

ERRATA

To: Kimberley A. Campbell, Chief Clerk
From: Kim Mitchell, Court Reporter
CC:
Date: December 9, 2020
Re: Orion Renewable Resources LLC
Docket Number SP-13695, Sub 1

Transcript edits have been made to reflect the following corrections. The corrected pages are attached.

| Page/Line | Text | Should Be |
|-----------|--|---|
| 6/17 | on | no |
| 22/16 | citizen | assistant |
| 28/9 | the pre-earned | another |
| 28/22 | minus | times |
| 49/20 | bills | the bids |
| 56/6 | man | Ben |
| 108/14 | calculated for the bidder what say about looking at the chart the summer avoided | calculated for the bidder by looking at the chart, the summer avoided |

P R O C E E D I N G S

COMMISSIONER CLODFELTER: Good afternoon everyone. We'll be in order at this point and we'll open the record in this matter. I am Commissioner Dan Clodfelter and I have been assigned by Chair Charlotte Mitchell to preside over this panel hearing. Joining me this afternoon are the other panelists, joining by remote connection are Commissioners Lyons Gray and Kim Duffley.

As is required by the State Government Ethics Act I remind the members of the panel of our duty to avoid conflicts of interest and inquire at this time from Commissioners Gray and Duffley whether they have identified any conflicts of interest.

(No response)

Okay. Madam Court Reporter, let the record reflect that no conflicts have been identified and we will proceed now to call for hearing Docket Number SP-13695, Sub 1, which is the Verified Petition for Relief filed by Orion Renewable Resources LLC, which I will refer to as Orion.

On March 9 of this year, Orion filed a Verified Petition for Relief including attachments, designated Attachments A through E. In the Petition

1 just for each of our panelists to give a very brief
2 background for the benefit of the Commissioners so
3 they will understand the qualifications of these
4 individuals.

5 DIRECT EXAMINATION BY MR. CRISP:

6 Q Beginning by Mr. Judd.

7 A (Mr. Judd) Good afternoon, Commissioners. I'm
8 pleased to be with you again even though it's
9 remote. I am Harry Judd. I'm the Independent
10 Administrator of the program. I started in the
11 electric utility field as a state consumer
12 advocate back in the -- I suppose I should be
13 embarrassed to say back in the late '70s. Since
14 then I served as an energy counsel in the White
15 House. I served in the solicitor's office at the
16 Department of Energy. And I was a senior
17 assistant attorney general for a state where I
18 represented the Public Utility Commission among
19 other agencies.

20 In 2000, I cofounded Accion Group.
21 Since then we have served as independent
22 evaluator or in this case Independent
23 Administrator of over 100 solicitations for
24 commissions across the country. We have done so

1 A (Mr. Judd) Thank you, Commissioner. As Attorney
2 Crisp said, we understood going beyond the three
3 questions that were laid out for us to address
4 that the issue before the Commission is how we
5 could -- avoided costs be defined for purposes of
6 CPRE. And that is should it be the net benefit
7 to customers based on a detailed hourly analysis
8 over the 20-year PPA contract for the CPA --
9 excuse me -- CPRE context or if another
10 definition should be used. And as we said in our
11 initial pleadings, we will welcome the
12 Commission's guidance on how to proceed.

13 In the CPRE program we rank bids
14 using the pricing and the hourly production
15 profiles provided by the bidders, and then we
16 compare that with the hourly avoided cost data
17 that we received from Duke for every hour of
18 every day for a 20-year period. That was
19 different than the guidance given in the RFP and
20 on a bid form, but I think it's useful for the
21 Commissioners to understand that we did an hourly
22 analysis, 8760 times 20 years. In doing that our
23 goal was to meet the requirements that all the
24 bids that we selected and recommended to Duke for

1 a calculation of upgrade costs for the Orion
2 proposal?

3 A Like I said earlier, it's not my area of
4 expertise, that Mr. Layfield could answer that.
5 But I do know it was well past the conclusion of
6 Tranche 1 and it may have been as recently as
7 last month or two. I'm just not sure.

8 Q Okay. So you don't recall specifically whether
9 Accion received information about the Tranche 1
10 Step 2 analysis for the Orion proposal?

11 A I do know that we did not receive the Tranche 1
12 Step 2 cost estimate for Orion during Tranche 1.

13 Q Understood. So just to be -- I apologize if I'm
14 going over this ad nauseam, but just to be clear,
15 I guess this question will be for Mr. Judd, it's
16 your understanding that Duke would not have
17 included the Orion proposal in the Step 2
18 analysis because you didn't ask them to?

19 A (Mr. Judd) They only included in the Step 2
20 analysis the bids, proposals that we passed over
21 to them and that's in keeping with the process.
22 You know, again, a number of proposals withdrew,
23 didn't post proposal security, so we were -- we
24 had to rank them. We provided them to the T&D

1 A Yes.

2 Q And on April 9th, 2019, Orion specifically asked
3 the IA to confirm the accuracy of the T&D
4 upgraded cost assigned to the project, didn't
5 they?

6 A I'd have to check the record. Sorry, Ben, I
7 don't have the printout sheet in front of me.

8 Q Thank you. Understood. I'd like to --

9 MR. SNOWDEN: Commissioner Clodfelter, I
10 would like to have marked for identification
11 Petitioner's first cross examination exhibit. This
12 would be the document dated July 15th, 2019, DEC
13 Tranche 1 Message Board, and it consists of 15 pages
14 with alternating white and gray rectangles. And at
15 the top it says "Your conversation with DE
16 Administrator."

17 COMMISSIONER CLODFELTER: The document will
18 be marked as Orion Accion Cross Examination Exhibit
19 Number 1.

20 MR. SNOWDEN: Thank you.

21 (WHEREUPON, Orion Accion Cross
22 Examination Exhibit 1 is marked
23 for identification.)

24 MR. CRISP: I'm sorry. If I could just to

1 Q Okay. Thank you. And so if a bidder were
2 seeking guidance as to how they would be
3 evaluated for compliance with the avoided cost
4 threshold, this would be the place to look,
5 wouldn't it?

6 A I don't think that's accurate. I think the next
7 section where we describe the evaluation
8 methodology would be that. What this says is and
9 what it was intended to be was how the different
10 pricing periods were identified and the periods
11 that are covered by each of those pricing
12 periods. Again, when a -- there was a single
13 decrement entry on the bid form, and then it
14 calculated for the bidder by looking at the
15 chart, the summer avoided -- what the rate would
16 be, the decrement against the summer rate for
17 DEC. So I think combined the entire RFP provided
18 what we thought was the necessary guidance.

19 Also, if you recall, we went
20 through stakeholder process. We also asked -- we
21 put the RFP up for comment and asked for guidance
22 from bidders to help us make it possible to get
23 them to give us their most robust bids and this
24 is the guidance that we provided and we thought