

169 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Northern Indiana Public Service Company
Rosewater Wind Farm, LLC

Docket No. ER19-2775-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued December 16, 2019)

1. In this order, we grant Rosewater Wind Farm, LLC (Rosewater ProjectCo) and Northern Indiana Public Service Company's (NIPSCO) (collectively, Applicants) request under section 205 of the Federal Power Act (FPA)¹ for authorization of an affiliate transaction in which Rosewater ProjectCo will sell energy, capacity, and ancillary services to its affiliate, NIPSCO (Transaction). As discussed below, we grant Applicants' request for authority for Rosewater ProjectCo to make sales to NIPSCO pursuant to a build-transfer agreement containing a long-term power purchase agreement (the BTA PPA), which resulted from a competitive solicitation, effective December 16, 2019, as requested.

I. Background

2. On September 9, 2019, Applicants filed their request for authorization to make the affiliate sale described in their application. Applicants state that NIPSCO is an Indiana limited liability company serving natural gas and electric customers, with franchised public utility service obligations in parts of Indiana. It is a transmission-owning member of the Midcontinent Independent System Operator, Inc. (MISO).²

3. Applicants state that Rosewater ProjectCo is a wholly owned subsidiary of EDP Renewables North America LLC (EDPRNA) and is developing a 102 MW wind-powered electric generation facility (Rosewater Project) in White County, Indiana, which is slated to be operational by October 2020. Applicants indicate that Rosewater

¹ 16 U.S.C. § 824d (2018).

² Application at 5.

ProjectCo will initially operate the Rosewater Project and plans to sell the Rosewater Project's full output to NIPSCO under the BTA PPA.³

4. Applicants state that as part of NIPSCO's state-mandated integrated resource plan in 2016, NIPSCO identified a potential capacity shortfall at or around 2023. Applicants state that, to address the expected capacity shortfall, NIPSCO initiated a competitive request for proposals (RFP) process in 2018 to procure approximately 600 MW (later amended to 1400 MW) of additional generating capacity. Applicants further state that the RFP was constructed as an all-sources RFP, such that respondents could submit any type of resource, and that the RFP attracted 90 proposals supported by 59 projects across five states.⁴

5. Applicants state that NIPSCO retained Charles River Associates, Inc. (Charles River), a third-party consulting firm with expertise in utility resource procurement and in RFP design, solicitation, and evaluation, to conduct the RFP. Applicants further state that NIPSCO and Charles River identified and contacted multiple bidders to publicize the RFP and further advertised it in the trade press and described it in detail at public stakeholder meetings.⁵

6. Applicants indicate that none of NIPSCO's affiliates participated in the RFP and that Charles River objectively evaluated and scored each proposal based on price and other pre-disclosed factors. Applicants further state that EDPRNA's 102 MW wind farm was among the top three scoring projects in the RFP and that NIPSCO awarded EDPRNA the opportunity to construct and then sell NIPSCO the project.⁶

7. Applicants state that, in January of 2019, NIPSCO formed Rosewater Wind Generation LLC (Joint Venture), which entered into a build-transfer agreement with EDPRNA to construct the Rosewater Project. Upon completion of the Rosewater Project, Applicants state that they expect NIPSCO, EDPRNA, and certain to-be-determined tax equity partners to become joint owners of Joint Venture and take

³ *Id.* at 4-5.

⁴ *Id.* at 6.

⁵ *Id.* at 7.

⁶ *Id.* at 7-8.

ownership of Rosewater ProjectCo, with NIPSCO serving as the managing member of Joint Venture.⁷

8. According to Applicants, Joint Venture filed a petition with the Indiana Utility Regulatory Commission (Indiana Commission) on February 1, 2019, requesting, among other things, approval for NIPSCO to “purchase and acquire [Rosewater Project] indirectly through Joint Venture...”⁸ The Indiana Commission approved the petition on August 7, 2019.⁹

9. On September 9, 2019, Applicants submitted the instant request for authority for Rosewater ProjectCo to make sales to NIPSCO, its anticipated affiliate, pursuant to the BTA PPA, that resulted from the competitive solicitation that NIPSCO conducted.

10. Applicants represent that the competitive solicitation complies with the Commission’s standards for approving affiliate sales that result from participation in a competitive procurement process, as set forth in *Boston Edison Co. Re: Edgar Electric Energy Company*¹⁰ and further refined in *Allegheny Energy Supply Company, LLC*.¹¹ Accordingly, Applicants request that the Commission grant the requested authorization effective December 16, 2019.¹²

11. Applicants state that they have entered into the BTA PPA, which obligates NIPSCO to purchase 100 percent of Rosewater Project’s power output for fifteen years after Joint Venture purchases Rosewater ProjectCo from EDPRNA, which is expected to take place in late 2020.¹³ Applicants state that, once the terms and conditions set forth in

⁷ *Id.* at 10.

⁸ Indiana Utility Regulatory Commission Cause No. 45194, P 2 (2019).

⁹ *Id.* P 54.

¹⁰ *Bos. Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

¹¹ *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

¹² Application at 18.

¹³ *Id.* at 3.

the BTA PPA are met, the agreement becomes effective, and will result in an affiliate power sale from Rosewater ProjectCo. to NIPSCO.¹⁴

II. Notices and Responsive Pleadings

12. Notice of Applicants' filing was published in the Federal Register,¹⁵ with interventions and protests due on or before September 30, 2019. None was filed.

III. Discussion

A. Affiliate Abuse Analysis

13. At issue here is whether Applicants' filing satisfies the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted. Using the *Edgar* standard, the Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.¹⁶

14. When an entity presents evidence seeking to satisfy the *Edgar* criteria, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected based on some reasonable combination of price and non-price factors.

15. In *Allegheny*, the Commission provided guidance as to how it evaluates whether a competitive solicitation process satisfies the *Edgar* criteria. The underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission stated that the following four guidelines will help the Commission

¹⁴ Rosewater ProjectCo was granted market-based rate authority effective October 16, 2019. See *Rosewater Wind Farm LLC*, Docket No. ER19-2626-000 (Oct. 3, 2019) (delegated order).

¹⁵ 84 Fed. Reg. 48,923 (2019).

¹⁶ See *Edgar*, 55 FERC at 62,167-69. See also *Conn. Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *Aquila Energy Mktg. Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999).

determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. The *Edgar* criteria and *Allegheny* guidelines are designed to ensure that the transactions between affiliates do not unduly favor affiliates, and thereby protect captive customers from affiliate abuse.

16. As discussed below, we conclude that the competitive solicitation described by Applicants satisfies the Commission's concerns regarding affiliate abuse. Accordingly, we grant Rosewater ProjectCo's request for authorization to make affiliate sales to NIPSCO that result from the competitive solicitation processes described herein.

1. Transparency Guideline

17. Applicants claim that the competitive solicitation satisfies the transparency guideline because the RFP process was overseen by Charles River, an independent third party that monitored all contact between NIPSCO and interested bidders, the RFP was widely publicized, a bidders' conference was held, Charles River was the sole developer and manager of the website established to answer RFP questions, and Charles River and worked with NIPSCO to respond to questions received.¹⁷

18. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's transparency guideline.

2. Definition Guideline

19. Applicants claim that the competitive solicitation satisfies the definition guideline because it detailed all aspects of the product sought and clearly indicated that NIPSCO sought to acquire, construct, or contract for additional capacity that would qualify as an internal MISO resource with physical deliverability utilizing Network Resource Integration Service to MISO Local Resource Zone 6. Applicants state that the RFP did not exclude any products that could fill NIPSCO's objectives, and further state that the

¹⁷ Applicants state that Charles River scrubbed the questions to remove identifying information before working with NIPSCO on responses to the questions. See Application Exhibit D, Testimony of Robert Lee at 8.

RFP resulted in 90 proposals supported by 59 projects, which demonstrates that the RFP was designed to create robust competition.¹⁸

20. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's definition guideline.

3. Evaluation Guideline

21. Applicants claim that the competitive solicitation satisfies the evaluation guideline because the RFP informed all potential bidders that Charles River would evaluate the bids independently of NIPSCO utilizing a scoring system that considered price and non-price factors including the: (1) capacity asset net present value calculation; (2) capacity asset reliability and deliverability; (3) development risk; and (4) additional proposal specific risk factors.

22. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's evaluation guideline.

4. Oversight Guideline

23. Applicants claim that the competitive solicitation satisfies the oversight guideline because the entire process was overseen by Charles River, an independent administrator of the RFP that had no financial interest in any of the bidders or in the outcome of the RFP process.

24. Based on Applicants' representations, we find that the competitive solicitation is consistent with the Commission's oversight guideline.

B. Other Issues

25. This order satisfies the requirement that Rosewater ProjectCo must first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates for the affiliate sales discussed herein. We note that Rosewater ProjectCo must receive prior approval from the Commission under section 205 of the FPA for any other sales to affiliates with a franchised electric service territory and captive customers.¹⁹

26. Finally, we direct Rosewater ProjectCo to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions section of its

¹⁸ Application at 19.

¹⁹ See 18 C.F.R. § 35.39(b) (2019).

market-based rate tariff to list the specific, limited authorization granted herein and to include a citation to this order.

The Commission orders:

(A) Applicants' request for authorization for Rosewater ProjectCo to make wholesale power sales at market-based rates to NIPSCO pursuant to the power purchase agreement that resulted from the 2019 competitive solicitation is granted, effective December 16, 2019, as discussed in the body of this order.

(B) Rosewater ProjectCo is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.