

**BEFORE THE MICHIGAN
PUBLIC SERVICE COMMISSION**

**In the matter, on the Commission's)
own motion, to promulgate rules) Case No. U-15900
governing renewable energy plans)
and energy optimization plans)**

COMMENTS OF THE ELECTRIC POWER SUPPLY ASSOCIATION

I. Introduction and Standing

The Electric Power Supply Association (EPSA)¹ appreciates the opportunity to provide comments to the Michigan Public Service Commission (PSC) on approaches that would optimize infrastructure/reliability planning for renewable generation sources as mandated by Michigan's Clean, Renewable and Efficiency Act of 2008 (or Act 295). EPSA is the national trade association of competitive power suppliers, including generators and power marketers. These suppliers account for nearly forty percent of the total generating capacity in the United States. In Michigan, about twenty-five percent of capacity is supplied by competitive wholesale electricity suppliers. Because EPSA seeks open, competitive and transparent markets for the provision of electricity, our organization has a significant understanding of how effective competitive bidding processes are developed. EPSA has commented before in Michigan PSC proceedings concerning RFP design and other competitive procurement issues.²

¹ EPSA is the national trade association representing competitive power suppliers, including generators and marketers. These suppliers, who account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities. EPSA seeks to bring the benefits of competition to all power customers. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

² Most recently, see: May 8, 2009 EPSA Comments in Case No. U-15590 discussing best practices for competitive procurement and 2009 Dolan Testimony in Case Nos. U-15805 and U-15806 discussing how competitive bidding practices should interplay with the renewable energy plan required of utilities under the Clean, Renewable and Efficiency Act of 2008.

EPSA's comments herein focus on draft Rule 460.228 (Rule 28), which concerns competitive bidding practices for major electric utilities. While the detailed procedures described under Rule 28 provide a good start, EPSA is concerned that there are still opportunities for incumbent utility discrimination in the RFP process. As such, EPSA supports the joint comments filed today of the Michigan Wholesale Power Association, Wind on the Wires and Windlabs, which includes alternative language to make Rule 28 a more truly competitive RFP requirement.

II. Comments

Michigan Act 295 mandated that utilities include provisions for request for proposal specifications to be included in a utility's Renewable Energy Plan, which then must be approved by the Commission.³ The Commission must then employ a "reasonable and prudent" standard to any such Renewable Energy Plan and embedded RFP.⁴

Competitive suppliers are the undisputed leaders in developing and deploying "Clean Renewable Energy" around the country.⁵ In proceeding to implement Michigan's Clean Renewable Energy Act, the Commission should take special care to assure that these leaders are not precluded by a process blessed by the Commission. While Rule 28 is a good start to ensuring that the RFPs designed by utilities in Michigan are reasonable and prudent, there are some key elements that Rule 28 is missing in order to gain the confidence and participation of competitive electricity suppliers.

³ Act 295, Section 33.

⁴ Act 295, Section 21 (1)(d).

⁵ For example, see: *The American Wind Energy Association's Year End 2009 Market Report*, which breaks wind development down by state and by developer. Independent developers are obviously more active than traditional utilities. That report is available here: <http://www.awea.org/publications/reports/4Q09.pdf>.

Namely, it all comes down to the ability for stakeholders to provide input and hold utilities accountable. There is neither an opportunity for an interested stakeholder to object to bidding criteria laid out at the front end of the process, nor is there an ability for interested stakeholders to appeal or review the utility-determined results after the RFP has taken place. To remedy these insufficiencies, language should be worked into Rule 28 so that there can be necessary collaborative dialogues between the Commission, interested stakeholders, and the utility issuing the RFP. The simplest, most straightforward way to address this issue is to use an independent evaluator throughout the RFP process to serve as a clearinghouse for all communications between stakeholders and the utility. This independent evaluator would also serve as the eyes and ears of the Commission while in no way replacing the Commission in any decision-making aspect of the competitive procurement.

Specific language articulating the rules for when and how the Commission will interact with utilities regarding RFP design is another critical element to a well functioning process. A standard for involvement in the RFP design development will go a long way in ensuring proper regulatory oversight for interested suppliers. It will also provide specific records concerning each RFP design process to which interested stakeholders can react in the form of corrections or suggested improvements. It is equally imperative that Rule 28 include an opportunity for interested stakeholders to appeal or ask the Commission to review the decisions made by incumbent utilities concerning the ultimate winner of an RFP. It is in this step that an independent evaluator could also serve a key role by providing their own analysis on the choices available to serve consumer needs and thereby help inform the final Commission

decision. The Commission must be the ultimate decision-maker concerning RFP-design; Commission judgment should not be replaced with utility judgment. In a matter so important to Michigan's energy and economic future, the Commission should remain fully and openly engaged at every step of the process, being advised from every possible source including independent energy suppliers and an independent evaluator.

To facilitate an open and trustworthy procurement process, EPSA would like to highlight the following three recommendations made in the joint comments of the Michigan Wholesale Power Association, Wind on the Wires and Windlabs:

- (1) Incorporate public input into RFP design;
- (2) Encourage the use of a demonstratively disinterested independent evaluator to act as an “umpire” and manage/administer the RFPs; and,
- (3) Permit a full, open Commission process in review and approval of any resulting contracts allowing stakeholder participation.⁶

EPSA also supports the proposed replacement draft Rule 28 that accompanies the Joint Comments as Attachment B. These changes to Rule 28 are consistent with the joint National Association of Regulatory Utility Commissioners (NARUC) and Federal Energy Regulatory Commission (FERC) study concerning trends in retail competitive procurement, which NARUC’s Board of Directors unanimously commended “State public utility commissions to consider implementing the Study’s recommendations, where appropriate for the type of industry structure, market design, and regulatory paradigm in which their utility companies operate.”⁷ EPSA’s competitive procurement

⁶ See Joint Comments at 3.

⁷ *NARUC/FERC Study: Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices*, prepared by the Analysis Group (June 2008), available here: <http://www.naruc.org/Publications/NARUC%20Competitive%20Procurement%20Final.pdf>. The unanimous NARUC Board of Directors resolution concerning the study is available here: <http://www.naruc.org/Resolutions/EL%20Resolution%20on%20the%20NARUC->

guidebook, "Getting the Best Deal for Electric Utility Consumers," is also an excellent manual for regulators.⁸ The changes to Rule 28 suggested by the Joint Comments support collaboration above all, which will contribute to the overall transparency, efficacy of and confidence in any RFP process.

III. Conclusion

EPSA's appreciates the opportunity to comment on this very important and timely policy proceeding before the Michigan Commission. EPSA urges the Commission to adopt the changes to Rule 28 that the Michigan Wholesale Power Association, Wind on the Wires and Windlabs have proposed.

Respectfully Submitted,



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[FERC%20Study%20of%20Model%20State%20and%20Utility%20Practices%20for%20Competitive%20Procurement%20of%20Retail%20Electric%20Supply.pdf](#).

⁸ EPSA's Guidebook: Getting the Best Deal for Electric Utility Consumers, prepared by the Boston Pacific Company (2004), available here:
http://www.epsa.org/forms/uploadFiles/359D0000003.filename.Policy_Guide_5.pdf.