

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

Docket No. SP-8748, Sub 1
Docket No. SP-8741, Sub 2
Docket No. E-7, Sub 1156

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of) ACCION GROUP, LLC, CPRE
) INDEPENDENT ADMINISTRATOR,
) RESPONSE TO MOTION FOR
Lick Creek LLC) EXPEDITED CONSIDERATION OF
) VERIFIED AMENDED PETITION
) FOR DECLARATORY RULING
) AND OTHER RELIEF

NOW COMES, Accion Group, LLC, the Independent Administrator for the Competitive Procurement of Renewable Energy Program (“CPRE” or “Program”) (hereinafter “IA” or “Accion”) for the purpose of addressing claims by Lick Creek Soar LLC (“Lick Creek”) to the North Carolina Utilities Commission (hereinafter, “NCUC” or “Commission”).

The Lick Creek Motion contains a number of factual errors that are addressed herein. The pleading also ignores the most important fact: The Lick Creek Proposal was never accepted in CPRE Tranche 2¹ because it failed to meet a basic requirement of the Request for Proposals (“RFP”).²

The RFP expressly required that the Market Participant (“MP”) had to commit “to sell 100% of its renewable electrical energy, capacity and environmental and renewable attributes to DEC or DEP (as applicable).” RFP at 2. The RFP also provided “for the avoidance of doubt, an MP may not submit a Proposal for a Facility that has an existing off-take agreement.” RFP at 2, FN 4. The MP raised this

¹ The IA understands the reference to Tranche 1 in the Lick Creek Motion to be a typographical error as the Lick Creek Proposal was received in Tranche 2.

² The IA also notes that the MP had their Proposal fee refunded following disqualification of the Lick Creek Proposal from the Tranche 2 solicitation.

very issue during the Stakeholder session on February 6, 2020, with both a verbal and written response provided. The Stakeholder session written response stated,

Projects that have an existing off-take agreement must terminate such off-take agreement prior to bidding into CPRE. Allowing projects with existing off-take agreement to bid into CPRE would introduce too much uncertainty and complexity into the RFP process.

Response to February Stakeholder Session, Question 26.

The written responses to the stakeholder sessions, and recordings of the sessions, are available on the IA Website.

Lick Creek chose to ignore this requirement and submitted a Proposal that had a pre-existing off-take agreement. The IA believes it is worth noting that the RFP bid form included a requirement that the MP attest that the proffered facility “(required) The Facility does not have an existing off-take agreement.” Lick Creek responded in the affirmative. It was only after the IA identified an existing Purchase Power Agreement (“PPA”) that Lick Creek admitted that the claim on the Proposal was false.

On March 3, 2020, Lick Creek responded to the IA with the statement,

We have reviewed the Bid Confirmation Memo for Lick Creek Solar (174-03) and would like to note that the following correction is needed. 1) The project does have an existing offtake agreement

IA Website Confidential Message Board.

Accordingly, the Lick Creek Proposal was never eligible to participate in CPRE Tranche 2.

Lick Creek claims the IA “disqualified the Tranche 1 (sic) Proposal ³ using an Evaluation Tool which was intended and authorized under the RFP to rank bids” Motion at 1. This is erroneous. As noted in the IA’s Step 2 Report dated August 11, 2020, “three [Proposals] were determined to be non-conforming and not included in the evaluation process.” Step 2 Report at 1, FN 1. This fact was

³ See footnote 1.

also noted in the IA's "CPRE Tranche 2 Initial Status Report" dated May 15, 2020. The Lick Creek Proposal was one of the three Proposals that were found to be non-conforming to the RFP requirements, and thus, were not included in the evaluation process and modeling. As noted above, Lick Creek confirmed that the Proposal was non-conforming and, thus, ineligible to be evaluated by the IA.

Lick Creek claims that "[t]he Step 2 report confirms Petitioner's contention that excluding Lick Creek from CPRE Tranche 2 has increased both the bid price and the clearing price for Tranche 2, to the detriment of ratepayers." Motion at 3. This is erroneous. The only reference to Lick Creek in the IA's Step 2 report was the footnote referenced above. There was no confirmation in support of any claim presented by Lick Creek. Further, because the Lick Creek Proposal was not qualified to participate in CPRE, it was not evaluated either in Step 1, where the preliminary ranking of Proposals was performed, or in Step 2, where the system upgrade cost of Proposals was imputed to Proposals before re-ranking.

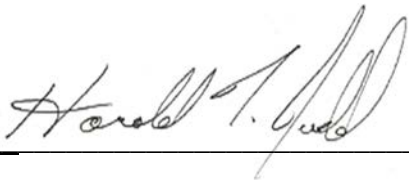
In the plea for relief Lick Creek requests that the Commission expand the size of CPRE Tranche 2 to accommodate the non-conforming Proposal.⁴ A basic tenant of all competitive solicitations is that all participants bid to the same terms and conditions. That includes conforming to the RFP requirements. Before the Proposal submission date, the size of the solicitation was established, which advised all interested persons of the scope of the RFP. It would be contrary to conducting a fair and competitive solicitation to increase the size of the solicitation, after all other Proposals were evaluated and winners selected, for the sole purpose of advancing the interests of one Market Participant. It is impossible to know after the completion of the RFP what would have been bid had the solicitation been greater, and whether there would have been more Proposals from more MPs, with pricing that would

⁴ The IA notes that as preparation begins for Tranche 3, it is unknown how many MW are needed to meet the CPRE goals. Requiring Duke to contract for additional MWs could exceed the statutory limits of the program.

have been selected as winners. What is known is that the Lick Creek Proposal would have been ineligible to participate, regardless of the number of MWs sought in the solicitation.

For these reasons the IA respectfully requests the Commission reject Lick Creek's Motion.

Respectfully submitted,

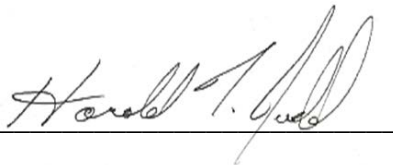
A handwritten signature in cursive script, reading "Harold T. Judd", written over a horizontal line.

Harold T. Judd, Esquire
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **IA Response to the Lick Creek Motion for Expedited Consideration** upon all parties of record by electronic mail.

This the 30th day of September, 2020.

A handwritten signature in cursive script, reading "Harold T. Judd", written over a horizontal line.

Harold T. Judd, Esquire