RFP processes and utility interconnection studies, it is possible, depending on RFP requirements, for bidders to enter an RFP process prior to having a completed interconnection study. It is possible, therefore, that the full cost of system upgrades may not be accurately known at the time a bid is entered. One solution may be for a utility to conduct an expedited interconnection study on shortlisted bids to determine expected system upgrade costs. These can then be used to re-score the bids with these accurate system upgrade costs included. It is unreasonable, therefore, to require transmission/distribution upgrade costs in bid prices. In many cases, such requirements would lead to inaccurate bid prices and an unfair evaluation process.

#### Financial compensation mechanism

It is important that potential bidders be able to accurately and transparently calculate any financial compensation mechanism (FCM) or adjustment factors to understand the final proposal prices that will be used for evaluation. Without this information a bidder cannot accurately weigh the preferred ownership model for a given project proposal.

#### Code of Conduct

As described below, Michigan EIBC and AEE believe that utilities and utility-affiliates should not compete in RFP processes in which the utility conducts the bid evaluation process. We do not believe that adherence to the current Code of Conduct will address the potential for an unfair process because the Code of Conduct was not designed to enable fair evaluation and consideration of bids submitted by utility-affiliates and third parties.

Under all circumstances, and regardless of how bids are evaluated, in the case of utility affiliates participating in RFPs, the Commission should ensure that access to all relevant information necessary to provide a timely, responsive bid is the same for utility-affiliates and third-party bidders.

- 2. Please identify topics that need additional research and/or discussion as part of the workgroup process (e.g., use of independent evaluator, sample scoring criteria or Request for Proposals (RFP)).**

#### Evaluation Process

It is necessary that the Staff and stakeholders spend more time discussing and researching the appropriate role of an independent evaluator or independent administrator (Item 5 of the Draft Guidelines). Specifically, Michigan EIBC and AEE strongly believe that if a utility self-built project or a utility-affiliate project is being considered, the utility and utility staff should not be involved in the bid evaluation process. It is unfair to all other bidders (even if separate staff are involved) to allow a utility to develop an RFP and then be allowed to evaluate responses to the RFP for which the utility itself or its affiliate submits a bid. This provides a clear unfair advantage to the utility project in terms of access to information, access to utility staff, and potential priority treatment.

In addition, it is important that Staff and stakeholders spend more time talking about whether it makes sense for the Commission to hire an independent evaluator for itself who would be separate from the evaluator or administrator engaged by the utility. If this practice were to be put in place, it is important to understand who would pay for this additional evaluator and whether this second evaluator would have authority with regard to the determination of bid winners. If utility self-built or utility-affiliate projects were considered as part of an RFP process and the utility nonetheless conducted the bid evaluation process, it would make sense for the Commission to independently employ an independent evaluator to assess the validity of the bid evaluation results. However, as described above, Michigan EIBC and AEE do not believe that situation should occur.

#### Stakeholder Review

Michigan EIBC and AEE strongly believe that only the Commission Staff, the utility running the RFP process, and the independent evaluator/administrator should review actual bid documents. These are some of the most sensitive materials that a bidding company submits to a utility and access by other parties should not be available. For that reason, care must be taken to not do anything that would make the bids subject to a FOIA request. It is not sufficient for a third party to sign an NDA to gain access to these materials or for the access to be limited to those who will not be submitting bids.

Allowing access to actual bid materials by outside stakeholders would likely significantly suppress responses to the RFP.

### **3. Are there additional experts or resources that we should consider as part of the workgroup process?**

In April 2020, Energy Innovation and the Southern Alliance for Clean Energy published a report titled, "Making the Most of the Power Plant Market: Best Practices for All-Source Electric Generation Procurement."<sup>3</sup> We would recommend that the Commission review this report to see what elements of these best practices apply in the Michigan context and consider reaching out the authors as experts on this topic.

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<sup>3</sup> Available for download at [https://cleanenergy.org/wp-content/uploads/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices\\_EI\\_SACE.pdf](https://cleanenergy.org/wp-content/uploads/All-Source-Utility-Electricity-Generation-Procurement-Best-Practices_EI_SACE.pdf).

In addition, we recommend that the Commission consider bringing in Ric O'Connell, Executive Director of GridLab. He is a recognized leader in energy technology and policy and has experience with competitive procurement for IRPs as well as the relative value of RFIs and RFPs.

**4. What processes should be instituted to ensure streamlined review of winning projects resulting from a procurement process that conforms to these guidelines?**

As described above, we believe it would be valuable to have further conversations on the role of an independent evaluator/independent administrator, including how such an entity can assist to streamline the review process. In addition, it may be helpful to require utilities to issue a post-bid report after an RFP to discuss problems encountered, potential improvements, and bid results (as appropriate).

**5. With respect to Item 8, and the three options listed below, to address the implementation of MCL 460.6(t)6:**

**5.1. For any of the three options presented, are there any legal constraints?**

The objective of Chapter 460.6t(6) seems to be that market prices be obtained in order to inform the IRP. The statute does not necessarily require that any awards be made based on the RFP. Therefore, what is required is more in the nature of an RFI even though that is not the term used. However, the Commission and the utility can and should agree that if an RFP is issued before an IRP, it will not only inform the IRP for purposes of satisfying the statutory language, but will also lead to a contract for the winning bidder if and when the utility next adds new resources.

**5.2. For any of the three options presented, are there any timing concerns?**

“Option 2” may provide bidders with the most certainty and understanding of the expected RFP process after an IRP is approved. Option 2 would establish the process for future RFPs, giving bidders certainty (for the time period of the IRP) regarding when (at least approximately) and for how many MW/what needs a utility will be conducting RFPs.

**5.3. For any of the three options presented, are there any concerns with usefulness of the information that would be obtained?**

Procurement goals should be driven by the IRP, but informed by the pre-IRP RFP. With this in mind, “Option 1” or “Option 2” may make the most sense in that they allow the utility to gain a more accurate understanding of pricing to enable effective, accurate modeling in an IRP and then enables procurement of the appropriate resources after the IRP is approved.

Procurement decisions in an IRP based on an RFI would likely be more accurate than those based on cost numbers tabulated from national sources. However, it is possible that the cost numbers received in response to an RFI will not be as accurate as cost numbers received in response to an RFP would be simply because respondents may not spend as much time/effort on an RFI and the projects proposed may not all be deliverable.

It is important that any pre-IRP RFI is technology-neutral to enable the utility to gain a full understanding of the available technologies/prices.

**5.4. For any of the three options presented, are there any other reasons why they should not be pursued? (Please explain)**

Michigan EIBC and AEE do not have a response to this question at this time.

**5.5. Are there additional options or variations to the three options presented that should be considered?**

The Commission should consider whether a hybrid option is possible -- it may be that after the first IRP, a post-IRP RFP that results in contract(s) can serve as the pre-IRP RFP for the next cycle. This would only be possible if the timeline of the most recent post RFP aligned with the planning cycle of the next IRP. In addition, it would be important to ensure that the RFP used for this information was open to all technologies modeled by the utility in the IRP.

***[SEE ATTACHED DOCUMENT FOR DIRECT COMMENTS ON THE GUIDENCE DOCUMENT]***

## Indiana Michigan Power Company (I&M)

I&M is a multi-jurisdictional public utility that is regulated in the States of Indiana and Michigan. I&M serves approximately 600,000 retail customers, with 472,000 in Indiana and 130,000 in Michigan and serves approximately 390MW of wholesale generation load under long-term full-requirements contracts. The Company's service territory in the State of Michigan encompasses portions of six counties.<sup>4</sup> I&M's Michigan retail customers comprise approximately 15% of the total generation load served by I&M. The remaining customers are wholesale or Indiana retail. Importantly, I&M uses all of its generation resources to meet the needs of all its customers. This allows all customers to realize the greatest benefits by being part of a larger whole, enabling greater resource diversity, economies of scale and lowers cost. In addition, I&M and its parent company American Electric Power (AEP) have significant experience utilizing robust competitive bidding practices when procuring generation resources.

While I&M shares the goal of the guidelines to support a transparent process that optimizes the value of generation resources for customers, I&M is concerned that the proposed guidelines will create competitive bidding requirements that may differ from I&M's Indiana retail jurisdiction. Customers benefit the most when I&M has the ability to manage its business to balance the needs and interests of the two retail jurisdictions. An unbalanced approach could require I&M to begin direct assigning resources specific to each state. This would particularly disadvantage Michigan customers due to being a small portion, approximately 15%, of I&M's entire customer base. Furthermore, given I&M's small footprint in Michigan, the Company supports guidelines that avoid imposing excessive and unnecessary administrative costs that would be allocated to its small customer base. Finally, a robust regulatory framework already exists to review and evaluate the reasonableness and necessity of I&M's generation resource decisions. For these reasons, I&M strongly recommends that the Commission exempt multi-jurisdictional companies from the proposed competitive procurement requirements.

I&M agrees that a critical element of a competitive procurement process is that the formal competitive solicitation process, or RFP, must be conducted with integrity. Formal protocols can provide some assurance that the utility is conducting its RFPs consistently and in a manner that is fair to the market. However, a formal RFP process requires extensive and comprehensive commitment from the utility, the MPSC, Stakeholders and bidders. As described by the Straw Proposal, the RFP process could take up to several months before an RFP is issued, followed by lengthened RFP evaluation and negotiation time and finally a regulatory pre-approval proceeding if pursued by the utility. All in all, the process could take multiple years to complete. Time equates to risk and uncertainty. The strawman proposal presents significant risk to bidders and the Company and its customers as bidders have to price this risk into their bids or may choose to not participate altogether. As such, a formal RFP mandate is not compatible with short-term resource decisions where companies need the ability to efficiently and effectively manage short-term customer needs through existing markets. I&M suggests a reasonable threshold should be resource procurements with terms of five or less years. In addition, consideration must be given to not imposing overly burdensome requirements for smaller resource acquisitions. I&M suggests a reasonable threshold should be 20 MW or smaller.

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<sup>4</sup> Berrien, Cass, St. Joseph, Van Buren, Kalamazoo, and Allegan

Further, as explained above and throughout I&M's comments below, it is important for the MPSC to consider and recognize the unique position of multistate and small utilities when considering the guidelines included in MPSC Staff's Strawman Proposal to ensure that any proposed rules or requirements do not unnecessarily burden or impact multistate or small utility customers and risk resulting in increased costs for customers.

A Public Utility's Role: As a regulated public utility, I&M has an obligation to serve customers with safe and reliable power and the responsibility to manage the business it owns and operates to ensure investments are reasonable and necessary for the provision of service to its customers. No other party to the process has such an "obligation/duty to serve".

Recognizing the role of the public utility, the competitive procurement guidelines should allow utilities to efficiently and effectively examine market options in order to acquire adequate, reliable resources at reasonable costs. The MPSC's policies governing competitive bidding should result in guidelines that provide for a reasonable and fair process that does not pre-judge the outcome of the competitive bidding process and that allows for diversity in ownership. It is important to recognize that the competitive energy and capacity market is highly volatile and changes rapidly; therefore, it is essential that a procurement process does not consist of requirements that would hinder the flexibility necessary for a utility to participate in the market when it is most advantageous. Undue delay or restrictions could have a detrimental impact on the Company's ability to meet the energy and capacity needs of its customers, which are dynamic and change from year to year.

### **Comments on Staff Straw Proposal**

**Draft Guideline 1: *All energy resources, including both short- and long-term supply and utility self-build projects, are arranged through competitive procurement. Bidding processes may be tailored based on the specific energy resource purpose or need.***

I&M Comment: First, I&M is unclear as to the meaning of the term "energy resources." This overly broad draft guideline would not appear to allow for near-term business activities without a formal RFP, which would inhibit the utility's ability to acquire cost-effective resources. Thus, in order to adequately address the Staff's Draft Guideline 1, a definition of "short term", "long term", and "energy resources" should be provided.

Additionally, as noted above, formal competitive bidding requirements should not be required for "all" energy resources. For shorter term acquisitions, an RFP adds unnecessary time and complexity, and ignores established short-term markets such as electronic trading platforms, energy brokers and other forms of bilateral procurement practices. I&M does not use bid solicitations or RFPs to buy short-term energy or capacity because of the liquid nature of the PJM market where it buys electricity. Using RFPs to acquire energy products with terms of less than 5 years should not be required and would reduce the flexibility the Company needs to fulfill short-term changes in capacity and energy needs.

**Draft Guideline 2: *Open, non-discriminatory treatment of resources:***

- a. Conduct open, non-discriminatory procurement process that fairly considers different ownership structures, resource types, and locations with transparency on how they will be evaluated (see minimum requirements below)***

**b. Bidding open to all resources and solutions that can meet system needs (e.g., energy, capacity, voltage support, ramping)**

I&M Comment: The Commission's competitive bidding rules should emphasize the benefits of competition, without regard to ownership, resource type and location. Nevertheless, ownership, resource type and location are factors in the ultimate evaluation. For example, in order to maintain an equal comparison of pricing and costs of utility-owned assets vs. PPA's, consideration of a financial compensation mechanism, based on an imputed debt methodology structure, should be considered.

**Draft Guideline 3: Comply with competitive bidding guidelines in FERC's PURPA order (July 2020), including referenced Allegheny case (Allegheny Energy Supply Co, LLC, 108 FERC 61082 at p 19 (2004))**

I&M Comment: To the extent this guideline is stating that utilities must comply with the competitive bidding guidelines in FERC's July 2020 PURPA order, including the referenced Allegheny case ("FERC's QF RFP Guidelines") when conducting RFPs that are intended to set QF rates, I&M will comply with FERC's PURPA order. If, however, this guideline is suggesting that FERC's QF RFP Guidelines should apply broadly to all RFPs – including those not intended to set QF rates, I&M disagrees that the guidelines FERC tailored for its purposes under PURPA necessarily should apply to all other RFPs. I&M will take future opportunities to comment further if this latter interpretation was Staff's intent.

**Draft Guideline 4: Minimum RFP requirements and specification of evaluation criteria:**

- a. Minimum eligibility requirements for bidders and resources**
- b. Price and non-price factors and weighting to be used for project selection (RFP to include scoring sheets with applicable weighting of evaluation factors)**
- c. Template PPA with terms and conditions**
- d. Consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk**
- e. As applicable, identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis or any other adjustment factor for utility self-build or build/transfer projects.**
- f. As applicable, assumptions for federal tax credit treatment for PPAs and utility self-build or build-transfer projects**

I&M Comment: 4a) – 4c): In general, these items are standard to the Company's RFPs, which the Company supports and should be a basic requirement to any RFP. The Company does not publicize, in its RFPs, a detailed scoring sheet with associated weighting of variables. However, I&M is receptive to providing the scoring and weighting to the MPSC Staff subject to confidentiality requirements consistent with past practices.

4d): To the extent transmission or distribution constraints exist those are considered in the RFP process. I&M supports the need for consideration of variables or constraints that could have an impact on the locational marginal pricing (LMP, \$/MWh) or deliverability of a project's output into a transmission or distribution system. I&M would not rely on any Bidder feedback or analysis in this area since the Bidder



may not have the expertise and a Bidder's feedback would likely understate any anticipated issues or concerns.

4e – 4f): The Company's economic analysis for PPAs, utility self-builds, or build transfer projects would include the appropriate inputs and considerations in its economic analysis, including consideration of the variables referred to in 4e and 4f.

**Draft Guideline 5: Oversight and independence of bidding process:**

- a. Separate staffing and information sharing between utility personnel or utility affiliate responding to RFP (submitting bids) and utility personnel conducting the RFP process (preparation of RFP, scoring/evaluation of results, and contract negotiation)***
- b. Use independent evaluator to administer and oversee the competitive solicitation process (independent evaluator need not have final selection authority but should provide recommendations that could be considered for Commission review through audit process)***
  - i. Utility to provide access to all information for the independent evaluator to effectively carry out its roles and responsibilities***
  - ii. Independent evaluator will provide utility with sufficient information to conduct a thorough internal review without disclosing the bidder's identity***
  - iii. Independent evaluator available and responsive to the MPSC throughout the process***
- c. At its sole discretion and as part of the Commission's regulatory review process, the Commission may hire its own independent evaluator in lieu of or in addition to the independent evaluator hired by the utility***

**I&M Comment:**

- a. I&M has had in place, for many years, an Affiliate Code of Conduct policy that is implemented whenever an affiliate may participate in an RFP. The Company's Affiliate Code of Conduct has policies regarding separate staffing and information sharing during RFP's where an affiliate is participating.
- b. I&M is unable to fully comment on issues related to an Independent Evaluator/Monitor ("IE/M") as there has been no definition or scope provided as to what this role encompasses or when it would be used. Generally speaking, an IE/M is not essential for a cost-effective competitive power procurement process as recognized by the lack of such a requirement in many state jurisdictions, including Indiana. However, certain state jurisdictions do require an IE/M when a utility or utility affiliate participates as a potential seller. If the MPSC determines that an IE/M may be desirable in certain circumstances, such as when a utility or utility affiliate participates as a potential seller, the Company agrees with Staff that delineation of when the IE/M must be used should be clearly defined and the full costs should be recoverable and directly assignable to Michigan. To the extent the MPSC determines an IE/M is necessary, the utilities must have ultimate decision-making authority in selecting winning bids and if the IE/M role should not create an undue burden on the RFP process itself. All decisions regarding successful bids should respect the utilities' managerial authority to identify and contract for resources the utility management deems reasonably necessary to serve its customers.

### The Role of the Independent Evaluator/Monitor

If used, the role of the IE/M should only be to monitor the activities of the RFP process and evaluate a utility's procurement process in order to ensure that they adhere to fair and unbiased procurement practices on behalf of Staff. For example, the IE/M's involvement with the procurement process should begin with commenting on the draft RFP and reviewing copies of all of bids responding to an RFP. The IE should not perform an economic, financial, or risk analysis for the utility; rather, the IE/M can undertake this process independently and can examine the utility's efforts throughout the process, including a review of the Company's assumptions and analytics. While an IE/M should have access to appropriate Company personnel and pertinent data, it is unnecessary for an IE/M to be physically present during the term of the solicitation and selection process. The IE/M should be required to evaluate the process pursuant to the express standards specifically articulated by the MPSC in formal policy statements, decisions or rules.

- i. I&M has no objection to sharing information with MPSC Staff and IE/M throughout the process subject to the above comment that it is advisable, practical or feasible to hand over utility management decision making responsibility to any third party, including MPSC Staff and an Independent Evaluator/Monitor.
  - ii. The Company does not support a regulatory framework in which an Independent Evaluator/Monitor provides the utility with information to conduct an internal review without disclosing the bidder's identity. The Independent Evaluator/Monitor would not be capable of performing the due diligence or screening that the Company would be comfortable with, let alone transact on.
  - iii. The Company has no issues with the IE/M sharing information provided by the Company during the RFP process with the MPSC Staff.
- c. Additional stakeholder discussion is needed on this proposal to understand the basis and intent. Notwithstanding all the above points, having multiple level of IE/M involvement in an RFP is unnecessary, overly burdensome and creates an additional layer of complexity and cost that doesn't support efficient and cost-effective procurement of resources.

### **Draft Guideline 6: Code of conduct compliance:**

- a. ***All code of conduct rules shall be followed***
- b. ***RFPs used to determine "market price" in affiliate transactions for resource supply pursuant to MPSC code of conduct rules***

### **I&M Comment:**

- a. I&M will abide by the Code of Conduct when soliciting bids for competitive resources.
- b. I&M will comply with the Michigan Code Conduct Rules; also, any affiliate transaction will be the result of an RFP that the affiliate participates in.

### **Draft Guideline 7: MPSC and Stakeholder Involvement:**

- a. ***Build in time for Staff and stakeholder review and input on draft RFP, review/scoring processes, and PPA documents***

- b. Review of actual bids will be limited to individuals or parties that do not participate directly in or have affiliations with organizations that have or will submit proposals responding to utility RFPs**
- c. Parties wishing to review bid proposals will be subject to non-disclosure agreements and other requirements to ensure the integrity of the process at the discretion of the utility and Commission**
- d. Continue to refine bidding processes over time based on feedback from bidders, the Commission, and stakeholders as well as experiences in other jurisdictions**

I&M Comment:

- a. I&M supports building in time for Staff and stakeholder review and input on draft RFP, reviewing bids and scoring and template PPA documents. However, as the stakeholders work to develop draft competitive procurement rules, I&M is concerned about rules that would substantially expand the amount of time required to complete the competitive bidding process. Currently, I&M can complete the entire RFP process in a year or less. Unduly burdensome regulatory requirements could further lengthen this process and negatively impact the goal of economic procurement. In I&M's experience, the material procurement and construction process for a large project can be quite lengthy in duration, ranging anywhere from two to three years. Expanding the existing RFP process by additional months would make resource planning significantly more challenging and add additional risk to bidders participating in the process. Simply stated, the RFP process should not be overly burdensome and negatively impact a utility's ability to procure resources to best serve our customers.
- b. Please see I&M's comment to Draft Guideline 6(a).
- c. In order to respond to this it is necessary to better understand how, "parties" is defined and the timeframe associated with reviewing bids. It is unclear who would be involved, whether this is proposed during the RFP process or during a later case seeking approval of resource decisions. As previously discussed, extending the RFP process unnecessarily adds risk and costs, also bids are highly competitive, proprietary and sensitive and opening those up to review may negatively impact the RFP process. In addition, a problem arises when the Staff is asked to sign non-disclosure agreements in the absence of an MPSC protective order. In the absence of a protective order, Staff signed non-disclosure agreements may not be enforceable against Freedom of Information Act requests.
- d. I&M is agreeable with continuing to refine the bidding process over time. However, constant regulatory changes can increase the time and expense of the competitive bidding process. In addition, changes should not be made without due consideration. Continuous re-evaluation and a longer process will necessarily require additional legal and regulatory resources. I&M is concerned that constant rule revisions and additional tasks that could result in additional expense. I&M request Staff to carefully consider the costs associated with new proposals, which will ultimately result in real impacts to customers.

**Draft Guideline 8: Ensure bidding process aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) (see options below).**

I&M Comment: First, the Company would note that, under MCL 460.6t(4), I&M meets the definition of a multistate utility and, as such, the Company must meet the resource planning and procurement requirements on a multistate basis. Should the MPSC impose more stringent and restrictive requirements on resource planning and procurement process in Michigan, including the IRP and RFP process, for multistate utilities, the implications would extend beyond the Company's Michigan customers. Thus, the Company recommends the MPSC recognize the unique position of multistate utilities to ensure that the Company, and other similarly situated utilities, can conduct resource planning and procurement in a manner that meet the needs and provides the most benefit to all its customers.

However, to the extent that the MPSC determines the proposed resource planning requirements apply to all utilities regardless of being multistate utilities, the Company supports an approach that maintains the utility's authority to determine whether a binding or non-binding RFP is more appropriate to satisfy the "request for proposal" requirement in MCL 460.6t. Currently, neither MCL 460.6t nor the MPSC's filing requirements for Integrated Resource Plans define an RFP. The text of MCL 460.6t(6) suggests strongly that utilities are afforded flexibility in defining their own RFP called for under that section. It states:

Before filing an integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply-side generation capacity resources needed to serve the utility's reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in each integrated resource plan to be filed under this section. An electric utility shall define qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, and other criteria that responses and respondents to the request for proposals must meet in order to be considered by the utility in its integrated resource plan to be filed under this section. (Emphasis added.)

With the freedom to set the scope of the RFP as described above, utilities could use a non-binding RFP to satisfy the requirements of Section 6t without any changes to the current regulatory framework. This non-binding RFP is better known in the market, and other jurisdictions, as an RFI or Request for Information. This approach is also consistent with the practical requirements for resource procurement. For example, an RFP for any type of resources typically seeks firm offers from developers in accordance with the terms of the RFP. It is problematic for the utility to go out to the market for firm offers when the only use of the proposal is to inform I&M's next IRP. An non-binding RFP, on the other hand, typically seeks either indicative non-binding pricing information from developers on a generic resource in the target area or indicative non-binding pricing regarding a specific project in our target region (in this case the PJM portion of Indiana and Michigan). Further, there may or may not be a need for near-term resources in any future IRP proceeding, and the ability for the Company conduct a RFI or RFP will allow the Company to make the best resource planning and procurement decisions based on the specific circumstances at that time. The Company's recommendation will allow the IRP team to take all the necessary information together, including forecasts and market information, to inform I&M's next IRP and to make the most informed decisions regarding resource planning and procurement to serve all its customers. As such, the Company recommends that the MPSC issue guidance making clear that an RFI can satisfy the "request for proposal" requirements without a formal definition or rules that would otherwise limit the current flexibility provided to utilities under the current rules.

## **Conclusion**

I&M is entrusted to serve Indiana and Michigan retail customers, as well as wholesale customers, with safe and reliable power. I&M further has the responsibility to manage the business it owns and operate to ensure investments are reasonable and necessary for the provision of service to all customers, in all jurisdictions. While stakeholder input on utility resource issues is constructive and welcome, it is imperative that decisions requiring resources deemed reasonably necessary to serve customers be made by I&M. As a multi-jurisdictional utility, that is also part of the larger AEP System, I&M has experience utilizing robust competitive bidding practices when procuring generation resources. I&M should be permitted to use these existing competitive bidding practices to secure the necessary resources for its customer base and not be restricted to using requirements that may differ from its other jurisdictions.

## Ecology Center, Environmental Law and Policy Center (ELPC), Solar Energy Industries Association (SEIA), and Vote Solar

Margrethe Kearney

**Question 1:** In addressing the draft guidelines below, please indicate your support, opposition, proposed modification, or request for clarification on specific items. Are there any additional guidelines that should be included?

*Draft Guidelines:*

1. *All energy resources, including both short- and long-term supply and utility self-build projects, are arranged through competitive procurement. Bidding processes may be tailored based on the specific energy resource purpose or need.*

**Support/Proposed Modification.** The JCEO seek to clarify that **all energy and capacity resources** should be arranged through competitive procurement.

2. *Open, non-discriminatory treatment of resources:*

**Support.** The JCEO has long supported principles of non-discrimination, but does note that we must remain mindful of the panoply of forms discriminatory treatment can take. The JCEO suspects that while most commenters agree with this principle, there are very different understandings of what non-discriminatory treatment means.

*a) Conduct open, non-discriminatory procurement process that fairly considers different ownership structures, resource types, and locations with transparency on how they will be evaluated (see minimum requirements below)*

**Support.** Again, as a fundamental principle, the JCEO agrees with this guideline. However, fleshing out the **meaning of the expansive concepts** laid out here is where the rubber meets the road. The JCEO provide more specific comments in response to the minimum requirements guidelines.

*b) Bidding open to all resources and solutions that can meet system needs (e.g., energy, capacity, voltage support, ramping)*

**Support.** The JCEO think it is very important to evaluate the ability of emerging technologies to meet utility and customer needs. An all resource bidding process would be helpful in accomplishing this goal. The JCEO recognizes that as a practical matter, the development of a specific bidding process may serve to exclude certain categories of resources. For example, if a utility were seeking resources with zero carbon emissions to meet a specific customer or utility need, that process would in practice exclude fossil-based generating resources.

3. *Comply with competitive bidding guidelines in FERC's PURPA order (July 2020), including referenced Allegheny case (Allegheny Energy Supply Co, LLC, 108 FERC 61082 at p 19 (2004))*

**Support.** The JCEO sees this as a necessary condition to any competitive bidding process. However, these guidelines should be understood to **provide minimum compliance characteristics**, and competitive

bidding guidelines set by the Commission can include requirements that are additional to, but not inconsistent with, FERC Order No. 872.

4. *Minimum RFP requirements and specification of evaluation criteria:*

a) *Minimum eligibility requirements for bidders and resources*

**Support/Provide Clarification.** The JCEO recognizes that minimum eligibility requirements for bidders and resources are necessary to provide appropriate information to bidders regarding the utility need and to prevent submission of unproductive bids. That said, it is important that these requirements are non-discriminatory and are reasonably related to the purposes of the competitive bidding process. We further recommend that **bids from any PURPA qualifying facility should be allowed and considered** in any competitive bidding process.

b) *Price and non-price factors and weighting to be used for project selection (RFP to include scoring sheets with applicable weighting of evaluation factors)*

**Support.** The JCEO supports the use of **both reasonable price and non-price factors**. There are often characteristics of projects that provide community, environmental, and other benefits that are not reflected in price. The JCEO emphasizes that for these mechanisms to be effective in soliciting bids that provide non-price benefits, the **non-price factors must be transparent, well-defined and well-communicated to prospective bidders** and should not be evaluated differently by resource type if that evaluation is intended to narrow a pool of bidders of multiple resource types. Price factors should be structured so that all potential values are “stacked” in the price evaluation, including energy capacity, ancillary services, avoided transmission costs, avoided distribution costs, and incremental risks and risk avoidance. Failure to “stack” values in bid evaluation inevitably bias resource selection.

In

c) *Template PPA with terms and conditions*

**Support.** The JCEO support the use of a template PPA, recognizing that both bidders and the utility will retain the ability to negotiate reasonable, non-price related terms tailored to specific projects. We further recommend that the template PPA be subject to acceptance by an eligible PURPA qualifying facility as a standard-offer contract.

d) *Consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk*

**Support/Provide Clarification.** The JCEO strongly support the consideration of transmission and distribution characteristics when developing evaluating criteria. However, the guidelines **need to provide additional requirements** on the part of utilities to provide information to prospective bidders that would allow them to develop bids designed to reduce costs or create benefits with respect to both distribution and transmission.

The RFP in the competitive bidding process serves an important role in translating information from the distribution planning process to the integrated resource planning process. In the distribution planning process, utilities should be forecasting load on a substation level to determine when it may be necessary to add capacity, or replace transformers because of age. Where these forecasts demonstrate a reasonably

near-term need to invest in the distribution system, a properly developed RFP could allow the Company to determine whether it would be less costly to delay or avoid that investment through the use of additional resources or Non-Wires Alternatives. The distribution planning process could provide locational information on costs avoided by these alternatives, and the RFP could place a value awarded to those alternatives. In the IRP process, possible generating resources would reflect those values, and offer as options projects that avoid distribution costs, resulting in more optimal coordination between distribution investments and resource investment.

*e) As applicable, identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis or any other adjustment factor for utility self-build or build/transfer projects.*

**Request for Clarification.** The JCEO is **not clear on why the FCM should be considered** as part of the competitive bidding process. Our current understanding is that utilities have the ability to request an FCM on specific PPAs. However, it is not clear to the JCEO why the ability to recover an FCM on a PPA should be taken into account in a RFP designed to procure resources.

*f) As applicable, assumptions for federal tax credit treatment for PPAs and utility self-build or build-transfer projects*

**Request for Clarification.** The JCEO is not clear on **why federal tax treatment should be specifically addressed** or incorporated into an RFP. The JCEO assume that federal tax treatment would be baked into the bids.

*5. Oversight and independence of bidding process:*

*a) Separate staffing and information sharing between utility personnel or utility affiliate responding to RFP (submitting bids) and utility personnel conducting the RFP process (preparation of RFP, scoring/evaluation of results, and contract negotiation)*

**Support.** If a utility affiliate is participating in the process, it is very important that measures be put in place to ensure that affiliates are not privy to information or other advantages that is not available to all bidders.

*b) Use independent evaluator to administer and oversee the competitive solicitation process (independent evaluator need not have final selection authority but should provide recommendations that could be considered for Commission review through audit process)*

**Proposed Modification.** The JCEO support the use of an independent evaluator to administer and oversee the competitive solicitation process. The JCEO's preferred role for an independent evaluator would **include final project selection through a ranking process.** The rank order should be provided to utilities without identification of the bidder. The JCEO does not believe that this ranking process obligates the utility to enter into a contract with bidders in rank order, but does believe that it creates an obligation on the part of the utility to provide an explanation to the MPSC explaining why deviation from the ranking conducted by the independent administrator is reasonable and prudent.

*i. Utility to provide access to all information for the independent evaluator to effectively carry out its roles and responsibilities*

**Support.**



*ii. Independent evaluator will provide utility with sufficient information to conduct a thorough internal review without disclosing the bidder's identity*

**Support.**

*iii. Independent evaluator available and responsive to the MPSC throughout the process*

**Support with Proposed Modification.** The JCEO recognizes that some information and communications between the independent evaluator and the MPSC will be highly confidential. However, there should be some provision for sharing this information with other stakeholders, under suitable confidentiality provisions, as soon as it is reasonable and appropriate to do so.

*c) At its sole discretion and as part of the Commission's regulatory review process, the Commission may hire its own independent evaluator in lieu of or in addition to the independent evaluator hired by the utility*

**Support.**

*6. Code of conduct compliance:*

*a. All code of conduct rules shall be followed*

**Support.**

*b. RFPs used to determine "market price" in affiliate transactions for resource supply pursuant to MPSC code of conduct rules*

**Support with Proposed Modification:** Use of an RFP to determine "market price" in affiliate transactions **must be limited to RFPs for which the affiliate transaction would be eligible.** We discourage the Commission from allowing affiliate transactions that are entered outside of an RFP and recommend that rather than using RFPs to determine "market price," the Commission should restrict affiliate transactions to be the result of an RFP.

*7. MPSC and Stakeholder Involvement:*

*a) Build in time for Staff and stakeholder review and input on draft RFP, review/scoring processes, and PPA documents*

**Support.** The JCEO don't see any obvious issues with the timelines set forth for each of these processes, including the 14 day turnaround for provision of comments by stakeholders who have signed confidentiality agreements.

*b) Review of actual bids will be limited to individuals or parties that do not participate directly in or have affiliations with organizations that have or will submit proposals responding to utility RFPs*

**Support and Request Clarification.** The JCEO do not object to the limitation of access to bids for review. However, what it means to "have affiliations with organizations that have or will submit proposals responding to utility RFPs" is unclear. The JCEO seek **confirmation that non-profit organizations who do not have business members would not be considered to have such "affiliations."** The JCEO further request clarification as to whether this provision is intended to restrict review of actual bids by representatives of trade associations who have signed confidentiality agreements.

*c) Parties wishing to review bid proposals will be subject to non-disclosure agreements and other requirements to ensure the integrity of the process at the discretion of the utility and Commission*

**Support and Proposed Modification.** The JCEO recognize that parties reviewing bid proposals will be subject to non-disclosure agreements. The JCEO propose that the Commission approve **a specific non-disclosure agreement to be used by all parties in this process**. The JCEO also suggest that “other requirements” be more specifically defined, especially since they seem to be at the discretion of the utility.

*d) Continue to refine bidding processes over time based on feedback from bidders, the Commission, and stakeholders as well as experiences in other jurisdictions*

**Support.**

- 8. Ensure bidding process aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) (see options below).*

**Support.**

**Question 2.** Please identify topics that need additional research and/or discussion as part of the workgroup process (e.g., use of independent evaluator, sample scoring criteria or Request for Proposals (RFP)).

- **The JCEO would like to discuss use of non-price environmental and public health factors during the workgroup.** We believe it would be valuable to **establish some guidelines for how utilities incorporate considerations such as reductions in air pollution emissions, environmental impacts of project siting, and use of blighted or brownfield sites**. We would also like to raise newer types of considerations, such as impacts on agricultural runoff and impaired waterways in siting renewables projects.
- **The JCEO would like to discuss how utilities can incorporate more robust information from the distribution planning process into the RFP.** The JCEO applaud the MPSC’s efforts to better integrate distribution and resource planning, and provided comments above on how an **RFP can be used as a mechanism for transferring information** from the distribution planning process to the integrated resource planning process.

**Question 3.** Are there additional experts or resources that we should consider as part of the workgroup process?

The JCEO does not have a recommendation on this question at this time.

**Question 4.** What processes should be instituted to ensure streamlined review of winning projects resulting from a procurement process that conforms to these guidelines?

The JCEO does not have a recommendation on this question at this time.

**Question 5.** With respect to Item 8, and the three options listed below, to address the implementation of MCL 460.6(t)6:

*1. For any of the three options presented, are there any legal constraints?*

ELPC has not undertaken a full legal analysis of the three options, and the inclusion or omission of any legal argument in response to this question should not be considered to be an admission or waiver.

- **With respect to Option 1**, Staff correctly notes that the language of the statute requires a “request for proposals” to provide any new supply-side generation capacity resources. The statute does not define the term “request for proposals,” nor does it use the term “request for information.” The intent of the requirement to conduct a request for proposals appears, however, to be informational. Section 6(t)6 goes on to explain that: “A utility that issues a request for proposals under this subsection shall use the resulting proposals to inform its integrated resource plan . . .” It is entirely consistent with the statutory language that the results of an RFP could inform the IRP process in ways that, under the standards laid out in 6(t)8, compel approval of an IRP that does not include any of the proposals resulting from the RFP. In other words, it would **not violate the statute to conduct a pre-IRP RFP** that does not result in the execution of contracts with winning bidders.
- **With respect to Option 2**, providing the additional contested case process is more likely to ensure that the resource ultimately procured through the post-IRP RFP is consistent with the IRP approved by the Commission under the standards laid out in 6(t)8. This two-step construct is **likely to reduce** the chances of a legal challenge and the resulting regulatory uncertainty.
- **With respect to Option 3**, there are potential **conflicts between the results of the RFP and the approved IRP**. If, for example, the approved IRP included 100 MW of solar plus storage, but the only projects bid into the RFP were solar projects without storage, the approval for cost recovery conferred by the Commission through approval of the IRP would not apply to any of the projects from the RFP. In this case, a post-IRP RFP for solar plus storage would be required, and the cost approval conferred by the Commission’s approval of the IRP could not be asserted by the utility. Some support for requiring a true RFP designed to solicit consummated contracts can be found in the broader context of the statute. For example, Section 6t(6) explicitly allows certain suppliers of existing electric generation capacity to “submit a written proposal directly to the commission as an alternative to any supply-side generation capacity resource included in the electric utility’s integrated resource plan.” This language suggests that the alternatives would be submitted to displace known, proposed contractual commitments.

*2. For any of the three options presented, are there any timing concerns?*

For all of the three options presented, there are timing concerns, and **none of the choices avoids all timing issues**. The JCEO suggests that the timing of the RFP be chosen with the intent of providing the most accurate information for the IRP process.

*3. For any of the three options presented, are there any concerns with usefulness of the information that would be obtained?*

Under Options 1 and 2, where the RFP is designed to function as an RFI, some stakeholders have suggested that the information provided will be inaccurate. While pricing information gleaned from competitive bidding processes is very useful in decision making, information from RFIs may less accurately reflect the true price at which bidders would be willing to build projects. This was pointed out in stakeholder meetings by both industry groups (potential bidders) and utilities (potential solicitors).

Stakeholders have also raised issues regarding whether Option 3 would result in submission of a robust number of bids, given the delay between the RFP and the completion of the IRP process and the consummation of contracts. Furthermore, if a utility is annually procuring resources with normal commercial lead time, it is likely the results of those RFPs would provide sufficient information to use in an RFP.

In balancing these concerns, the JCEO see larger concerns with Options 1 and 2, where the RFP is widely understood to be for informational purposes only, versus Option 3, where the RFP is intended to solicit bids that will be put under contract, recognizing that the results of the IRP may require a supplemental IRP to also solicit bids on technologies or projects that were not represented in the universe of bids. There is also some mitigation of risks associated with Option 3 through the ability of certain suppliers to submit alternative proposals under 6t(6) and the ability of the utility under 6t(7) to submit updated cost estimates up to 150 days after the initial filing. Both of these mechanisms would allow specific contracts to be provided to the Commission, including those resulting from the pre-IRP RFP, for evaluation during the course of the IRP.

*4. For any of the three options presented, are there any other reasons why they should not be pursued? (Please explain)*

None that we are currently aware of.

*5. Are there additional options or variations to the three options presented that should be considered?*

The JCEO suggests that for Option 3 it is baked into the procedure that there will be a second, limited post-IRP RFP if the IRP indicates a technology or locational need that was not represented in the initial bid response.

## DTE Electric

DTE Electric (DTE or Company) appreciates the effort of Michigan Public Service Commission (MPSC) Staff (Staff) and all parties involved in this Competitive Procurement workgroup. DTE has a successful track record of request for proposals (RFPs), audited by the Commission Staff and approved by the Commission. Over time the Company's process has evolved to become significantly transparent, has involved an independent evaluator, and has resulted in many approved, contracted, and constructed projects. DTE is committed to continuous improvement and is always open to collaborative discussions to expand our understanding of issues that are important to stakeholders, and welcome suggestions on how to continue to make our RFP process more transparent, more efficient for developers, and result in better projects for our customers.

However, the Company believes this can be done without promulgation of rules or issuance of formal guidelines. Multiple important issues have been discussed in the workgroup sessions thus far and it is great to see alignment on several issues. For instance, DTE has taken note of developers' concerns about transparency of information provided in the RFP and the importance of tailoring the RFPs closely to utility needs so that developers can know where to target their considerable efforts in developing bids. In support of these learnings, DTE plans to incorporate pre-issuance stakeholder meetings with developers to preview the RFP into future RFP offerings. Another example of consensus reached is around the stakeholders' agreement that informational RFPs, or requests for information (RFIs), that are not intended to result in actual projects, do not result in reliable pricing information on which the utility could rely in its modeling. These are just two examples of areas of alignment the Company has found of benefit, and DTE anticipates more to come.

## Legal Framework

The manner in which a utility conducts an RFP is a management decision that must be made by the utility. Ultimately it is the utility's duty to choose projects and/or power purchase agreements (PPAs) that best suit the needs of its customers and its shareholders; this duty is not delegable. Further this is an area into which the Commission's authority generally does not extend. The Commission may not substitute its judgment for that of the utility, nor force the utility to cede its management decisions to a third party. The Staff's strawman proposal, if promulgated as rules, contains many provisions that inappropriately interfere with utilities' management decisions.

The Commission's authority to regulate a utility's rates and charges does not include the power to make management decisions. As the Michigan Supreme Court explained in *Union Carbide*:

*It must never be forgotten that while the State may regulate with a view to enforcing reasonable rates and charges, it is not the owner of the property of public utility companies and is not clothed with the general power of management incident to ownership. [Union Carbide, 431 Mich 135 at 148-149 (1988).]*

The *Union Carbide* Court concluded that, although the MPSC could preclude a utility from passing along increased charges incurred from its noneconomic operation of facilities, it could not order the utility to cease those operations. In other words, the MPSC can "encourage a specific management decision through the exercise of its ratemaking power, but it may not directly order the utility to make the decision." *Consumers Power Co v PSC*, 460 Mich 148, 158 (1999).

Similarly, in *Huron Portland Cement*, the Michigan Supreme Court determined the MPSC did not have the authority to order a utility to render service to an end-user in an area it did not serve and in which it had no power lines, because “absent specific statutory authority, the decision whether to provide the service rests with the utility’s management.” *Huron Portland Cement Co v Mich Pub Serv Com*, 351 Mich 255, 268 (1958). More recently, in *Consumers Power*, the Michigan Supreme Court ruled the MPSC lacked the authority to compel utilities to provide a new service, retail wheeling (the transmission of electricity from a third-party provider’s system to an end-user who is not directly connected to that system). *Consumers Power Co*, 460 Mich at 159. The court explained that “[r]etail wheeling would require that utilities accept power from suppliers chosen not by management, but by an end-user, and necessitate the negotiation of new interconnection agreements or modification of existing ones.” *Id.* Similarly, the Commission may not via rules supplant a utility’s management decisions regarding acquiring new projects or PPAs. Examples of management decisions the utility makes in an RFP that the Commission may not mandate include, but are not limited to:

- With whom a utility will contract;<sup>5</sup>
- What project/PPA the utility will select;
- What type of resource the utility will select;
- Terms on which the Company will contract;<sup>6</sup>
- Whether the utility will conduct an RFP<sup>7</sup> except in limited circumstances;
- If the utility will use a third party to run a RFP, and if so, who the utility will chose to provide that service;
- What considerations a utility may weigh in scoring bids; and
- What resources to include in a solicitation;

There are a limited number of situations where the MSPC does have authority to restrict the utility’s management or business-decision-making authority. The MPSC may impose restrictions beyond reasonable and prudent utility decision-making in a) RFPs conducted by the utility to set Public Utilities Regulatory Policy Act of 1978 (PURPA) avoided costs, and b) where a utility or its affiliate bids in the utility’s RFP. In these instances, the MPSC has some authority pursuant to statute arising from PURPA and utility code of conduct provisions regarding affiliate transactions.

Nevertheless, that authority is not unfettered, and the MPSC may not strip a utility of the core management decisions regarding with whom it will contract and on what terms. DTE does not believe that it is necessary or appropriate for the Commission to issue guidelines on how to conduct RFPs. However, the Company recognizes that the Commission may issue guidelines at any time and on any topic it chooses. Utilities are not bound by these guidelines and the Commission may not disapprove utility actions or cost-recovery requests for the reason that the utility did not follow the guidelines. The guidelines do provide utilities with

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<sup>5</sup> Except for contracting requirements for qualifying facilities associated with PURPA.

<sup>6</sup> Except for standard offer contract terms associated with PURPA.

<sup>7</sup> For instance, an RFP is mandatory if the utility will procure or build a new resource in the first three years in connection with an IRP under MCL 460.6t(6).

certainty that in the event it conducts an RFP in conformance with the guidelines it may rest assured its RFP will be found reasonable and prudent. But the utility retains the right to issue, or not issue, an RFP in any manner it chooses, with the caveat that it will bear the burden of making its case to the Commission that the decisions it made in that regard were reasonable and prudent in light of the circumstances of the particular case.

### **DTE positions on the DRAFT Competitive Procurement Guidelines sections**

As explained more fully above, DTE believes that if the Commission were to issue guidelines, such guidelines, although not binding on the utility, should only apply to PURPA avoided cost RFPs and RFPs including utility self-build/affiliate participation. DTE acknowledges the requirement in MCL 460.6t(6) to issue an RFP for any required supply-side generation resource needs in the initial 3-year planning period of an Integrated Resource Plan (IRP) and when doing so will consider RFP attributes to promote successful outcomes for the Company and its customers. DTE summarizes its thoughts and positions on the sections of the draft guidelines including comments on how the concepts might help or hinder in various scenarios, not solely with regard to PURPA and utility/affiliate participation. DTE reserves the right to take positions different from or in addition to those expressed in these comments throughout this process and in all future or existing cases.

§1. DTE agrees that a competitive procurement process will be used for the procurement of new long-term supply-side generation resource needs when identified during the initial 3-year planning period considered in its IRP. If the utility filing an IRP does not identify a generation resource need it is not necessary to issue an RFP.

While DTE believes a competitive procurement process can provide value for certain longterm capacity procurements, there are some instances where competitive procurement would not be a timely or efficient means to meet supply needs. For example, DTE does not support the mandatory use of a competitive procurement process overseen by the MPSC for short-term capacity needs identified in the prompt two planning years. Meaning, if the Company has a capacity need in either the first or second planning year that does not extend into or beyond the third planning year. The process would be inefficient and risk procuring resources in a timely manner to ensure reliability. Utilities should procure short-term capacity needs through any means determined prudent by the utility under the circumstances, including using the MISO Planning Resource Auction.

DTE believes that there are times when using a competitive procurement process may make sense for specific Voluntary Green Pricing Program (VGP) and Renewable Portfolio Standards (RPS) needs. However, competitive procurement cannot be mandatory for VGP and RPS needs because there are numerous instances in which an RFP would be inappropriate or hinder development of creative and innovative solutions. For instance, MCL 460.1028(4) specifically allows for unsolicited proposals in certain circumstances. And, in the past, the utility has brought bilateral contracts to the Commission for approval when federal tax credits were set to expire and there was insufficient time to conduct an RFP and still take advantage of the tax credits. Another example is a procurement agreed by parties to a settlement agreement via some methodology other than RFP.

§2. DTE agrees with Staff that the competitive procurement processes associated with MCL 460.6t(6) should be open to varied resource types, including new and existing resource technologies, and different

ownership structures, to the extent they meet the need identified by the utility. Thus, DTE believes a Limited-All-Source RFP under MCL 460.6t(6) would be less burdensome and time consuming for instances when it makes sense to constrain the scope of resources—for example, a solicitation intended to procure only low or non-carbon emitting resources to achieve a Corporate or State CO2 reduction goal. In addition, performing an All-Source RFP that includes technologies not identified as being needed, e.g., including variable resources when the company needs a fixed resource to meet operational requirements or including gas plants when the company needs a renewable asset, does not allow developers to focus their time and energy on the resources that are most responsive to the Company's need and adds inefficiencies and added costs.

§3. DTE acknowledges that the FERC PURPA regulations, as interpreted recently by the FERC in Order 872, permit the state the flexibility to utilize several methods to set PURPA avoided energy and/or capacity rates including using competitive solicitations. Should the utility choose to conduct an RFP from the various options to set PURPA avoided energy and/or capacity rates, the RFP would be required to follow the guidelines for competitive procurement in FERC's recent Order 872. If an RFP is not being used to set PURPA avoided energy and/or capacity rates, it should not be required to follow all the FERC guidelines for competitive procurement.

DTE also agrees that following the Allegheny standards, but not all the FERC guidelines for competitive procurement in setting PURPA avoided costs, is required if an affiliate of the utility is providing a proposal in a utility's RFP. Further, DTE believes that when the utility or its affiliate may bid or propose a project in the RFP, it is appropriate to separate employees associated with developing and/or bidding a project from those employees who will be involved in issuing, administering, evaluating bids and/or projects, and selecting projects. This separation allows utilities with substantial experience and insight to participate in the competitive procurement process without risking undue influence.

§4. With respect to establishing minimum RFP requirements and specification of evaluation criteria, DTE does not support specific guidelines applicable to all RFPs. Rather, the utility should continue to develop specific requirements for each RFP, in consultation with the Commission Staff. The needs driving RFPs can vary widely, as the evaluation criteria may need to adapt either in definition or in relative weighting of importance of the criteria. As an example, emissions and air impacts are not a consideration for renewable resources, and an investment tax credit (ITC) qualification would not be an issue for thermal resources, etc. To that end, DTE Electric does not recommend a single prescriptive approach and advocates for flexibility between RFPs.

In addition, DTE Electric does not support the complete disclosure of the weighting and factors to stakeholders. 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. 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 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. Examples of these terms include but are not limited to the following: forms of guarantee, security and credit levels, transferability, change in law risk, liquidated damages, performance guarantees, treatment of various representations and warranties. Limiting the negotiation of the proforma contract limits the creativity of the developer and could increase the overall price.

Where appropriate, the RFP requirements and evaluation criteria should also consider transmission and distribution availability and constraints, interconnection status, as well as time and costs needed to complete necessary transmission/distribution system upgrades to ensure timely and reliable interconnection. Participation in the established interconnection study process should be required of all projects under consideration. Where appropriate, a customized evaluation protocol within the confines of the interconnection process should be considered to ensure proper evaluation of the feasibility and interconnection cost of the projects. This is especially important where proposed projects are in physical proximity to one another and projects may impact one another if more than one project is selected.

§5. DTE believes the selection and use of an independent evaluator can be beneficial to oversee the competitive solicitation process in some circumstances, and the Company has used independent evaluators in certain past RFPs. However, the independent evaluator cannot, by itself, complete the entire evaluation process or have final selection authority. This would impermissibly interfere with a utility's management decisions. Nor does the FERC's Allegheny standard require an independent administrator or evaluator have any decision-making authority, or even run the issuance and bidding process.<sup>8</sup> FERC's recent Order No. 872 did not change the Allegheny standard.<sup>9</sup> Moreover, to ensure that a robust process is followed, the expertise and capabilities of the utility should be leveraged to conduct the evaluation process as a whole, but in particular key areas where third parties would not have the same level of insight and understanding to adequately cover these considerations. This would include matters that are more local in nature such as permitting, land-use, environmental impacts, and interconnection. An independent evaluator could provide recommendations that could be considered both by the utility during the process and by the Commission Staff through the audit process. In the event that the utility or an affiliate plans to participate in the competitive solicitation, DTE Electric agrees that the evaluation team and the bid teams should be separately staffed, and compliance with such code of conduct requirements can be monitored by the independent evaluator with any deviations reported to the Commission. The competitive procurement process should maintain the utility in an administrative capacity to run an efficient and robust solicitation

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<sup>8</sup> Since Allegheny, the FERC has approved 17 affiliate transactions arising from an RFP in which the utility did not cede decision-making authority to an independent administrator or evaluator, but instead the utility selected the winning bids. **[See comment document for specific instances.]**

<sup>9</sup> In Order No. 872 the FERC explained the Allegheny requirement using similar language to what it used in the original Allegheny case "Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection." Allegheny Energy Supply Co, LLC, 108 FERC ¶ 61,082, 61,417 (2004); Order No. 872, 172 FERC ¶ 61,041, 61263 (2020).

process in addition to leveraging the integrity gained through the inclusion of independent oversight and monitoring.

§6. DTE agrees with Staff that utilities should follow all code of conduct rules and that results of the RFP could be used to determine “market price” for affiliate transactions.

§7. DTE believes holding a Stakeholder workshop prior to the development of an RFP could provide valuable input for consideration in an RFP. Review of the actual draft RFP documents, review/scoring processes, and Power Purchase Agreement (PPA)/Build Transfer Agreement (BTA) documents should be limited to the independent evaluator and MPSC Staff to make the process more efficient. Review and audit by MPSC Staff and an independent evaluator has worked well in prior DTE RFPs.

Review of actual bids, however, should be limited and not available to developers, industry groups, or intervening parties. DTE Electric believes this may introduce undue risk and the potential for conflicts in the process, which could undermine the integrity of the competitive solicitation process. Sharing bid details with other third parties is inconsistent with the confidentiality that bidders expect and would be counter-productive to running an effective, competitive, and robust RFP. Also, several developers stated in the MPSC competitive procurement workshop on October 22nd that they do not support sharing actual bids with any third parties even with a non-disclosure agreement. A failure to protect the bid information of developers would hinder the ability of utilities to conduct competitive RFPs, as developers will be reluctant to bid if they know their bids may be disclosed.

Finally, DTE believes that conducting a post-RFP after action review (ARR) with the parties involved could be beneficial to improving future RFPs.

§8. DTE agrees that where the utility identifies a long-term need for a supply-side resource in the first three years of the IRP, MCL 460.6t(6) requires the utility conduct an RFP. The bidding process for these RFPs must align with resource planning and various project/contract approval processes, including the requirements in MCL 460.6t(6). DTE believes that Options 1 and 2 laid out in the draft guidelines do not comply with MCL 460.6t(6). As Staff has observed, the statute requires an RFP,<sup>10</sup> not a request for information (RFI) which is substantively different from an RFP. Aside from legal concerns, DTE believes the information obtained in a RFI will likely not represent the true costs associated with viable projects as the suppliers are not obligated to the information provided. Also, several developers stated in the MPSC competitive procurement workshop on October 22nd that they would likely not participate in an RFI due to the amount of work involved in preparing a bid, since that bid could not lead to selection of a project. Several developers also noted that an RFI has the potential to misrepresent the costs of a particular technology as bids are not binding and bidders have a strong incentive to discount their chosen technology in hopes its technology will appear most cost-effective in IRP modeling and lead to utility selection of that technology. Finally, a process including an RFI followed by an IRP, followed by another RFP, will take a considerable amount of time and resources, which could jeopardize the cost and construction of any needed resource potentially impacting reliability.

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<sup>10</sup> DTE notes also that MCL 460.6t(6) does not require an All-Source RFP, merely an RFP, and as discussed more fully above, a Limited-All-Source RFP is often more appropriate.

DTE believes that a rigid timeline for the RFP/IRP process should not be specified. Due to the complex nature of the processes, flexibility will be needed to address unforeseen circumstances that may arise during the execution of the process. DTE provides two conceptual timelines (Concurrent Pathway and Sequential Pathway) for Option 3 to illustrate that this option is viable and there exist workable solutions, of which these are merely two illustrative examples. DTE prefers a timeline resembling the Concurrent Pathway where the time elapsed from the proposals submitted to contract approval is not unduly long, mitigating risks such as contract price changes and qualification for federal tax credits. DTE believes the Sequential Pathway is also workable and allows for the RFP results to be incorporated into some IRP modeling before the IRP case is filed. However, the longer timeline introduces increased risk to contract price changes and the qualification for federal tax credits compared to the Concurrent Pathway. Any timeline included in the guidelines should include only suggested timeframes with only firm dates tied to legislation. It is important to recall that while the Company has set out hypothetical pathways below, turning these timelines into rules or prescriptive time limits for the various stages would be inappropriate. Depending upon the size and complexity of the Company's needs, other timelines may be more appropriate.

#### Hypothetical Concurrent Pathway **[See comment document for diagram]**

Limited-All-Source RFP bids received within a month of IRP filing. Cost data from bids incorporated to IRP filing, if necessary, at the 150-day cost update case milestone.

- Timeline assumes coordination with an independent evaluator in both the RFP pre-issuance and evaluation phase
- Efficient use of time, reduces time duration from bid received to contract approval
- Resource costs in IRP based on public data, RFP bids inform the validity of resource cost modeled in IRP
- Section 6t(7) allows for the utility to update cost 150 days after filing if costs have materially changed
- If a capacity need is identified in the initial 3-year planning period then filing contracts for approval concurrent with the IRP case proceeding, after a 150-day cost update, can save time as opposed to waiting to do the same after an IRP Order is issued

#### Hypothetical Sequential Pathway **[See comment document for diagram]**

Limited-All-Source RFP bids received ~3 months ahead of IRP filing. Cost data from proposals incorporated into IRP modeling via select scenarios and sensitivities.

- Timeline assumes coordination with an independent evaluator in both the RFP pre-issuance and evaluation phase
- Increased time duration, approximately four months, from bid received to contract approval compared to Concurrent Pathway
- Cost data from bids can inform some IRP modeling prior to the case. If all scenarios and sensitivities are modeled with cost information from bids an additional 3 months is needed to perform IRP modeling

- If a capacity need is identified in the initial 3-year planning period then filing contracts for approval concurrent with the IRP case proceeding, after a 150-day cost update, can save time as opposed to waiting to do the same after an IRP Order is issued

## **Conclusions**

DTE appreciates the considerable time and energy the MPSC Staff and stakeholders have invested in this collaborative workgroup. The Company has gained valuable insights that will help DTE in continuing to improve upon its RFP process. However, DTE reiterates that the Commission lacks the statutory authority to promulgate rules that displace the utility's management decisions in the area of competitive procurement with only a few very limited exceptions set forth above. Likewise, issuance of formal guidelines, even though they would not be binding upon the utility are not necessary. Rather, this workgroup should serve as a true collaborative where the stakeholders can gain a better understanding of the issues important to each stakeholder, share experiences and learnings, and where possible achieve an understanding or consensus on certain issues which may culminate in a report to the Commission, but should not result in either promulgated rules or formal guidelines. DTE has conducted many successful RFPs and its competitive procurement process has evolved over time, continually improving, and will continue to do so, in part due to the substantial insights the Company gleans from collaborative workgroups like this one.

## Michigan Biomass

Michigan Biomass is a business coalition of the state's utility-scale waste-wood fired power plants operating under long-term power purchase agreements with Consumers Energy that are structured under the federal Public Utility Regulatory Policy Act (PURPA). Its members<sup>11</sup> total 168 MW of baseload, renewable energy capacity fueled by local wood byproducts and other alternative fuels.

These facilities also provide critical grid support in rural areas of the state that includes voltage stabilization, VARs, and reduced need for transmission and its related costs and line losses.

Biomass power produced by these facilities is home-grown, domestic energy from local resources, keeping a portion of Michigan's energy dollars in the state. It supports a waste-wood fuel market of approximately \$30 million a year that provides a hedge on commodity fuels such as coal and natural gas, supporting upwards of 700 jobs, mostly in rural parts of the state.

Michigan Biomass and its members appreciate this opportunity to comment on the proposed IRP Competitive Procurement Process. Following is our response to questions asked by MPSC staff on this matter.

### Questions for Stakeholder Input:

1. *In addressing the draft guidelines below, please indicate your support, opposition, proposed modification, or request for clarification on specific items. Are there any additional guidelines that should be included?*

2. *Please identify topics that need additional research and/or discussion as part of the workgroup process (e.g., use of independent evaluator, sample scoring criteria or Request for Proposals (RFP)).*

a. **COMMENT:** Michigan Biomass interest in this topic is to ensure that the value of energy resource diversity is appropriately applied in the competitive procurement process, which would warrant "additional discussion" as part of this workgroup process.

The benefits provided by energy diversity are non-price criteria that should be part of the competitive procurement process in the IRP. The intent and rationale to value resource diversity is made clear in the Statewide Energy Assessment:<sup>12</sup> Therefore, energy diversity must be considered in the Integrated Resource Planning process. And, while that is important for resource planning, those values should be recognized and scored within the competitive bidding process if these values are to be fully realized, and have their desired effect incorporated into the "most reasonable and prudent" outcomes in energy decision making, and a "no regrets" energy future for the State of Michigan.

In particular, the Phase II - Integration of Resource/Distribution/Transmission Planning workgroup in which Michigan Biomass participates is currently exploring scoring criteria, models and methodologies<sup>13</sup> that could be used to account for the various values of different energy resources. Michigan Biomass believes

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<sup>11</sup> Cadillac Renewable Energy, Genesee Power Station, Grayling Generating Station, Hillman Power Co., Viking Energy of McBain, and Viking Energy of Lincoln.

<sup>12</sup> SEA page 196; Valuing resource diversity and resilience, page iii; and footnote 203, page 187

<sup>13</sup> Workgroup presentation slides, page 57. Also, zoom recording starting at approximately 1:20:00

that this work must be completed, and its findings and recommendations integrated with the final version of the procurement process.

*3. Are there additional experts or resources that we should consider as part of the workgroup process?*

a. **COMMENT:** MPSC's Zachary Heidemann, who is heading up this segment of the Phase II workgroup, should be invited to present the energy diversity topic to the procurement workgroup to better inform participants on this topic and how it relates to competitive procurement. Commission staff should determine the best timing to introduce this topic – either now while it's under development, or after it's work is done.

*4. What processes should be instituted to ensure streamlined review of winning projects resulting from a procurement process that conforms to these guidelines?*

a. **COMMENT:** See previous comments

*5. With respect to Item 8, and the three options listed below, to address the implementation of MCL 460.6(t)6:*

*1. For any of the three options presented, are there any legal constraints?*

*2. For any of the three options presented, are there any timing concerns?*

*3. For any of the three options presented, are there any concerns with usefulness of the information that would be obtained?*

*4. For any of the three options presented, are there any other reasons why they should not be pursued? (Please explain)*

*5. Are there additional options or variations to the three options presented that should be considered?*

## Consumers Energy (CE)

Consumers Energy Company (“Consumers Energy” or the “Company”) is providing the following comments in response to Staff’s Competitive Procurement Guidelines Strawman Proposal.

As a preliminary matter, the Company supports the use of this workgroup process for the establishment of guidelines for competitive bidding processes when such processes are used by utilities. The guidelines developed in this workgroup should be similar in structure, with necessary updates, to those previously established by the Commission in Case No. U-15800. In that matter, the Commission established Guidelines for Competitive Request for Proposal for Renewable and Advanced Cleaner Energy (“2008 Guidelines”) in conjunction with the enactment of 2008 Public Act 295 which, among other things, provided for a renewable energy portfolio standard and the need to procure new renewable energy resources. See Case No. U-15800, December 4, 2008 Temporary Order, Attachment D. Since that time, the Company has successfully and cost-effectively used those guidelines to evaluate numerous types of renewable energy resources (i.e. landfill gas, anaerobic digestion, hydroelectric, wind, solar, storage) and numerous types of bids (Power Purchase Agreements (“PPAs”), Build-Transfer Agreements (“BTAs”), Development Asset Acquisitions (“DAAs”). Furthermore, in the context of the Company’s 2018 Integrated Resource Plan (“IRP”) Case No. U-20165, the Company agreed to continue to use the 2008 Guidelines, with certain modifications, as it implements its Proposed Course of Action (“PCA”), as approved in that matter. The 2008 Guidelines have worked well for utilities and stakeholders and should serve as a model for any new competitive bidding guidelines developed in this workgroup process.

While the Company is supportive of new competitive bidding guidelines modeled after the 2008 Guidelines, the Company does not support mandated competitive bidding rules, because they fail to provide utilities with the flexibility to tailor resource procurement to the needs of their customers and business. The Company has agreed, in its most recent IRP, to the annual competitive procurement of new supply-side resources, the procurement of a certain resource type, and a certain generation ownership structure. Nevertheless, terms like these should not be mandated by the Commission because this would improperly infringe on the management decisions that Michigan utilities are permitted to make. See *Union Carbide Corp v Pub Serv Com’n*, 431 Mich 135, 149; 428 NW2d 322 (1988). Moreover, while the Company is generally supportive of competitive bidding as a means of procuring new supply-side resources, and intends to use competitive bidding to procure the new resources in the Company’s approved IRP PCA, competitive bidding should not be mandated for every situation where a utility may procure a new resource. New guidelines for the competitive bidding of resources should instead be used to encourage reasonable bidding practices when competitive bidding is selected as a procurement method or when it is required to be used, such as under MCL 460.6t(6). Such guidelines, when followed, can provide utilities and counter-parties greater assurance that bids selected during an appropriately administered competitive solicitation will ultimately be approved for cost recovery by the Commission.

If Staff intend the Competitive Procurement Guidelines Strawman Proposal to be adopted as formal rules that bind Michigan utilities, the Company is of the position that numerous aspects of Staff’s proposal are inconsistent with the law, particularly, the provisions of MCL 460.6s and MCL 460.6t.

Item 1 of the proposed guidelines provides that “[a]ll energy resources, including both short- and long-term supply and utility self-build projects, are arranged through competitive procurement.” However, the procurement of new resources is primarily dictated by the Certificate of Necessity (“CON”) process under

MCL 460.6s and the IRP process under MCL 460.6t. Neither of those processes require competitive procurement as the exclusive means for procuring new resources. For instance, utilities retain the authority to construct, as opposed to competitively procuring, new resources under the CON process. See MCL 460.6s(1).

Item 2, which provides for the consideration of “different ownership structures” and “[b]idding open to all resources and solutions,” is also inconsistent with and beyond the requirements of these laws. Not only that, but “[b]idding open to all resources and solutions” could also nullify the entire IRP process. When preparing an IRP, extensive modeling and analyses are used to determine the most reasonable and prudent resources for a utility to procure. If that resource procurement plan is approved by the Commission, it could become completely negated if the utility is then forced to procure all types of resources in a competitive solicitation, rather than what is specifically in the approved resource procurement plan. This fundamentally undermines the IRP process.

For this reason, the Company opposes any requirement that all future competitive solicitations must be open to all resources and solutions. Consumers Energy maintains that competitive solicitations must be able to be designed to procure the specific resources required by a utility.

The Commission should also not mandate competitive bidding rules which could stifle the development of new mutually agreeable competitive bidding practices in the future. In the Company’s 2018 IRP, the Company, Staff, and stakeholders agreed to a method of competitively bidding new supply-side capacity resources, which included, among other things, the use of an independent administrator, stakeholder outreach, public notice, and the development of standard contract terms. In future IRPs, utilities should be encouraged to work with stakeholders to develop new and improved mutually agreeable ways to procure supply-side resources. Any new competitive bidding guidelines should be developed so that utilities and stakeholders may innovate when procuring new resources in the future.

## **Comments**

### *1. Competitive Bidding of All Resources*

*All energy resources, including both short- and long-term supply and utility self-build projects, are arranged through competitive procurement. Bidding processes may be tailored based on the specific energy resource purpose or need.*

The Company is generally supportive of using a competitive procurement process to acquire energy resources for short- and long-term supply and utility self-build supply-side projects that can be tailored based upon the specific purpose the resource serves. The “Guiding Principles” included in the Competitive Procurement Guidelines Strawman Proposal indicate that the guidelines will include resources necessary for Voluntary Green Pricing Programs, meeting Renewable Portfolio Standards, informing the IRPs or as a result of IRPs, etc., and that these guidelines do not apply to energy waste reduction or other demand-side programs.

The Company’s position is that each of the filings mentioned have specific needs requiring a level of tailoring to ensure compliance requirements or targets are met in a timely manner. Therefore, creating a single standard for competitive procurement may result in harm to the unique procurement opportunities available to other supply resource needs. Flexibility in approaches to procurement will be key because it



creates the opportunity to better adapt the procurement processes, especially as resource mixes and dynamic energy systems evolve over time.

For example, Voluntary Green Pricing Programs and the Renewable Energy Plan both require clean and renewable energy resources in order to comply with 2016 Public Act 342. Requiring all energy resources or technologies to compete in these bidding processes would be counter to the objectives of these two programs in the event a non-renewable asset is selected. Setting guidelines on competitive procurement that offer tailoring and flexibility ensures the utility's ability to meet customer and business needs in a competitive and timely manner.

Utilities are approached by developers and independent power producers from time to time with unique opportunities to enter into PPAs or to purchase generating assets. The Company supports the flexibility of utilities to enter into such transactions that provide more customer value than would otherwise be expected through a competitive solicitation process. This flexibility was provided to the Company in 2008 PA 295 to supply the Renewable Energy Plan, and the Company was able to leverage this provision to execute a 100 MW wind farm PPA at a lower cost than the previously competitively-bid PPAs. Therefore, competitive solicitations should not be required of every utility in every circumstance when adding electric resources to its supply.

The Company identifies a need for clarification on the intended use of Item 1, which states the bidding process can be tailored, while Item 2b states the "bidding process must be open to all resources and solutions that can meet system needs". The Company recommends the use of the word "may" instead of "must" in Item 2b, and an additional sentence or language that clarifies that the bidding process can be tailored based upon the specific needs of the customer and business. Indeed, MCL 460.6t(6) states, "The utility shall define qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, or other criteria specified for the utility's RFP under this section". The competitive procurement process resulting from this workgroup should consider this requirement.

The Company does not support bidding open to all resource types in all circumstances where a utility may conduct a competitive solicitation. In circumstances such as post-IRP competitive solicitations, the IRP is informing the resources which are sought in the solicitation and therefore, it is unnecessary to consider all resources.

With the above noted, the Company is supportive of a competitive process that is open to all PURPA Qualifying Facility technologies when soliciting resources identified in a utility's IRP. This approach is the current process used by Consumers Energy in acquiring the supply-side resources identified in its approved IRP in Case No. U-20165, and a type of all resource bidding.

2. *Open, Non-Discriminatory Treatment of Resources*
  - a. *Conduct open, non-discriminatory procurement process that fairly considers different ownership structures, resource types, and locations with transparency on how they will be evaluated (see minimum requirements below).*
  - b. *Bidding open to all resources and solutions that can meet system needs (e.g., energy, capacity, voltage support, ramping).*

The Company is supportive of open and non-discriminatory procurement processes. See above response to Item 1 for the Company's position on Item 2b. The Company does not support bidding open to all resource types, ownership structures, or locations in all circumstances where a utility may conduct a competitive solicitation. This is further addressed in the introductory section of these Comments.

3. *Comply with Federal Energy Regulatory Commission ("FERC") Guidelines*

*Comply with competitive bidding guidelines in FERC's PURPA order (July 2020), including referenced Allegheny case (Allegheny Energy Supply Co, LLC, 108 FERC 61082 at p 19 (2004)).*

FERC's competitive bidding guidelines, as provided in its July 16, 2020 Order ("PURPA Order") apply in circumstances where competitive solicitations are being used to set avoided cost rates. The Company interprets Staff's Competitive Procurement Guidelines Strawman Proposal as applying to effectively all circumstances where a utility may issue a competitive solicitation, not just when avoided cost rates are set. FERC's PURPA Order did not mandate that avoided cost rates be set through competitive solicitation, but instead permitted states the flexibility to set avoided costs using competitive solicitations. Since competitive solicitations offered by a utility could potentially be used for other purposes than setting avoided cost rates, any competitive bidding guidelines set subsequent to this workgroup should not mandate compliance with FERC's competitive bidding guidelines, as provided in its PURPA Order.

Furthermore, the Company is concerned about mandates that apply certain interpretations of FERC's PURPA Order to all circumstances where a utility may issue a competitive solicitation. Paragraph 413 of FERC's PURPA Order provides, among other things, that "solicitations should be open to all sources to satisfy that purchasing electric utility's capacity needs, taking into account the required operating characteristics of the needed capacity." The Company does not interpret FERC's PURPA Order to require blanket "all source" bidding, but rather that it allows for tailoring competitive solicitations to the required type of the needed capacity.

However, to the extent that this requirement is interpreted as requiring the solicitation of all resource types, there are potential conflicts with Michigan's integrated source planning process where extensive modeling and analysis are used to determine the most reasonable and prudent resources for a utility to procure. For instance, in its 2018 IRP, the Company's approved PCA provided for the procurement of new solar generating resources, based on the results of extensive modeling and analysis. If FERC's PURPA Order were interpreted in so that the Company would be forced to procure all types of resources in a competitive solicitation, the Company's PCA and approved resource procurement plan would be completely negated. The Company opposes this interpretation of bidding "all sources," if that interpretation is to be applied to all circumstances where a utility may issue a competitive solicitation.

In addition to the above, it would be difficult to effectively compare resources of all types in a competitive solicitation when such resources have very different attributes (e.g., dispatchability vs. non-dispatchability, locational impacts on the grid, assets which provide energy supply and distribution value, etc.). Utilities need the ability to maintain flexibility in a regulated process to select a particular type of resource that best serves customers and to procure that resource through competitive bidding or another reasonable process.

4. *Minimum RFP Requirements and Specification of Evaluation Criteria*

a. *Minimum eligibility requirements for bidders and resources;*

- b. *Price and non-price factors and weighting to be used for project selection (RFP to include scoring sheets with applicable weighting of evaluation factors);*
- c. *Template PPA with terms and conditions;*
- d. *Consideration of transmission and distribution availability and constraints, including treatment of transmission congestion costs and inter-zonal pricing risk;*
- e. *As applicable, identify the parameters for inclusion of a financial compensation mechanism, terminal value analysis or any other adjustment factor for utility self-build or build/transfer projects; and*
- f. *As applicable, assumptions for federal tax credit treatment for PPAs and utility self-build or build-transfer projects.*

a. The Company supports including minimum eligibility requirements as a means for screening proposals based on both respondent and project criteria. Respondent and resource screening are important to ensure that the proposals under consideration for selection are of the highest quality and will serve the resource need of the solicitation.

b. The Company does not support mandating the release of price and non-price factors for all utility solicitations. This decision should be left up to the utility and the stakeholder process to determine the appropriate procurement strategy, as discussed above. Although providing weightings and scoresheets may improve respondents' proposals and the outcome of the solicitation, this practice introduces a great amount of risk that there could be an unintentional flaw with the scoring process that respondents exploit, gaming and skewing the ranking of proposals. Due to this inherent risk, the Company believes this decision should be utility- and solicitation-specific, instead of a blanket requirement.

c. As it has historically, the Company continues to provide template contracts with its solicitations to reduce the duration of negotiations and attempt to get proposals on a more apples-to-apples basis for evaluation. The Company's post-IRP solicitations include the issuance of transmission PPA, distribution PPA, and BTA templates. Future solicitations may also include others, such as a Development Asset Acquisition template. While Consumers Energy implements this practice for certain solicitations, it may be costly or infeasible for it to be required in all solicitations regardless of the uniqueness of the product or utility. Additionally, the rigidity of template contracts may limit the flexibility and creativity of respondents.

d. Implementing transmission and distribution constraints and congestion issues into a solicitation is complex due to the location- and project-specific calculations that are necessary to appropriately evaluate the proposal. Constraints related to increased project costs (i.e. interconnection costs) should be information gathered by respondents and incorporated into proposal pricing. The Company anticipates that there could be a future scenario where such factors become an important consideration to be included in solicitations. If the utility determines that additional value or cost associated with these factors would be realized by the Company and its customers, it would be reasonable to include such adjustments in the proposal's evaluation. This is an example of the need support the utility's ability to continuously improve procurement for supply-side resources to address these types of constraints, and other electric needs that arise, especially as transitions are made away from traditional resources to more intermittent resources.

e. When comparing similar acquisition structures, incorporating the financial compensation mechanism on PPAs or terminal value on utility-owned projects may not have a material effect. It should be recognized

that the financial structures of a PPA provider and a utility ownership are fundamentally different. While it can attempt to create an apples-to-apples comparison of a PPA to a utility-owned resource, the Company's position is that these types of ownership structures should not compete against each other. To provide comparability, a PPA provider would need to give rates based on the cost to build, and show that their rate of return is reasonable relative to those earned by the utility. This does not occur today. Additionally, the use of a long-dated PPA requires an evaluation of the use of the utility's balance sheet to finance a PPA. It should also be recognized that long-term power PPAs require an obligation by the utility to make payments through the term of that contract. Therefore, the incumbent utility is unable to make adjustments to the monthly and yearly spend, or consider early termination of that contract or the retirement of the asset as it does for the assets the utility owns. The primary goal of the procurement process should not be to compare a PPA against a utility-owned asset, but rather to enable the procurement of resources considering a multitude of factors to the benefit of customers.

f. The Company supports the consideration of federal tax benefits for generating resources as part of the solicitation. Solicitations should include consideration of federal tax credits that could reasonably be expected to be received for a specific proposal. In order to include such a consideration, the respondent would potentially have to provide additional supporting evidence of its qualification.

#### 5. Oversight and Independence of Bidding Process

- a. *Separate staffing and information sharing between utility personnel or utility affiliate responding to RFP (submitting bids) and utility personnel conducting the RFP process (preparation of RFP, scoring/evaluation of results, and contract negotiation);*
- b. *Use independent evaluator to administer and oversee the competitive solicitation process (independent evaluator need not have final selection authority but should provide recommendations that could be considered for Commission review through audit process);*
  - i. *Utility to provide access to all information for the independent evaluator to effectively carry out its roles and responsibilities;*
  - ii. *Independent evaluator will provide utility with sufficient information to conduct thorough internal review without disclosing the bidder's identity; and*
  - iii. *Independent evaluator available and responsive to the MPSC throughout the process.*
- c. *At its sole discretion and as part of the Commission's regulatory review process, the Commission may hire its own independent evaluator in lieu of or in addition to the independent evaluator hired by the utility.*

a. Affiliate transactions between Consumers Energy and its affiliate CMS Enterprises are governed by the rules for affiliate transactions under FERC's authority. Consumers Energy is also allowed to submit its own proposals into the Company's solicitations as part of the IRP Settlement Agreement. Additionally, in past Renewable Energy Plan solicitations, the Company compared the cost of its internally developed projects against the cost of third-party developed projects. The difficulty with creating "firewalls" within the Company is that the employees responsible for developing proposals are also likely the most experienced employees to negotiate third-party contracts such as build-transfer agreements. Given the nature of different utility organizational structures, any requirement for separation of duties should be utility-specific.

b. The Company requests clarification as to the Staff's definition of "independent evaluator." The terms "independent evaluator" and "independent administrator" are often used interchangeably but can refer to different roles. As part of its approved 2018 IRP, the Company is using an independent administrator to conduct the solicitation and prepare a blind ranking of bids for the Company. The Company would oppose an independent evaluator that plays a greater role in the solicitation process than that of an independent administrator, such as by taking management decisions/selection authority out of the utility's hands. The Company would also oppose any rules which mandate the use of an independent administrator or evaluator, since it may not be necessary in all circumstances and there is no legal requirement that an independent administrator or evaluator be used in all circumstances.

Assuming Staff's use of the term "independent evaluator" has the same meaning as the "independent administrator" working to implement the Company's approved IRP solicitations, the Company is of the position that the use of an independent administrator has both upsides and downsides. For example, it enables an easier separation of solicitation activities within a utility, which is a benefit when the utility is bidding its own projects into the solicitation. However, the use of an independent administrator becomes problematic for considering more creative and unique proposals. The administrator may not have the tools necessary or the utility's perspectives to ensure that creative proposals are handled appropriately. Selection authority should always lie with the utility, since the burden of proof for justifying the long-term cost of the asset in future rate cases is borne by the utility, not the independent administrator. The use of blind rankings can meet the FERC requirements for affiliate transactions but is not necessary in all solicitations. The MPSC's ability to reasonably audit the independent administrator's work can serve as a useful process especially when the utility must remain blind to the ranking.

With the above noted, the Company acknowledges that FERC, in its PURPA Order, has included "oversight by an independent administrator" as a requirement for competitive solicitations used to set PURPA avoided costs. To the extent that the Company is running a solicitation which will be used to set avoided costs, the use of an "independent administrator" may be appropriate.

c. The Company identifies a need for clarification with respect to whether Item 5c applies to the Commission or to Staff. The Company also identifies a need for clarification with respect to the specific role a Commission- or Staff-hired independent administrator would provide. The Company supports the involvement of Staff in the competitive bidding process as an independent auditor, and has already involved Staff in the Company's annual solicitations issued pursuant to the Company's approved IRP. Depending on the role of the Commission- or Staff-selected independent administrator, the Company sees the potential for inefficiencies since a utility may already be using an independent administrator or evaluator to conduct the solicitation.

#### 6. *Code of Conduct Compliance*

- a. *All code of conduct rules shall be followed; and*
- b. *RFPs used to determine "market price" in affiliate transactions for resource supply pursuant to MPSC code of conduct rules.*

The Company agrees that competitive solicitations should comply with the Code of Conduct to the extent applicable.

#### 7. *MPSC and Stakeholder Involvement*

- a. *Build in time for Staff and stakeholder review and input on draft RFP, review/scoring processes, and PPA documents;*
- b. *Review of actual bids will be limited to individuals or parties that do not participate directly in or have affiliations with organizations that have or will submit proposals responding to utility RFPs;*
- c. *Parties wishing to review bid proposals will be subject to non-disclosure agreements and other requirements to ensure the integrity of the process at the discretion of the utility and Commission;*
- d. *Continue to refine bidding processes over time based on feedback from bidders, the Commission, and stakeholders as well as experiences in other jurisdictions.*

a. The Company's current annual solicitation process, as approved in the Company's IRP, builds in time for Staff and stakeholder input. As a general matter, the Company supports competitive bidding guidelines that provide for Staff and stakeholder input as part of the solicitation process. However, the Company does not support any type of mandatory stakeholder input process which could delay solicitations, nor it should it be required to reach a consensus on any particular component of the competitive solicitation, such as the terms of the PPA, prior to its issuance.

b. The Company does not support the review of any specific bidding information by stakeholders, other than by the Staff during an audit, during an open competitive solicitation. Numerous stakeholders which participate in MPSC proceedings represent, either directly or indirectly, parties which may participate in a competitive solicitation. It would be extremely onerous to separate the stakeholders which may directly or indirectly represent potential bidders that have or will participate in a solicitation from those that will not participate. As indicated above in response to Item 5c, the Company supports the involvement of Staff in the competitive bidding process as an independent auditor, and has already involved Staff in the Company's annual solicitations issued pursuant to the Company's approved IRP. The Company believes that Staff's review of bidding information in open solicitations is sufficient. When a utility ultimately files for approval of a project, information could be provided in the context of the approval proceeding which provides insight into how a project was selected while also protecting the competitive information of the bidders.

c. As a general matter, the Company does not believe "non-disclosure agreements and other requirements" are sufficient means to prevent parties, which include potential bidders and organizations directly and indirectly representing potential bidders, from receiving a competitive advantage when reviewing bidding information. Once bidding information is seen by a potential bidder, whether confidential or not, it would be difficult, if not impossible, to ensure that the bidding information did not inform the potential bidder's future bids. The Company understands that Item 7c is "limited to individuals or parties that do not participate directly in or have affiliations with organizations that have or will submit proposals responding to utility RFPs." However, the Company is of the position that in actual practice, this restriction will be extremely difficult to enforce. For instance, an organization may represent numerous potential bidders that did not bid in an active solicitation, and do not currently plan to bid in future solicitations, but after the organization reviews bidding information, one or more of its potential bidders could change course and decide to bid in a future solicitation. The only approach which ensures the integrity of the bidding process is to restrict access to bid proposals to only Staff.

d. The Company supports continuing to refine bidding processes over time based on feedback from bidders, the Commission, and stakeholders as well as experiences in other jurisdictions. However, as indicated in response to Item 7a, the Company does not support any type of mandatory input process which could delay solicitations, nor should it be a requirement to reach a consensus on any particular component of the competitive solicitation prior to its issuance.

*8. Aligning Bidding Process with IRP Law*

*Ensure bidding process aligns with resource planning and various project/contract approval processes, including requirements in MCL 460.6t(6) (see options below).*

As indicated in the introductory section of these Comments, if Staff's Competitive Procurement Guidelines Strawman Proposal is intended to operate as mandatory rules, the Company is of the position that numerous aspects of Staff's proposal are inconsistent with the law, specifically MCL 460.6s and MCL 460.6t. Competitive bidding requirements which include competitively bidding all resources, the mandatory consideration of different ownership structures, and the mandatory consideration of all resource types are inconsistent with and beyond the scope of the law. "Bidding open to all resources and solutions," also threatens to nullify the entire IRP process. Furthermore, since utilities are not required to use competitive bidding as the exclusive means of acquiring new resources, the Company is of the position that any rules requiring competitive bidding as the exclusive means of acquiring new resources would be unlawful. As indicated above, the Company is supportive of competitive bidding guidelines modeled after the 2008 Guidelines. It is essential that any new competitive bidding guidelines only apply to situations where a utility elects to issue a competitive solicitation or where a competitive solicitation is explicitly required under the law, such as MCL 460.6t(6), as addressed below.

With the above noted regarding general conflicts with the law, the following addresses the three competitive procurement options developed by Staff for compliance with MCL 460.6t(6). MCL 460.6t(6) requires the issuance of an RFP in connection with an IRP filing. In relevant part, MCL 460.6t(6) specifically provides:

(6) Before filing an integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply-side generation capacity resources needed to serve the utility's reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in each integrated resource plan to be filed under this section. An electric utility shall define qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, and other criteria that responses and respondents to the request for proposals must meet in order to be considered by the utility in its integrated resource plan to be filed under this section. Respondents to a request for proposals may request that certain proprietary information be exempt from public disclosure as allowed by the commission. A utility that issues a request for proposals under this subsection shall use the resulting proposals to inform its integrated resource plan filed under this section and include all of the submitted proposals as attachments to its integrated resource plan filing regardless of whether the proposals met the qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, or other criteria specified for the utility's request for proposals under this section.

Based on the requirements provided in MCL 460.6t(6), Staff has provided the following potential options for compliance with that provision of the law. Those options are:

1. Option 1: Pre-IRP RFP functions as a Request for Information (“RFI”) and Post-IRP RFP is specific to resource need identified in IRP proceeding.
2. Option 2: Pre-IRP RFP functions as an RFI, Post-IRP RFP is specific to resource need identified in IRP proceeding. RFP process/parameters specified in IRP with approval/modification by the Commission in the IRP proceeding.
3. Option 3: Pre-IRP RFP is a true all-source RFP which informs and drives the modeling and project selection in the IRP and will result in executable contracts following approval in IRP.

Given the specific language provided in MCL 460.6t(6), the Company is of the position that a pre-IRP RFP is only required when “new supply-side generation capacity resources” are proposed in an IRP and those resources are “needed to serve the utility’s reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in each integrated resource plan.” In such circumstances, the pre-IRP RFP can demonstrate the economics of a certain supply-side capacity resource, by comparing it to other options which could have been pursued in the competitive solicitation process, and thereby is used as a tool to ensure that any new supply-side generation capacity resources represent the most reasonable and prudent means of meeting the electric utility’s energy and capacity needs, as is required under MCL 460.6t(6).

While a pre-IRP RFP would be required in the circumstances set forth above, a pre-IRP RFP would not be required if a utility is not specifically proposing, in its IRP, to acquire any “new supply-side generation capacity resources... during the initial 3-year planning period to be considered.” A pre-IRP RFP would also not be required based on the mere possibility that a utility could have an open capacity position as a result of an approved IRP. As was the case in the Company’s 2018 IRP, Case No. U-20165, a utility may present an IRP which includes a supply-side generation early retirement proposal and a plan to acquire new supply-side generation capacity resources subsequent to an IRP, should that early retirement proposal be included as part of the IRP PCA approved by the Commission. In such a circumstance, it would not be prudent nor efficient for a utility to be required to issue a pre-IRP RFP because of the uncertainty related to the outcome of the IRP. Furthermore, in such a circumstance, the Commission would still have sufficient oversight of the acquisition of new supply-side generation capacity resources because the Commission can review and approve a utility’s plan to acquire the new resources, just as the Commission did in Case No. U-20165.

The timelines proposed for the above options would be modified based upon the comments provided in this document. The Company does not agree with setting business day milestones for each activity due to the dynamic and complex nature of RFIs and RFPs. The challenges seen for each of the timelines proposed for each option are:

Option 1 (applies to Option 2): Pre-IRP RFP functioning as an RFI

- The requirement to complete an RFI with usable results six months prior to the filing of a utility’s IRP does not provide the information in time to be incorporated into the analysis of an IRP. It is expected that after the completion of the RFI, a series of communications with the respondents



would be needed to ensure accurate understanding of the information provided and address any gaps that may have occurred in the respondent's submittal. The time needed to quality check and resolve outstanding issues could take 1 to 2 months of the 6-month window provided, shortening even further the time necessary to use the results in an IRP. This RFI would need to be conducted and completed a year or more ahead of a utility's filing date.

- Depending upon the different types of technologies and specific operating characteristics of each respondent, the ability to appropriately account for that specific project within an IRP becomes overly burdensome under the timelines presented.
- Because there is not a binding agreement or incentive for respondents at the end of the RFI, the level of detail on costs, performance characteristics, etc. needed to accurately and appropriately inform an IRP would not be useful in validating technology assumptions and forecasts analyzed in an IRP. There is no indication public data sources do not provide the same level of validation needed in an IRP as an RFI. Additionally, some public data sources do take into account recent market pricing as an aggregate to support the development of long-term forecasts.
- The 60-day requirement to incorporate into an IRP would only be to the extent that an RFI was conducted and does not provide additional value to the IRP process. The data from an RFI would be needed at least a year to 18 months prior to the filing date.

#### Option 1 (applies to Option 2): Post-IRP RFP

- The Company agrees that if an RFP is used post-IRP, it may elect to utilize a type of all-source bidding or to be guided in the selection of the resource through modeling and other information in the IRP proceeding.
- The business days identified for each activity should not be pre-determined nor required due to the complexity and dynamics of the RFP process.
- The 30 business days to negotiate contracts is extremely short. The Company continues to attempt to improve the process and reduce the duration of negotiating contracts, however, to do so in a month's time is unreasonable. The negotiation time needed, based on the Company's recent experience, is generally between 6 and 12 months, depending on the acquisition type.
- The Company opposes the need for a non-competitive party review, as noted in the above comments.
- The Company is supportive of submitting contract(s) from an RFP to the Commission for ex-parte review that is approved in an IRP, REP, or other type of plan filing because it gives both the utility and the developer assurances in a timely manner.

#### Option 3: Pre-IRP RFP

- The requirement to complete an RFP, with usable results, six months prior to the filing of a utility's IRP does not provide the time needed to fully incorporate the data into the analysis of an IRP, especially if it is an all-source bid. As indicated above related to the RFI, the time needed to quality check and resolve outstanding issues and accurately develop separate prototypes for each specific technology and project submitted is generally estimated to take well over 3 months. This estimate can vary widely, however, and is highly dependent upon the number and types of bids issues by a respondent to the RFP. For example, the utility could receive more than one type of natural gas unit, solar unit, battery unit, hybrid technologies, landfill gas, co-generation facilities, wind, etc.

each requiring its own specific prototype to be built and modeled appropriately in an IRP. On average, to build one prototype takes two to three months, and as the number of bid proposals provided grows, so does the time required to incorporate them into the IRP analysis. The Company views the all-source bidding RFP as overly burdensome and unreasonable under the proposed timeline.

- The Company is supportive of a pre-RFP, if a need is identified during the first three years of the plan and when the pre-RFP defines specific parameters and criteria as allowed for by MCL 460.6t(6).
- The 60-day requirement to incorporate the results into an IRP does not provide additional value to the IRP process for the reasons stated in the first bullet above.
- The 30 business days for final contract negotiations is extremely short. The Company is not in favor of this time requirement for the same reasons given in Option 1.
- The Company opposes the proposal of a non-competitive party review as noted above.
- The Company supports submitting contract(s) from an RFP to the Commission for ex-parte review that is approved in an IRP, REP, or other type of plan filing that is beneficial to the utility and the developer.
- Having flexibility on the timelines of activities, whether by utilizing the 150-day cost updates per MCL 460.6t for an IRP or by another means, can support a greater level of efficiencies and procurement outcomes between when an RFP is issued and approved.

Therefore, the Company is of the position that Staff's proposed Option 3 is the most consistent with the IRP law, should a utility specifically propose in its IRP to acquire any "new supply-side generation capacity resources... during the initial 3-year planning period to be considered." In such a scenario, the pre-IRP RFP could be used as a means to select the new-supply-side generation capacity resource or, in the case of an RFP being conducted after a resource is selected, could be used as a means of confirming that a selected resource is competitively priced and represents the most reasonable and prudent means of meeting an electric utility's energy and capacity needs. Also, the Company's position is that the RFP required under MCL 460.6t(6) provides for tailoring of the solicitation criteria versus an all-source bidding approach. While Staff's Option 1 and Option 2 could help inform an IRP, the Company believes that those options should be discretionary and not mandatory. RFIs can be helpful tools for determining whether resource options exist, validating public or utility data sources used in an IRP, and identifying unconventional or emerging technology resources with pricing that has limited public data. The challenge with an RFI is that they do not always provide accurate pricing, because the bidding parties are not held to their proposals and/or the technology offering is just emerging as an option. An RFI should be used for informational purposes rather than to establish a contract to provide capacity and energy. Lastly, all-source bidding is inconsistent with the intent and purpose of an IRP required under MCL 460.6t.

## **CONCLUSION**

Consumers Energy appreciates the opportunity to submit these Comments and looks forward to the opportunity to participate further in the Competitive Procurement Workgroup. The Company reserves the right to take new and different positions as more information and clarifications becomes available in this workgroup process.

## Michigan Electric and Gas Association (MEGA)

The Michigan Electric and Gas Association appreciates the opportunity to provide initial feedback on the Staff strawman of guidelines for competitive procurement. We are still reviewing the details of the proposal and plan to continue to weigh in as the stakeholder discussions continue. At this time, our comments address broader questions and concerns with what has been presented.

One overarching consideration, specific to MEGA members, is addressing the differences in impact on small and multi-state utilities. For instance, requiring use of an independent evaluator could be expensive, with some estimates at \$100,000 or more, and will be burdensome on a utility that serves as few as 17,000 customers who will pay the related costs. Further, utilities that serve customers in multiple states share resources and resource planning across jurisdictions. The requirements in these other states must be taken into account when developing the guidelines for Michigan, especially when the majority of those customers are outside of the state. The legislature recognized the differing impact in MCL.460.6t(4) related to IRP's by allowing separate procedures for utilities serving fewer than one million customers in the state and allowing multi-state utilities to present an IRP developed for another state that includes Michigan to meet the requirement of submitting a plan under the law. The MEGA members look forward to working with Staff on logical instances for exemptions or modifications for small and multi-state utilities.

The main concern on the substance of the strawman at this time is the use of some broad or vague language. One key example is the independent evaluator in #5. It isn't clear what role this person or entity would play. Sometimes the term independent monitor is also used in discussions which can have a different connotation. Also, in #7, "parties" is used to refer to those who would have the ability to review bids. It's unclear who these parties would be, whether parties to the case or other entities.

Another example and concern is application of these guidelines to "all" resources in #1, including short and long term supply. There has to be some rational guiderails for when to apply the extensive process being proposed which could take a year or more just to administer. First, it should be clear that the process only applies to generation resources, not RECs or other market products that could be used to meet RPS or VGP needs. Further, considering the time it takes to plan and build some resources, the competitive bidding process should be limited to long-term resources needed for a period of 5 years or longer. Otherwise, requiring competitive procurement for short-term resource needs could impede and add an unnecessary burden for companies to meet short-term customer capacity and energy needs.

MEGA also requests that the guidelines provide additional flexibility for procurement of resources for Voluntary Green Pricing (VGP) programs. Resource procurement needs for VGP programs may not necessarily align with the timing of identified "resource needs" for the overall system from an IRP perspective. Because VGP needs are specific to a subset of customers, and VGPs may have additional goals to meet depending on the program structure (i.e. based on resource location, size, type, etc.), utilities need additional flexibility to best meet the objectives of their VGPs. MEGA believes that having competitive procurement guidelines applicable to procuring system resources for resource planning purposes should be sufficient to give the Commission the information it needs to evaluate whether a resource procured for VGP needs is appropriate without requiring specific process for the procurement of VGP resources.

Thank you again for the opportunity to comments on the strawman proposal. We look forward to continued participation in this stakeholder process. Please reach out with any questions.

## Pinegate Renewables

Thank you for the opportunity to comment on the Michigan Public Service Commission Staff's competitive bidding straw proposal released on October 1, 2020. Pine Gate supports the work of the Commission in updating its competitive procurement guidelines for investor-owned utilities and I appreciate the opportunity to have been a member of the Solar Developer Panel at the October 22, 2020 workgroup meeting. As noted in my remarks on October 22, Pine Gate believes that fair, transparent, and non-discriminatory competitive procurement is critical to ending monopoly control of electric generation, providing market access for independent power producers, and delivering cost savings and other benefits to ratepayers. We believe that the Staff's competitive solicitation proposal provides an excellent foundation for moving in this direction. Pine Gate offers the following comments on the straw proposal:

- Draft Guidelines #1, #2 & #4: There are a series of threshold policy questions that need to be answered with respect to (i) utility ownership of, and cost-recovery for, generation resources, and (ii) participation by the utility and/or its non-regulated affiliates in any competitive solicitations. In general, we believe that rate-basing of generation assets is an outmoded concept given that generation is not a natural monopoly and puts ratepayers at unnecessary risk. Ideally, all generation should be procured through competitive solicitation. The utilities (or their non-regulated affiliates) should be allowed to participate (with a cap on awards) and recover costs in the same way as third parties – i.e, through a time-limited contract at a defined price. However, if it is determined that some continued utility ownership and rate-basing of generation assets is desirable (for either operational or financial reasons), we believe (i) that such acquisitions should be accomplished through a competitive solicitation for build-own-transfer transactions with independent third-parties (so secure the best pricing and have those parties rather than ratepayers bear the risk of cost overruns), and (ii) that utilities and their affiliates should not then be able to compete against independent power producers for the PPA portion of the procurement. It is also important to note that PPA and rate-based procurements cannot compete against each other on a level playing field and need to be dealt with through separate solicitations.
- Draft Guideline #4: Distribution network upgrade costs should be attributed to project bids but should be paid for by the utility and recovered from ratepayers. Ratepayers will bear these costs whether directly or through higher bids (and should do so for any generation determined to be necessary and in the public interest, just as they do today). Requiring that the cost be included in bids is problematic because the costs are often not known at the time of bid submittal, which could force bidders to increase their bid prices more than necessary. The RFP requirements and specification of evaluation criteria, as well as the template PPA, should make clear this treatment of distribution network upgrade costs.
- Draft Guideline #4(f): Consistent with the idea of a level playing field, utilities participating in a competitive process with the same cost recovery mechanism as third parties should be entitled to the same utilization of tax credits.
- Draft Guideline #5: The term “independent administrator” is preferable to “independent evaluator” and the independent administrator should have complete control over the entire procurement process including selecting awardees. It is unacceptable for the utility to make the award decisions if it or its affiliates are market participants. Under this approach, there is no need for the Commission to have a separate evaluator, which will unnecessarily increase the cost of the process and bids.
- Draft Guideline #7: The Commission and staff should have the ability to oversee the administration of the solicitation process, but there is **no need for other third parties to have the right/ability to review bids.**
- Draft Guideline #8: Procurement goals should be driven by the integrated resource plan (IRP), not the other way around. That is, **actual procurement should be made after the approval of the IRP.** The objective of MCL 460.6t(6) seems to be that market pricing informs the IRP. It does not require that any awards be made based on that RFP.

So, what is required by law seems more in the nature of a request for information (RFI) even though that is not the term used. It is also not clear why an RFI is practically needed for an all-resource RFP. Under an all-source solicitation, technology decisions are not made in advance based on a comparison of assumed prices; rather, what mix of technologies is procured depends on the result of the post-IRP RFP. Also, it may be that after the first IRP, a post-IRP RFP can serve as the pre-IRP RFP for the next cycle. It should also be noted that RFIs don't actually lock in pricing and put market participants to a lot of time and expense with no immediate prospect of receiving a contract award. Consistent with these comments, Pine Gate supports an approach similar to your proposed Option 1 or Option 2 (we are little uncertain about the difference between the two). We view the two options as follows: (1) The Commission-approved IRP defines the amount and operational characteristics of the generation to be procured and the utility then conducts a competitive solicitation consistent with that direction, with no further action by the Commission being required. (2) As in Colorado, the IRP is less prescriptive about what must be procured and instead defines a range of potential procurement scenarios. After conducting an all-source solicitation, the utility then proposes a definitive procurement portfolio for approval by the Commission. The latter approach might actually satisfy the literal wording of the statute, but in our view the IRP would need to be bifurcated so that there is an initial phase in which direction is provided for the RFP and a second phase in which the final portfolio is approved. Please let me know if you have any questions or concerns. We look forward to the next iteration of the Staff's draft guidelines.

Sincerely,

Steven J. Levitas

Senior Vice President for Regulatory and Government Affairs

## Association of Businesses Advocating Tariff Equity (ABATE)

**A. Please Indicate your support, opposition, proposed modification, or request for clarification on specific [draft guideline] items. Are there any additional guidelines that should be included?**

**1. This process' Objective should further reflect the Commission Order establishing this proceeding.**

While the Objective set out in Staff's proposal echoes the objective set out in the Commission Order establishing this proceeding, it should also reflect the further purposes described by the Commission. For instance, the Commission's August 20, 2020 Order imitating this stakeholder process stated that "[c]ompetitively bidding new resources can help reveal what options are available, ensure emerging technologies can be considered as part of utility planning and procurement, and *result in lower cost for customers.*" (Emphasis added.) The Commission also noted that "part of its core mission [is] to ensure that energy is reliable and accessible at reasonable rates." The statutory framework for utility integrated resource plans ("IRPs") similarly notes the importance of this consideration stating that in determining whether an IRP "is the most reasonable and prudent means of meeting energy and capacity needs, the commission shall consider whether the plan appropriately balances" certain enumerated factors, including "[c]ompetative pricing." MCL 460.6t(8)(a)(iii). In short, lower customer costs and reasonable rates are an important overarching element of utility procurement decisions and ensuring the same should be a foundational objective for this proceeding.

**2. Guideline 4.b requires further clarification.**

Under Guideline 4.b, regarding minimum RFP requirements and specification of evaluation criteria, the "non-price factors and weighting to be used for project selection" should be further clarified to ensure uniformity across utilities and transparency regarding what exactly each non-price factor or weighing reflects (i.e. how these factors are defined), how it was valued weighted, or measured (i.e. these factor's ultimate importance and the basis for how they are scored, valued, or quantified), and a detailed justification for providing that value or weighting. These factors should not be premised to devolve into miscellaneous categories in which arbitrary value is registered to consciously or inadvertently skew or bias procurement decisions. Instead, specific non-price factors and weighting should be established for RFP evaluations to establish uniformity and provide utilities guidance regarding what exactly will be considered reasonable.

As noted by Staff's presentation at the September 14, 2020 stakeholder session in this proceeding, FERC has described the importance of this issue. See 172 FERC ¶ 61,041 (July 16, 2020) ("FERC Order 872"); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) ("Selecting bids based on only price ensured that affiliates were not given preferential treatment during the selection phase of the process" and "setting a minimum standard for non-price factors" permitted a utility affiliate to "select bids based on price alone"). As explained by FERC in the *Allegheny* Order, "RFPs should clearly specify the price and non-price criteria under which the bids are evaluated" and "[n]on-price criteria should also be specific and detailed." This allows parties, including third parties, "to credibly assess all bids based on both price and non-price factors" and clearly "evaluate non-price traits of various

alternatives.” In accordance with Guideline 3, the Commission should therefore clarify the details and requirements for non-price factor evaluation.

The importance of ensuring transparency for non-price factor considerations effectively comes down to the reasonableness of the costs utilities will seek to recover from customers. Again, as the Commission noted in its August 20, 2020 Order initiating this proceeding, competitive bidding can “result in lower cost for customers,” and part of the Commission’s “core mission” is “to ensure that energy is reliable and accessible at reasonable rates.” Customer value, specifically reasonable customer costs, is therefore of prominent importance and must be established through transparent, reasonable, and adequately supported procurement evaluation criteria.

### **3. Guidelines 5.c should be clarified.**

While guideline 5.c permits the Commission discretion to hire an independent auditor, the circumstances under which the Commission may do so are not clear. Issues such as whether such an auditor can be requested or mandated by interested parties in certain situations, the process by which an auditor is selected, the auditor’s scope and ultimate authority, and the applicable funding source should be clarified.

Further, as noted in Staff’s September 14, 2020 presentation in this proceeding, FERC’s *Allegheny* decision explained the importance of this issue and resource. See 108 FERC ¶ 61.082 (“Oversight: an independent third-party should design the solicitation, administer bidding, and evaluate bids prior to the company’s selection”). As provided in *Allegheny*, beyond Commission discretion to utilize an auditor, independent third-party control of the RFP process overall should potentially be established as the default option in certain circumstances. This is particularly the case of the utility self-built or affiliate project bids or proposals are considered for the utility’s RFP. It is important to avoid even the appearance of utility procurement decisions reverting to a default preference for utility or affiliate-built, owned, and operated projects.

Additional detail regarding the involvement, selection, use, and authority of an independent third-party evaluator should therefore be discussed and determined in this proceeding. Such a resource can ultimately aid in procurement oversight and process credibility.

### **4. Guideline 7 should allow for stakeholder involvement early in the process.**

As noted by the August 20, 2020 Commission Order establishing this proceeding, FERC has explained the importance of including Staff and stakeholders in this process such that they “better understand the utility’s competitive solicitation processes and thus [can] be confident in the fairness of the process and of the results.” See FERC Order 872. While Guideline 7 provides for stakeholder involvement through review and input, it should clarify that stakeholders are permitted to engage in such activities as early as possible. The details of stakeholders’ involvement should also be clarified. For instance, before the RFP is issued stakeholders should receive a copy of the draft RFP along with 60 days in which to ask questions of the utility and provide comments or suggested edits. This will bolster the credibility of the process and outcome and permit stakeholders a role in developing the service they utilize.

**B. Please identify topics that need additional research and/or discussion as part of the workgroup process (e.g. use of independent evaluator, sample scoring criteria or Request for Proposals (RFP)).**

As noted above, the specific “non-price factors and weighting to be used for project selection” by a utility should be further discussed and clarified in this proceeding. Transparent consideration and quantification of non-price factors and sufficient support therefore is of prominent importance. The discretion and flexibility afforded a utility for these factors and weighting should be minimal to ensure procurement integrity, stakeholder confidence and process credibility.

As also described above, the use and role of independent evaluators should be further discussed in this proceeding. This type of process administration or review can represent a valuable resource provided the evaluator’s role encompasses the proper scope and authority.

**C. Are there additional experts of resources that we should consider as part of the workgroup process?**

As Staff’s September 14, 2020 presentation in this proceeding stated, one of the tasks for this competitive procurement workgroup is to discuss independence issues, such as different models for the use and role of third-party administrator/evaluators. Given the importance of this issue as highlighted in Staff’s presentation and the FERC *Allegheny* decision, it would be prudent to consider the input of such third-party administrators/evaluators in this workgroup proceeding. Specifically, Staff should seek input and recommendations from independent third-party administrators/evaluators who conduct and evaluate RFPs. Such perspectives will help inform this process and its ultimate outcome.

**D. Regarding the options for aligning the bidding process with resource planning and various project/contract approval process, including the implementation of MCL 460.6(t)6.**

**1. For any of the three options presented, are there any legal constraints?**

MCL 460.6t(6) requires the following:

*Before filing an integrated resource plan under this section, each electric utility whose rates are regulated by the commission shall issue a request for proposals to provide any new supply-side generation capacity resources needed to serve the utility’s reasonably projected electric load, applicable planning reserve margin, and local clearing requirement for its customers in this state and customers the utility serves in other states during the initial 3-year planning period to be considered in each integrated resource plan to be filed under this section . . . A utility that issues a request for proposals under this subsection shall use the resulting proposals to inform its integrated resource plan filed under this section and include all of the submitted proposals as attachments to its integrated resource plan filing regardless of whether the proposals met the qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, or other criteria specified for the utility’s request for proposals under this section.*

*The RFP process to be conducted prior to the IRP must therefore be specific and certain enough to “inform” the IRP and the utility’s proposals for meeting its various needs, obligations, and requirements as identified in MCL 460.6t. Specifically, it must result in*



*an IRP that the Commission may determine to “represent[] the most reasonable and prudent means of meeting the electric utility’s energy and capacity needs” considering the factors identified in MCL 460.6t(8). Stated differently, the RFP process must result in responses that do, in fact establish that new supply-side generation capacity resources are needed and are the most reasonable and prudent means of serving the utility’s reasonably projected electric load. The statute also provides specific items that must be defined and included in a RFP, including “qualifying performance standards, contract terms, technical competence, capability, reliability, creditworthiness, past performance, and other criteria that responses and respondents to the request for proposals must meet.” MCL 460.6t(6).*

The statute does not, however, appear to explicitly require the utility enter into contracts for supply-side resources through the RFP and IRP process. As such, while the RFP process should be specific enough to determine that procurement of supply-side resources is, in fact, the most reasonable and prudent means of meeting utility needs included in its IRP, the actual procurement of those resources should be accomplished through an additional post-IRP RFP process, as described in more detail below. Thus, however the pre-IRP RFP generally “functions” it must meet the standards identified above and produce credible proposals which can ultimately inform the utility IRP submitted for approval, while further proposal solicitation and contract finalization can continue after the IRP process.

**2. For any of the three options presented, are there any timing concerns?**

The longer the duration between the bids submitted in response to a RFP and the ultimate execution of a contract the greater the risk and risk factors that bidders will apply to their responses. In other words, cost and pricing terms contained in RFP responses will be disadvantageously increased the greater the time period between submission of RFP responses and contract finalization. This will negatively impact the cost effectiveness of RFP response bids as the timing risk will increase bid costs and pricing. As such, once a RFP has been developed and informed by stakeholder input the bid submission deadline, evaluation process, and ultimate contract award should be conducted on as efficient a timeframe as possible. This will also assist in ensuring the information obtained is as useful as possible, as raised by the question below.

**3. For any of the three options presented, are there any concerns with usefulness of the information that would be obtained?**

Option 2 (pre-IRP RFP function as an RFI, Post-IRP RFP is specific to resource need identified in IRP proceeding; RFP prices/parameters specified in IRP with approval/modification by the Commission in the IRP proceeding) would likely produce the most useful matching of resource options with utility needs or requirements. As indicated in Staff’s proposal (discussing the similar Option 1), this would “allow for price and resource discovery to inform IRP” as required by the statute while the ore narrow and specific IRP (of as Staff’s proposal states, post-IRP REFP responses “[w]oud be responsive to modeling and the contested process taking place in the IRP proceeding”). In other words, this process would provide the best way to effectively and comparatively evaluate resources against each other in assessing how to meet verified utility needs.