

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. E-2, SUB 1159

DOCKET NO. E-7, SUB 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of)	COMMENTS OF THE CPRE INDEPENDENT
Joint Petition of Duke Energy)	ADMINISTRATOR (ACCION GROUP, LLC)
Carolinas, LLC, and Duke)	REGARDING REVISIONS TO COMMISSION
Energy Progress, LLC, for)	RULE R8-729(f)(3)
Approval of Competitive)	
Procurement of Renewable)	
Energy Program)	

On May 1, 2019, the North Carolina Utilities Commission (“Commission”) postponed the commencement of Tranche 2 of the CPRE RFP and scheduled a Technical Conference. In addition, the Commission identified four questions to be addressed during the conference, including “[h]ow to structure a “bid refresh” procedure and what amendments need to be made to Commission Rule R8-71(f)(3) to authorize that procedure.” The Commission provided

[t]hat on or before May 16, 2019, the parties who desire to provide comments on, and/or propose revisions to Commission Rule R8-71(f)(3) to accomplish, the incorporation of a bid refresh procedure, shall file their comments and/or proposed revisions with the Commission;

Herein the CPRE Independent Administrator (“IA”) provides comments on how a refresh could be administered, should the Commission modify the CPRE process.

The IA has conducted over 100 RFPs in the past twelve years. Occasionally, the refreshing of bids was incorporated in recognition of known uncertainties in the market or to address unexpected changes that arose during the RFP process. The typical situation has been when there is a well-established uncertainty that made it difficult to bid firm, fixed pricing for a long-term contract. In those RFPs, a refresh of bid price some months after the bid due date encouraged bidders to provide firm pricing without also including a large risk premium. Examples include eras with volatile fuel prices (with conventional generation) and times of significant uncertainty in the legislative arena, such as when carbon taxation was under serious consideration. Another reason the IA has employed repricing in other RFPs was in response to a significant event that was unforeseen when the bid period closed. One recent example of that situation is the major restructuring of the tax code in December 2017. In all of those RFPs over the years, bidders were permitted to either revise a specific component of the bid (e.g., fuel price) or the bid price, but not other aspects of the bid.

From this experience we know that to have a successful refresh process the parameters and expectations must be clearly defined and established, and the standards must be applied equally to

all bidders. That is, the aspects of a bid open to refresh must be clearly defined to avoid confusion and the prospect for a never-ending bid process with ever-changing bid components. In past RFPs the IA conducted, where a refresh was permitted, only specific data was subject to refresh, while all other aspects of a bid remained static. For example, the project location, technology, point of interconnection, in-service date, size of the project and what part of the project included in the bid proposed counterparty to a PPA, et al, should remain fixed at the time of the initial bid. Aspects of bids that we have previously accepted for revision have been the total bid price or a specific pricing component, such as fuel. The IA would find it unmanageable to permit bidders to change all aspects of their bids during the refresh process.

Accordingly, the IA offers suggestions for a manageable refresh of bids.

I. REFRESH FOR NETWORK IMPACT COSTS

In CPRE, proposals that were identified as being the most cost-effective were required to post a proposal security prior to moving into the network impact analysis in Step 2. After the Step 2 analysis is completed, the network impact cost is imputed to the proposal by the Independent Administrator. This was done to identify what would be the true cost to the system of the proposal. All proposals were then re-ranked taking into account the cost of any necessary network upgrades. The cost of network impact is unknown to the MP at the time of bidding, because such costs are not determined until completion of the Step 2 analysis, which is dependent on which projects are proposed in the CPRE tranche. Therefore, should the Commission determine it would be appropriate to permit a MP to revise the decrement included in their proposal, the IA could accommodate a refresh of the decrement after the project's network impact is established and before the IA identifies the finalists.

The IA believes it would be imperative to establish limits on the ability to refresh bids to avoid an endless loop of evaluation. As outlined below, if there is to be a refresh opportunity after the network impact of a project is established, the IA firmly believes this should be a one-time opportunity limited to the first time the Step 2 analysis is conducted for a project. This is because the iterative process of Step 2 assessment produces a new review each time a project is eliminated from consideration, which results in the introduction of an additional project. In turn this could produce a new network impact determination for other proposals, including those that may have refreshed pricing based on a prior Step 2 review. To avoid an endless loop of evaluation, a single refresh opportunity should be provided.

A refresh of the proposal once the network impact cost is established could be accomplished by the following sequence:

1. Only the most cost-effective proposals that moved into the Step 2 evaluation would have the option to refresh;
2. The refresh opportunity would be available the first time a project is included in a Step 2 study;
3. While the IA anticipates that the competitive tier will be at least three times the MW goal of a tranche, proposals would be grouped for evaluation in Step 2 (as part of the iterative process)

with the best ranked projects from Step 1 reviewed first, with the initial group of proposals analyzed in Step 2 being equal to the total MW sought in the tranche;

4. Once the initial Step 2 evaluation is complete, the IA would inform the MP of the cost of any network upgrades assigned to a particular proposal (if any). The MP would only learn the cost for their proposal and not the costs assigned to other proposals. Similarly, the MP would be aware of their proposal's inclusion in the competitive tier as a whole, and not its ranking within the competitive tier. No other information that would provide market intelligence would be disclosed to the MP.
5. For proposals to which network upgrade costs were assigned, the MP would be invited to modify the decrement to avoided cost from what was presented in the original proposal.
6. The refresh option should only allow for one refresh for a project. If the MP is permitted to refresh with each iteration of the Step 2 evaluation, that MP could use the knowledge gleaned from repeated Step 2 network impact studies to repeatedly change pricing in an attempt to refine the proposal to achieve maximum value for the MP. The IE believes this would be unfair to all other MPs and would ultimately increase costs to ratepayers if this MP's proposal is selected as a finalist;
7. NOTE: Should the Commission believe the IA's concern about fairness to other MPs is misplaced, an alternative approach would be to permit repeated refreshing of the decrement for proposals on the competitive tier. To accomplish this, should the network upgrades previously assigned to a proposal change during any subsequent Step 2 evaluation, the MP would be advised of the revised network impact cost and permitted to refresh the decrement of the proposal;
8. The MP would have a finite period of time within which to either proffer a revised decrement to avoided cost, continue with the decrement originally proposed, or withdraw from consideration;
9. If the MP refreshes the decrement the proposal is again evaluated in Step 2 and once again subject to re-ranking in the IA's iterative process;
10. If this process fails to produce enough MWs to meet the goal of the tranche, additional proposals would be added to the Step 2 evaluation;
11. The system improvement cost would again be assigned to proposals, and the proposals that had not previously had the option to refresh could refresh; and,
12. The process would continue until the goal of the tranche is met, or when the reserve list of proposals is exhausted.

Any expansion of the solicitation process is certain to raise the question of if or when proposal security would be released. It should be remembered that the MP must provide proposal security in order for their proposal to be included in Step 2 study. Presently, the proposal security is released if the IA determines that the proposal pricing is above avoided cost after the Step 2 analysis and the proposal is no longer eligible for a PPA, or when the proposal is selected as a finalist and the MP substitutes Performance Assurance when executing a PPA proffered by Duke. Should the Commission include a refresh option as outlined above, the IA recommends the MP be

permitted to withdraw from consideration in lieu of refreshing, and in this instance the proposal security should be released.

The Commission should be aware that even a limited refresh opportunity such as the process described above, will substantially lengthen the evaluation process. In general terms, each iterative Step 2 evaluation that is required (as bids are re-ranked due to re-pricing) could add as many as six weeks to the evaluation process. In the refresh scenario discussed above, it is very conceivable that four or more iterative evaluations could be needed, which could easily add half a year to evaluation process.

II. REFRESH OPEN TO ALL BIDS

During the stakeholder discussions in February and March, one MP suggested that any refresh opportunity should be extended to all proposals, regardless of whether the proposal is in the competitive tier. This option would have unique challenges and potentially create an unmanageable process that would have endless iterations. It would also incent gaming by encouraging “low-ball” bids that would seek to be included in the Step 2 evaluation only so that they could subsequently evaluate their position and increase their bid to a more reasonable number. However, if the Commission were to elect to allow for a refresh on all bids, specific conditions and parameters to prevent endless rounds of evaluation could be accommodated in the evaluation process.

The IA envisions two scenarios where a global refresh is permitted.

A. Refresh after an initial Competitive Tier refresh

The first would be in conjunction with a refresh as described above, that is, proposals for which the Step 2 network impact cost is established are afforded the opportunity to refresh proposals after learning the cost of imputed network upgrade costs but then all other projects (i.e., those not included in the Step 2 evaluation) are also given an opportunity to re-price.

The reason for this approach is to afford the most competitive proposals with the opportunity to address the cost of imputed network upgrades before universal repricing. With this approach, the initial competitive tier could remain unchanged, and there would be no need to include proposals from the reserve list in the Step 2 analysis. This approach would encourage all MPs to be aggressive in pricing their initial proposals and not rely on the possibility to refresh as an opportunity to bid against the bids that had not previously withdrawn from consideration.

If the Commission adopts a refresh under this scenario, the IA recommends the following parameters be included:

1. As outlined herein, each proposal may be refreshed one time;
2. Proposals with the opportunity to refresh after a Step 2 analysis would only be permitted to refresh once as described above in Section I. That is, the MP could refresh or not when presented with network upgrade costs, but not at a later date. The IA believes this would be fair to the MP and to all participants thus treating all MPs in the same manner;

3. For all other proposals, each MP would have the opportunity to refresh the decrement in the original proposal after the Step 2 process is completed;
4. The MP would have a finite period of time within which to either proffer a revised decrement to avoided cost, continue with the decrement originally proposed, or withdraw from consideration;
5. The IA would again conduct a re-ranking of proposals that had not withdrawn; and,
6. Proposals in the competitive tier for the first time would be included in another Step 2 review, provided the required proposal security is proffered.

B. Refresh regardless of initial Competitive Tier refresh

The second scenario imagined by the IA would permit all proposals to be refreshed at the conclusion of the Step 2 iterative process. If the Commission adopts a refresh under this scenario, the IA recommends the following parameters be included:

1. Each proposal may be refreshed one time at the end of the Step 2 process except proposals that failed to provide proposal security when the MP was informed the proposal was eligible for Step 2 analysis;
2. Regardless of whether a proposal was evaluated as part of a Step 2 system impact study, the MP would not be informed of the ranking of their proposal within the competitive tier or other information that would provide market intelligence;
3. Proposals for which the imputed network upgrade is established would be provided the cost information after all Step 2 analysis is completed, and not as each iterative cycle is concluded. The MP would learn only the cost for their proposal, and not the costs assigned to other proposals;
4. The MP would have the opportunity to refresh the decrement in the original proposal, with all other bid components remaining unchanged;
5. The MP would have a finite period of time within which to either proffer a revised decrement to avoided cost, continue with the decrement originally proposed, or withdraw from consideration;
6. The IA would again conduct a re-ranking of proposals that had not withdrawn;
7. Proposals in the competitive tier for the first time would be included in another Step 2 review, provided the required proposal security is proffered; and,
8. The proposal security would be released for any proposal that chose to withdraw from consideration at this stage rather than refreshing the pricing or continuing with the originally proposed pricing.

III. CONCLUSION

As discussed above, the IA notes that any refresh included in the evaluation process will extend the time required for sequential evaluations. Depending on the approach adopted by the Commission, the number of times the Step 2 process will need to be conducted will increase. The final design of a refresh process will determine how much additional time will be dedicated to the

evaluation process, which could require months of additional analysis as a result of repeatedly changing cluster studies.

Attachment 1 presents the IA's proposed changes to Commission Rule R8-729(f)(3) to incorporate a refresh of pricing by proposals for which a network upgrade cost is established and imputed to the value of the proposal.

ATTACHMENT 1

PROPOSED CHANGES TO COMMISSION RULE R8-729(F)(3)

(Without redline of suggested changes)

- (3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a CPRE RFP Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission's oversight as provided in G.S. 62-110.8 and this rule.
- (i) In step one, the Independent Administrator shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the CPRE RFP Solicitation evaluation factors. As a result of the Independent Administrator's evaluation, the Independent Administrator shall, subject to the provisions of subsection (f)(3)(ii) of this Rule, eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors and then develop and deliver to the electric public utility's T&D Sub-Team a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals included in the list delivered to the electric public utility any information that identifies the market participant that submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.
 - (ii) As a part of the step one evaluation, the Independent Administrator may, in its discretion, allow a market participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal, and may consult with the electric public utility's Evaluation Team to determine whether a proposal meets the CPRE RFP Solicitation Evaluation factors. In consulting with the Evaluation Team, the Independent Administrator shall maintain the anonymity of the market participant that submitted the proposal. The Independent Administrator shall document the reasons for the elimination of a proposal. The Independent Administrator shall also eliminate any proposal where necessary in order to comply with G.S. 62-110.8(b)(4).
 - (iii) In step two, the electric public utility's T&D Sub-Team shall assess the system impact of the most cost-effective proposals in the order ranked by the Independent Administrator and assign any system upgrade costs attributable to each proposal so assessed. The T&D Sub-Team shall conduct this assessment in a reasonable manner, with oversight by the Independent Administrator, and in parallel with the Independent Administrator's allowing modification or clarification of proposals and consultation with the Evaluation Team, as provided in (f)(3)(ii), if applicable. The electric public utility's T&D Sub-Team shall provide its assessment of system upgrade costs to the Independent Administrator, who shall determine whether such system upgrade costs have been appropriately assigned. The Independent Administrator shall then confidentially convey such information to the applicable market participants and the market participant shall be permitted one opportunity to re-price, leave the proposal unchanged, or withdraw the proposal. The Independent Administrator shall

then re-rank the proposals based on such re-pricing and determine in consultation with the T&D Sub-Team whether such re-ranking necessitates any update to the assessment of system upgrades costs. If no update to the assessment of system upgrades is needed and the Independent Administrator has concluded its evaluation pursuant to (f)(3)(ii) of this Rule, if applicable, then the electric public utility shall select the winning proposals in accordance with subsection (iv) below. If an update to the assessment of system upgrades is needed, the Independent Administrator shall work with the T&D Sub-Team of the electric public utility to assess the system upgrade costs attributable to the most cost-effective proposals. This process shall continue on an iterative basis, as directed by the Independent Administrator, until the Independent Administrator determines that the total generating capacity sought in the CPRE RFP Solicitation is satisfied in the most cost-effective manner after taking into account the re-pricing permitted by the Commission.

- (iv) Upon completion of step two and determination by the Independent Administrator of the final ranking of the proposals, the Independent Administrator shall deliver to the Evaluation Team of the electric public utility the final ranked list of proposals. The electric public utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, and the Independent Administrator shall provide the electric public utility with the identity of the market participants that were so selected. Upon publication of the list of proposals selected, the Independent Administrator shall declare the CPRE RFP Solicitation closed.

ATTACHMENT 2**PROPOSED CHANGES TO COMMISSION RULE R8-729(F)(3)****(With redlined suggested changes)**

(3) Evaluation and Selection of Proposals. The evaluation and selection of proposals received in response to a CPRE RFP Solicitation shall proceed in two steps as set forth in this subdivision, and shall be subject to the Commission's oversight as provided in G.S. 62-110.8 and this rule.

- (i) In step one, the Independent Administrator shall evaluate all proposals based upon the CPRE RFP Solicitation evaluation factors using the CPRE Program Methodology. The Independent Administrator shall conduct this evaluation in an appropriate manner designed to ensure equitable review of all proposals based on the economic and noneconomic factors contained in the CPRE RFP Solicitation evaluation factors. As a result of the Independent Administrator's evaluation, the Independent Administrator shall, subject to the provisions of subsection (f)(3)(ii) of this Rule, eliminate proposals that fail to meet the CPRE RFP Solicitation evaluation factors and then develop and deliver to the electric public utility's T&D Sub-Team a list of proposals ranked in order from most competitive to least competitive. The Independent Administrator shall redact from the proposals included in the list delivered to the electric public utility any information that identifies the market participant that submitted the proposal and any information in the proposal that is not reasonably necessary for the utility to complete step two of the evaluation process, including economic factors such as cost and pricing information.
- (ii) As a part of the step one evaluation, the Independent Administrator may, in its discretion, allow a market participant to modify or clarify its proposal to cure a non-conformance that would otherwise require elimination of the proposal, and may consult with the electric public utility's Evaluation Team to determine whether a proposal meets the CPRE RFP Solicitation Evaluation factors. In consulting with the Evaluation Team, the Independent Administrator shall maintain the anonymity of the market participant that submitted the proposal. The Independent Administrator shall document the reasons for the elimination of a proposal. ~~The Independent Administrator shall also eliminate any proposal where necessary in order to comply with G.S. 62-110.8(b)(4).~~
- (iii) In step two, the electric public utility's T&D Sub-Team shall assess the system impact of the ~~most cost effective~~ proposals in the order ranked by the Independent Administrator and assign any system upgrade costs attributable to each proposal ~~so assessed, included in the list provided by the Independent Administrator.~~ The T&D Sub-Team shall conduct this assessment in a reasonable manner, with oversight by the Independent Administrator, and in parallel with the Independent Administrator's allowing modification or clarification of proposals and consultation with the Evaluation Team, as provided in (f)(3)(ii), if applicable. The electric public utility's T&D Sub-Team shall provide its assessment of system upgrade costs to the Independent Administrator, who shall first determine whether such system upgrade costs have been appropriately assigned ~~and then determine whether the original~~

ranking of proposals needs to be modified to recognize the system upgrade costs assigned to each proposal. The Independent Administrator shall ~~then confidentially convey such information to the applicable market participants~~ And the market participant shall be permitted one opportunity to re-price, leave the proposal unchanged, or withdraw the ~~also eliminate any~~ proposal. ~~The Independent Administrator shall then re-rank the proposals based on such re-pricing and determine where necessary in consultation order to comply with the T&D Sub Team whether such re-ranking necessitates any update to the assessment of system upgrades costs. G.S. 62-110.8(b)(4).~~ If no update to the assessment of system upgrades ~~reranking~~ is needed and the Independent Administrator has concluded its evaluation pursuant to (f)(3)(ii) of this Rule, if applicable, then the electric public utility shall select the winning proposals in accordance with subsection (iv) below. ~~If an update to the assessment of system upgrades is needed,~~ If the Independent Administrator modifies the original ranking as result of the assignment of system upgrade costs or the elimination of a proposal, it shall work with ~~deliver to~~ the T&D Sub-Team of the electric public utility ~~to assess the~~ such revised list of proposals ranked in order from most competitive to least competitive (with market participant information redacted as described in step one) and the assignment of system upgrade costs attributable to the most cost-effective proposals. Re-pricing described in this subsection shall then be permitted in the manner and to the extent approved performed again by the Commission. T&D Sub-Team and provided to the Independent Administrator, who will re-rank the proposals. This process shall continue on an iterative basis, as directed by the Independent Administrator, until the Independent Administrator determines that the total generating capacity sought in the CPRE RFP Solicitation is satisfied in the most cost-effective manner after taking into account the ~~re-pricing permitted by the Commission~~ assignment of system upgrade costs through this step two.

- (iv) Upon completion of step two and determination by the Independent Administer of the final ranking of the proposals, the Independent Administrator shall deliver to the Evaluation Team of the electric public utility the final ranked list of proposals. The electric public utility shall select proposals in the order ranked by the Independent Administrator until the total generating capacity sought in the CPRE RFP Solicitation is satisfied, and the Independent Administrator shall provide the electric public utility with the identity of the market participants that were so selected. Upon publication of the list of proposals selected, the Independent Administrator shall declare the CPRE RFP Solicitation closed.