

July 6, 2020

Via E-filing

Mark L. Johnson
Executive Director Secretary
Washington Utilities and Transportation Commission
621 Woodland Square Loop S.E.
Lacey, WA 98594

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UTIL. AND TRANSP.
COMMISSION

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Re: Comments of Cypress Creek Renewables, LLC on Puget Sound Energy Request for Proposals for All Generation Sources – Docket No. UE-200414

Dear Mr. Johnson:

Pursuant to the May 11, 2020 *Notice of Opportunity to File Written Comments on Puget Sound Energy's Proposed Request for Proposals Pursuant to WAC 480-107* issued by the Washington Utilities and Transportation Commission ("Commission"), Cypress Creek Renewables, LLC ("Cypress Creek") submits the following comments on Puget Sound Energy's ("PSE") Request for Proposals for All Generation Sources ("RFP").

Cypress Creek develops, finances, owns and operates utility-scale and distributed solar and storage facilities across the country. With 9.2 gigawatts of solar developed and/or sold in more than a dozen states, Cypress Creek is one of the country's leading solar companies. Cypress Creek thanks the Commission and PSE for the opportunity to submit comments on PSE's RFP.

The following comments correspond to the applicable RFP documents provided by PSE.

Comments

A. All Source RFP – Main Document

1. Reference Section 4, Proposal Requirements, Page 19. In the second bullet, the RFP states that "Discretionary permits should be in the application phase." Cypress Creek requests that PSE identify the discretionary permits they indicate should be in the application process at the time of proposal submission.
2. Reference Section 4, Proposal Requirements, Page 17. The RFP states that all respondents must either 1) be located in PSE's system or 2) "demonstrate that the project has secure long-term firm delivery to PSE's system at BPAT.PSEI."

Cypress Creek recommends that a project outside of PSE's system should not be required to demonstrate participation in the Transmission Service Rights ("TSR") queue at the time the project submits its bid. Rather, a project should be required to make this demonstration only after the project has been selected for the RFP short list, for the following reasons:

- a. A project should not be required to participate in the TSR queue before it has obtained an executable revenue contract in place (i.e. established revenue certainty) given that the TSR requires a firm 5-yr contract, with no termination rights available to the generator;
 - b. Requiring a project to execute a TSR contract prior to the project's inclusion on the RFP short list could require a project to progress through study and execute a TSR contract, exposing the project to substantial development risk given the uncertainty of receiving an RFP award at the time the project submits its bid;
 - c. After receiving notification that it has been included on the RFP short list, a project should have sufficient time to secure TSR to demonstrate long-term, firm transmission service before the first contractual delivery date.
3. Reference Section 2, Resources Requested, Page 10. Under "Power Purchase Agreements" the RFP states that "PSE will consider non-unit contingent capacity products with terms less than five years." Cypress Creek requests that PSE define a "non-unit capacity product" and clarify and how this product would align with the \$/kW-Month capacity payment construct in a typical Energy Service Agreement.
 4. Reference Section 3, Schedule and Process, Page 12. Cypress Creek requests that PSE provide a proposed PPA Execution date as part of its 2020 All Source RFP Schedule. The inclusion of this date will help facilitate necessary schedules and planning required to submit a project bid to the RFP.

B. All Source RFP – Exhibit A: Evaluation Criteria

1. Exhibit A to the All Source RFP provides a narrative description of the applicable evaluation criteria that PSE will consider in the evaluation of RFP bids. In order to provide additional transparency to the bid evaluation process, Cypress Creek requests that PSE provide a "Score Card," including the applicable quantitative weightings or percentages associated with the evaluation criteria. While the narrative description of the evaluation criteria provides important information regarding PSE's selection process, a Score Card providing quantitative information regarding the selection process would provide substantial additional transparency regarding PSE's selection process and would greatly assist prospective bidders as they prepare projects for bid.

C. All Source RFP – Exhibit B: Proposal Requirements Form Excel

1. Reference Proposal Checklist Tab. RFP respondents are required to provide "at least 3 years of verifiable supporting data with historical wind generation and solar irradiance observation." Cypress Creek requests clarification that SolarAnywhere and/or PSM are acceptable metrics to meet insolation data requirements. Both metrics are industry-standard and acceptable for typical RFPs.

In addition to providing data regarding expected generation, the RFP PPA or other RFP agreements will likely include a performance guarantee and/or liquidated damages requirements that will provide assurances to PSE regarding a project's production

estimates, further decreasing the likelihood that a project would provide a generation estimate that it was unable to achieve.

D. All Sources RFP – Exhibit E – Term Sheet (Ownership)

1. Reference Page E-10, Assignability. The RFP states that “parties would not be permitted to assign the Definitive Agreements or their respective rights and obligations under them without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.” Cypress Creek recommends that the Definitive Documents should allow Respondent to transfer, sell, pledge, encumber or assign the Definitive Documents or the revenues or proceeds thereof in connection with any financing without first requiring PSE’s consent.
2. Reference Page E-7, Additional Representations, Warranties, and Covenants of Respondent. The term sheet requires the EPC contractor to provide a “full wrap” of all equipment warranties. However, a full wrap of all equipment warranties may not be available on commercially reasonable terms. The warranty provided by an EPC contractor is typically limited to defects the EPC contractor’s design and workmanship. All warranties for major equipment will be assignable to the owner.

E. All Source RFP – Exhibit G – Term Sheet (Clean Energy PPA)

1. Reference Page G-9, Credit Support. The RFP states that “Upon execution of the PPA, if Buyer deems it necessary due to Seller’s credit position, Seller shall provide Buyer with a guaranty, cash collateral and/or letter of credit in forms and amounts acceptable to Buyer. Buyer shall not be required to provide credit support or performance assurance of any kind to Seller.”

In the event that credit support is required, a commercially reasonable surety bond should be considered acceptable credit support to support Seller’s payment and performance obligations. Additionally, Buyer should make available sufficient financial records so that Seller’s financing parties may reasonably evaluate the financial strength of Buyer and confirm no credit support is needed from Buyer.

2. Reference Page G-4, Development Milestones. The RFP describes obligations and penalties regarding development milestones, including the payment of liquidated damages and PPA termination. With respect to the requirement that Seller pay liquidated damages if Seller fails to timely achieve a Development Milestone, Cypress Creek recommends that rather than immediately paying LDs, Seller should have the opportunity to provide a remedial action plan demonstrating how it will timely achieve the Commercial Operation. Additionally, Buyer’s termination right should only apply if Seller fails to timely achieve multiple, consecutive milestones.
3. Reference Page G-3, Commercial Operation. The RFP states that

Seller shall provide a Guaranteed Commercial Operation Date for the Generating Facility. The Guaranteed Commercial Operation Date shall be extended for delays caused by Buyer or force majeure events (with extensions for force majeure events not to exceed 180 days in the aggregate),

subject to compliance by Seller of its obligation to mitigate such delays. In the event Seller fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, Seller shall be required to pay to Buyer liquidated damages for each day of delay beyond the Guaranteed Commercial Operation Date in the amount per day of \$[___] per MW with respect to each [wind turbine/PV module] that does not achieve Commercial Operation by such date. If the Commercial Operation Date has not been achieved within 180 days after the Guaranteed Commercial Operation Date, it shall be an Event of Default under the PPA and Buyer shall be entitled to terminate the PPA and seek damages or exercise other remedies at law or equity.

Cypress Creek recommends that in addition to extensions for delays caused by Buyer or Force Majeure events, the Guaranteed COD should be extended on a day-for-day basis for each day of delay due to delays by (i) Buyer's affiliates, (ii) the interconnecting utility or any of its affiliates, or (ii) any governmental authority.

4. Reference Page G-8, Availability/Output Guarantees. The RFP states that for unit-contingent offers from solar projects, the “Seller shall provide Buyer with an annual output guarantee.” Cypress Creek recommends requiring a two-year output guarantee rather than a one-year output guarantee.

Conclusion

Cypress Creek appreciates the opportunity to provide initial comments on the PSE RFP and looks forward to additional engagement with the Commission, PSE, and other stakeholders as the RFP is finalized.

Respectfully submitted,

/s/ Tai Wallace
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