

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held June 24, 2008

Commissioners Present:

Wendell F. Holland, Chairman
James H. Cawley, Vice Chairman
Tyrone J. Christy
Kim Pizzingrilli

Petition of PECO Energy Company
For Approval of (1) A Process to Procure
Alternative Energy Credits During the AEPS
Banking Period and (2) A Section 1307 Surcharge
And Tariff to Recover AEPS Credits

P-00072260

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition is the Petition for Reconsideration (Petition) of Iberdrola Renewable Energies USA, (Iberdrola) filed on April 7, 2008. The Petition was filed regarding the Commission's determination which denied PECO's request for approval of Iberdrola's bid results for the annual delivery of alternative energy credits (AECs). On April 11, 2008, the Pennsylvania Department of Environmental Protection filed a letter in support of the Petition. On April 24, 2008, PECO filed a letter affirming that it stands ready to accept the bids offered by Iberdrola. Iberdrola timely filed the instant Petition pursuant to Commission Regulations, 52 Pa.

Code § 5.572. Iberdrola filed an Amended Petition on April 17, 2008, wherein expedited treatment of the Petition was requested.

History of Proceeding

On March 14, 2008, PECO filed the results of its Request for Proposals (RFP) Process and Rules, including the proposed bid results from the first of two solicitations, for annual delivery of 250,000 AECs under a fixed-price five-year contract, for provider of last resort service, with delivery beginning no later than December 31, 2008.

By Secretarial Letter issued March 19, 2008, the Commission determined that the auction was conducted in accordance with the RFP Process and Rules. However, the Commission did not approve the bid results and stated that final approval is contingent upon the facilities being certified by the Pennsylvania AEPS Program, Clean Power Markets credit administrator. Additionally, the Commission stated that these facilities must be qualified as an alternative energy source under the AEPS Act and the bidders must provide documentation of the certification to PECO and the Commission.¹ March 19th Secretarial Letter.

By Secretarial Letter dated March 21, 2008, the Commission again declined to approve Iberdrola's bid results submitted in this solicitation. On April 7, 2008, Iberdrola filed the instant Petition for Reconsideration regarding the bid results from its Providence Heights facility. Petition at 3.

¹ On July 17, 2007, Governor Edward Rendell signed Act 35 of 2007 into law. This Act amended several sections of the Alternative Portfolio Standards Act of 2004, 73 P.S. §§ 1648.1, *et seq.*, including those relating to the definition of customer generators, the reconciliation mechanism for surplus energy supplied through net metering, and the location of alternative energy resources.

Discussion

The Public Utility Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. Section 5.572(a), 52 Pa. Code § 5.572(a) provides that:

Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for findings or orders desired.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 1982 Pa. PUC LEXIS 4 (1982). *Duick* held that a petition for rehearing under Subsection 703(f) of the Code must allege newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Duick at 558*. A petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, in whole, or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed. *Duick at 559*.

By Secretarial Letter dated March 21, 2008, the Commission determined that the Iberdrola Providence Heights Wind Farm facility has not yet been certified as an eligible alternative energy source and that due to a lack of good market pricing data the

reasonableness of the bid prices could not be determined. Accordingly, the Commission denied the bids presented by Iberdrola.

In its Petition, Iberdrola states that PECO's RFP does not require projects to achieve commercial operation until December 31, 2008, and therefore, clearly anticipated receiving and accepting bids before AEPS certification of the pledged project. Petition at 3. Article 3.1 of the PECO RFP, regarding project eligibility and requirements provides, in pertinent part, the following:

Eligibility. Applications may be submitted by qualified entities who currently own, propose to develop, or have production rights to Tier 1 non-solar Alternative Energy Systems Successful bidders must commence delivery of AECs to PECO no later than December 31, 2008

RFP Article 3.1 (emphasis added). Additionally, according to the bidders' significant milestone schedule, the commercially operational milestone date is to be on or before December 31, 2008. RFP Exh. 2. We agree with Iberdrola that the RFP supports its position that facilities only need to be certified on or before December 31, 2008, to qualify as non-solar Tier I alternative energy providers.

Iberdrola states that the RFP requires that winning bidders who sign contracts to supply AECs post a Development Security if the facilities pledged have not yet achieved commercial operation status or a Performance Security if the facility is in commercial operation. Petition at 3. Article 3.6 of the PECO RFP, regarding security, provides, in part, as follows:

Development Security and Performance Security. Successful bidders developing new facilities will be required to post Development Security (cash deposit or letter of credit) with PECO of \$3.75 per AEC of the Contract Amount at execution of an AEC Purchase and Sale Agreement Performance Security equal to \$7.50 per AEC to be delivered annually

must be posted by bidders of existing facilities upon execution of an AEC Purchase and Sale Agreement, and by developers of new facilities upon commencement of Commercial Operation

RFP Article 3.6. Iberdrola notes that the PECO RFP Development and Performance Security requirements place the risk of non-delivery onto the AEC supplier. Additionally, Iberdrola expects to energize its pledged facility by late spring of 2008, and, at that time, will submit a formal request to the Pennsylvania AEPS administrator requesting certification as an eligible alternative energy source. Petition at 3, 4.

Iberdrola considers the Commission's concern of insufficient market pricing information to determine the reasonableness of its bid prices to be unfounded. Petition at 4. Iberdrola states that despite the limited number of winning bidders it believes that there is sufficient pricing information available to the Commission to determine their reasonableness. Petition at 4.

In support of its contention that sufficient pricing data is available, Iberdrola states that: (1) its bid is well under the Alternative Compliance Payment² price of \$45 per MWh; (2) the Pennsylvania AEPS Tier I AEC eligibility requirements are consistent with other states' standards within the PJM region;³ (3) wind generation is likely to comprise the majority of new renewable megawatts developed in the PJM region and, therefore, will be the marginal supplier of AECs/RECs; and (4) the AECs/RECs derived from wind power will be eligible for the New Jersey RPS, accordingly, it is reasonable to suggest that pricing in the New Jersey Class I market would reflect pricing

² 73 P.S. § 1648.3(f)(3).

³ PJM Interconnection is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

in Pennsylvania's Tier I market. Petition at 4, 5.

Iberdrola notes that the cost of commercial scale wind energy generation has increased approximately 10% to 15% annually due to the increasing capital costs associated with the acquisition of wind turbines. Additionally, Iberdrola believes that this upward trend in capital costs will continue. Therefore, by accepting the Providence Heights bid, the Commission would be ensuring that PECO ratepayers are receiving the benefit of 2008 development costs. Iberdrola also believes that acceptance of its bid for Providence Heights will further investment in alternative energy facilities in Pennsylvania and within the PJM region. Petition at 5, 6.

By letter dated April 24, 2008, PECO states that, by allowing electric distribution companies to procure and bank AECs during their cost-recovery period, the General Assembly intended to both utilize existing alternative energy resources and encourage the development of new alternative energy resources for AEPS compliance. PECO Ltr. at 2.

Disposition

Although there was a noticeable lack of bid participation in this initial Tier 1 RFP, the Iberdrola bid should be accepted. We are persuaded by the additional information submitted by Iberdrola in its Petition that the bid price is reasonable. Also, the amount of bid load is relatively small; therefore, these prices should have a minor role in the final AEPS costs for PECO. In the future, PECO should augment its efforts to increase bid awareness, particularly with wind developers who are planning new facilities in PJM (and especially within Pennsylvania). These measures will further eliminate barriers to bid participation.

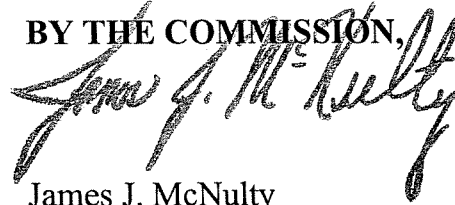
Lastly, since there is only one successful bid in this RFP, these results should be kept confidential until the Commission determines otherwise. The resulting prices will be publicly posted in the aggregate with other successful bids when the results of the second solicitation are approved. Accordingly, we shall grant the instant Petition and approve the AEPS bid of Iberdrola's Providence Heights facility; **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Reconsideration filed by Iberdrola Renewable Energies USA on April 7, 2008, pursuant to 52 Pa. Code § 5.572 is granted.
2. That the bid results from the first of PECO Energy Company's two (2) solicitations for annual delivery of 250,000 alternative energy credits under a fixed-price five (5)-year contract, for provider of last resort service with delivery beginning no later than December 31, 2008, are approved consistent with this Opinion and Order.
3. That the bid results of PECO Energy Company's first solicitation for annual delivery of 250,000 alternative energy credits for provider of last resort service shall be kept confidential until the Commission determines otherwise.

4. That the Commission's Secretary shall mark this record as marked closed.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: June 24, 2008

ORDER ENTERED: JUL 16 2008