

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Adoption of Rules for)
Alternative and Renewable Energy)
Technologies and Resources, and Emission)
Control Reporting Requirements, and) Case No. 08-888-EL-ORD
Amendment of Chapters 4901:5-1, 4901:5-3,)
4901:5-5, and 4901:5-7 of the Ohio)
Administrative Code, pursuant to Chapter)
4928, Revised Code, to Implement Senate Bill)
No. 221.)

Comments of LS Power Associates, L.P.
To Staff's Proposed Rules-New Chapter 4901:1-40.

I. Introduction

Now comes LS Power Associates, L.P. and in response to the Commission's Entry of August 20, 2008 seeking comments on staff's proposed new rules to implement Amended Substitute Senate Bill No. 221 ((SB 221)).

The LS Power Associates L.P. family of companies ("LS Power") is one of the largest and most successful developers, owners, operators and investors of independent power generation in the United States today. LS Power has successfully developed more than 5,700 megawatts of independently owned and operated power generation capacity since the Company's founding in 1990. At present, LS Power operates more than 1,100 megawatts of generating capacity furnishing electric power to load-serving entities and wholesale power markets across the United States. LS Power is actively engaged in the development of more than

10,000 megawatts of additional generating capacity, including both conventional base-load generation and renewable energy resources.

LS Power respectfully submits the following comments in response to the Public Utilities Commission of Ohio's request in its Order dated August 20, 2008, and urges the Commission to enhance the proposed rules by the inclusion of provisions requiring electric distribution utilities to employ competitive procurement practices to meet the alternative energy resources mandate of S.221. Such a provision should, at a minimum, prescribe a process which:

- Is fair and objective
- Is designed to encourage robust competitive offerings and creative proposals from market participants
- Will select winning offers based on appropriate evaluation of all relevant price and non-price factors
- Can be conducted in an efficient and timely manner

II. Competitive Procurement Practices Represent the Best Way to Ensure that Traditionally Regulated Utilities Provide Cost-Effective Retail Service.

Competitive procurement practices are now so widely employed by government¹ and industry that few people would dispute the effectiveness of competitive procurement practices to contain costs. In July of this year a White Paper commissioned by the National Association of

¹ See for example the State of Ohio Department of Administrative Services Vendor Handbook at page 6, <http://procure.ohio.gov/pdf/vendorhandbook.pdf> : "The preferred procurement method utilized by DAS is through issuance of an Invitation to Bid to solicit Competitive Sealed Bids. Sealed bids are opened publicly and contracts awarded to the lowest responsive and responsible bidder."

Regulatory Utility Commissioners (NARUC) and funded by the Federal Energy regulatory Commission (the “FERC/NARUC Paper”) on the subject of competitive power procurement policies and practices was published. The Executive Summary of that paper, which is entitled “Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices”² begins:

“Over the past two decades, electric distribution utilities have increasingly relied on competitive procurements as a means to obtain power supply for their retail customers. In many states, regulators now rely on such procurements as an important tool to help ensure that utilities provide cost-effective retail services...”

“Competitive procurements can provide utilities with a way of obtaining electricity supply that has the “best” fit to customers’ needs at the “best” possible terms.”
FERC/NARUC Paper at p i.

There are two principal reasons why competitive procurement is a best practice for regulated utilities. First, soliciting competitive bids, or Requests For Proposals, can fulfill a basic intelligence gathering function with respect to the market for wholesale electricity. By inviting the broadest possible group of participants to suggest unique combinations of technology, location, risk management and financing alternatives, the range of choices from which that the single alternative that most benefits ratepayers can be identified is expanded far beyond those that can be realized only by the imagination and resources of the utility companies.

² Tierney, Susan F., Ph. D. and Schatzki, Todd, Ph. D., Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices, National Association of Regulatory Utility Commissions, 2008.
<http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf>

Second, a competitive procurement process can be the best means to “[P]revent potential improper self-dealing by the utility. Because a utility may financially benefit from the selection of its own self-build offer or proposal from an affiliate...” FERC/NARUC Paper, Supra, p.iv. But, as advantageous as having a wide variety of choices from which to choose can be, potential participants, experts in this field, will only make the necessary investment of time, money and lost opportunities to pursue the business in other states if they perceive that the playing field is level and there is a realistic prospect of a reward in the form of an eventual business relationship at the end of the RFP process. The FERC/NARUC Paper explores at some length the need to protect bidders through provision of third-party evaluators, measures to insure transparency and utility codes of conduct to guard against even the perception of a biased process all of which should be incorporated in the new rules. See eg: FERC/NARUC Paper at iv, viii, 7-9, 12, 13-16.

The need for a competitive procurement process may be even more pronounced in securing renewable generating resources than conventional resources. It is widely understood that renewable generating resources will, in the main, be comprised of wind generation. Probably no form of generation is more location-dependent than wind. The economics of wind generation derive from the quantity and quality of the wind, and from proximity to electric transmission. Any given developer of wind generating facilities will have access only to a finite number of project sites and even the largest of them will have access only to a tiny fraction of the universe of potential sites. The quality of the ranking of wind generation opportunities will vary in direct relation to the number of opportunities considered.

Moreover, the economics of wind generation are heavily dependent on such factors as turbine placement, equipment selection, and wind science experience. All of these skills have developed and for the most part reside exclusively in an industry which has evolved and now exists entirely apart from the traditional utility industry. To fail to actively encourage inclusion of the universe of wind generation developers is to risk jeopardizing the entire renewables initiative.

A tremendous success of competitive procurement practices in a renewable energy context was shown by the Request For Proposals issued in 2007 by Manitoba Hydro, the electric utility for the Province of Manitoba. In a news release dated December 14, 2007 Manitoba Hydro said “in response to its initial request for proposals to supply up to 300 megawatts of wind-generation, Manitoba Hydro received 84 submissions *adding up to more than 10,000 megawatts*. Based on a thorough review and evaluation of these submissions Manitoba Hydro has selected 10 proposals for further consideration with seven separate developers being invited to provide additional, more detailed information to help determine which proposals may be selected.” [Emphasis added] Manitoba Hydro, seeking 300 megawatts of renewable generating capacity received 10,000 megawatts of bids, thereby permitting the utility to select for its ratepayers the best 3% of all the wind generation potential identified. But for the broad-based RFP process, the chances of Manitoba Hydro securing or even knowing of the optimal projects ultimately selected must have been very small.

For all these reasons LS Power urges the Commission to adopt a rule requiring electric utilities to employ fair, transparent RFP programs designed by the Commission and administered by an independent evaluator.³

III. Draft Rule – New Chapter 4901:1-40 Does Not Contain an Explicit Requirement that Renewable Energy Resources be Procured Pursuant to a Competitive Process

The Ohio legislature has given electric utilities, at Section 4928.64(B), “discretion” to obtain alternative energy resources pursuant to an electric supply contract and by implication, discretion to build their own generating resources in order to satisfy the mandate of Senate Bill 221. What Section 4928.64(B) does not do, however, is grant the electric distribution utility license to act imprudently in the procurement of alternative energy resources. As discussed above, LS Power believes that it is not possible prudently to procure supplies of electric power, particularly renewable electric power, without an exhaustive knowledge of available generating resource alternatives, and it is not possible to obtain such knowledge under circumstances where the owners of those resources can not see a reasonable prospect of reward in return for the time, money and opportunity they will risk. Only an effective RFP process which is fair and transparent and demonstrably offers a real opportunity for commercial reward will ever permit the utility, or this Commission, to know what alternatives were not pursued in the effort to obtain for rate payers the greatest benefit for their renewable energy dollars.

For those reasons LS Power submits that the Commission should incorporate within new Chapter 4901:1-40 a requirement under which electric utilities procuring alternative energy

³ In this we are drawing an intentional distinction between a traditionally regulated electric utility, which is necessarily biased toward all self-build options (see FERC/NARUC Paper at iv), and an electric services company, whose bias is toward cost minimization rather than rate base enhancement.

resources must employ a Commission-designed or approved Request For Proposals process, and that such process be designed to plainly show all market participants that the process is fair. At a minimum, the Commission make it plain that (1) an electric utility cannot demonstrate that the cost cap set forth in Section 4928.64(C)(3) has been exceeded, or that the utility is prevented by *force majeure* from complying with the renewable mandate as described in Section 4928.64(C)(4) without evidence of market conditions throughout the entire renewables market, and that (2) such a showing cannot be made without the utility having employed an effective, Commission-designed RFP process.

IV. Conclusion.

The success of the Ohio renewable energy program rests in large part on the success of this Commission in constraining the cost of the program to ratepayers. Competitive procurement practices are a proven technique to constrain costs and secure the “best” outcome for ratepayers. A Commission-designed mandatory Requests For Proposals program will attract to Ohio the widest possible pool of providers of renewable energy with the highest level of expertise in this up and coming segment of the electric industry. The larger the pool of competitors, the more pressure will be brought to bear on costs. This will result in the highest levels of compliance with the Ohio RPS mandate at the lowest prices for ratepayers.

Respectfully submitted,

LS Power Associates, L.P.

/s/ Rodger A. Kershner

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Summary: Comments electronically filed by Mr. Rodger A. Kershner on behalf of LS Power Associates, L.P. and Mackey, Lynne Ms.