

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. SP-9590, Sub 0

DOCKET NO. E-2, SUB 1159

DOCKET NO. E-7, SUB 1156

Application for CPCN and Registration)	ACCION GROUP, LLC’s, THE CPRE
Statement for 50 Mw Facility Located at)	INDEPENDENT ADMINISTRATOR,
20217 Old Aquadale Road, Albermarle,)	RESPONSE TO THE PETITION FOR
NC 28001 Stanly County)	RECONSIDERATION BY STANLY
)	SOLAR LLC

In the Matter of Joint Petition of Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, for Approval of Competitive Procurement of Renewable Energy Program

NOW COMES, Accion Group, LLC, the Independent Administrator for the Competitive Procurement of Renewable Energy Program (“CPRE” or “Program”) (hereinafter “IA” or “Accion”), and requests leave to respond to the Petition for Reconsideration (“Petition”) filed by Stanly Solar LLC (“Stanly”).

I. Introduction and Summary Position

The IA believes the North Carolina Utilities Commission (“Commission”) correctly enforced the terms of the Requests for Proposals (“RFP”), including the use of Proposal Security. Stanly’s Petition requests the Commission to selectively revise a provision of the RFP, while ignoring Stanly’s actions during Tranche 1. To further the goal of having a viable competitive procurement process in North Carolina, the IA urges the Commission to reject Stanly’s Petition.

The elements of Stanly’s Petition that the IA believes should be addressed are:

1. Stanly would have the Commission ignore that the Market Participant (“MP”) made a business decision, based on a failure to procure solar panels, in refusing to sign a Power Purchase Agreement (“PPA”), and only months later alleged inequitable treatment;

2. Stanly claims that it was treated inequitably because another developer was not required to provide Proposal Security. This claim ignores that the IA employed the terms of the RFP that were developed in cooperation with Stakeholders, including Stanly;
3. Stanly did not object to the terms for Proposal Security either during the three Stakeholder conferences conducted at the direction of the Commission, or during the comment period where MPs were invited to assist in the drafting of the RFP and PPA;
4. Stanly failed to acknowledge that it was provided repeated extensions of the deadline for providing Proposal Security, including extensions due to Stanly's sequential submission of non-conforming security documents. During the two months of these extensions, Stanly could have secured a supply chain that was consistent with the pricing included in its Proposal;
5. Stanly's claim that the IA violated the law and Commission rules is erroneous; and,
6. Stanly asserts that "other third-party bidders" were harmed but offers no evidence to support this assertion or the assertion that any other MP believed the Proposal Security should be voided.

II. Discussion

CPRE was the first competitive procurement process with statutory directives and rules implemented by the Commission. While modeled in many aspects after the program the Georgia Public Service Commission developed and implemented with the IA's assistance, there were, and remain, parts that evolve as unique considerations are identified. The IA understood from the outset that the collaborative process established by the Commission, which included Stakeholders in the development of the RFP and the PPA, was intended to avoid conflicts by reaching agreement on their respective terms and conditions. In Tranche 1 there were three Stakeholder sessions in

addition to a formal “comment period.” Stakeholders were invited to offer specific edits to the draft RFP and PPA, so that all aspects of the documents would have a thorough review by participants before being released as final. A number of MPs, including Stanly, and the Public Staff, participated in the Stakeholder sessions. The RFP identified that Proposals from Duke Energy Carolinas, LLC (“Duke”) would not be required to provide Proposal Security, but Proposal Security was required from all other MPs, including Duke’s unregulated affiliate. It should again be noted that Stanly participated in each of the Stakeholder sessions and the comment period and did not express concern that the provision was, in the view of the MP, inequitable. The process designed by the Commission, with Stakeholders’ participation, was designed to give full consideration to concerns of developers. Stanly chose to participate in the process, but failed to share concerns. Having waived the opportunity to assist in crafting the RFP, and thereby ignoring the Commission’s process, Stanly should not be rewarded by receiving unique treatment.

There were aspects of the CPRE Tranche 1 that were modified for Tranche 2, based on lessons learned in Tranche 1. These included having nine Avoided Cost Threshold pricing periods instead of three to give MPs greater PPA pricing guidance. The Proposal Security requirement was modified to include a parallel form of Proposal Security from MPs proposing asset acquisitions to Duke. The fact that a competitive procurement process evolves does not indicate it was flawed when first introduced, which the IA has referred to as the “beta” iteration. Rather, the willingness to adapt and modify to make participation more attractive to MPs reflects the Commission’s and Duke’s commitment to attract a robust response from the market and to learn from each experience.

In alleging that the IA violated N.C. Gen. Stat. § 62-110.8 by enforcing the RFP terms, Stanly would have a requirement of *identical* treatment be substituted for the statutory requirement

of *equitable* treatment. The statute does not provide the interpretation Stanly advances. As noted, Stanly participated in the process established by the Commission for the drafting of the RFP, namely Stakeholder sessions and the comment period addressing the draft RFP. Stanly did not claim that the provision for Proposal Security would violate the letter or the spirit of the statute.

Stanly's reliance on a claim of inequitable treatment would have the Commission ignore the real reason the MP rejected the PPA offered by Duke. As documented by the IA in earlier pleadings, ¹ Stanly declined to sign the PPA offered by Duke at the end of Tranche 1 because the MP failed to secure a firm commitment for solar panels before bidding. It was only well after being selected as a finalist on April 10, 2019 that Stanly claimed its assumption of solar panel cost was wrong. This fact was shared by Stanly with the IA in a message on May 6, 2019:

However, as you may be aware, there has been a significant increase (on the order of 15-20%) in the price of solar PV modules since January 2019, when Stanly posted its bid bond. This result, in Stanly's case, in a construction budget increase of over \$4.5 million. Due to these circumstances beyond its control, Stanly Solar will likely not be able to post the PPA security at the completion of Stage 2, as the proposed PPA price is no longer sufficient to cover the increased project costs. ²

Without proof, Stanly next pivoted to accusing the IA of withholding information (information the IA did not have) about when necessary system upgrades could be completed. The Commission rightly dismissed Stanly's claims as inaccurate.

After Stanly determined it had failed to procure solar panels at the cost assumed in its Proposal, Stanly raised a claim of inequity, but far different from what is now presented in the Petition. On May 6, 2019, Stanly asserted it was inequitable that it posted security in February

¹ See: Accion Response to Motion for Return of CPRE Proposal Security dated February 20, 2020.

² See: Accion Response to Motion for Return of CPRE Proposal Security dated February 20, 2020 at 3. See also Attachment A.

2019, while other MPs were not required to post until months later.³ To sustain that argument, Stanly would have the Commission ignore the CPRE process established by the Commission's rules as clearly set forth in the RFP. Simply stated, MPs were invited to provide Proposal Security when their Proposals were moved to the Competitive Tier. Stanly bid a very aggressive decrement to the Avoided Cost and was one of the best ranked Proposals. For that reason, Stanly was in the first group of MPs with Proposals in the Competitive Tier and invited to post Proposal Security in December 2018. In keeping with the CPRE process, other more expensive Proposals were invited to post Proposal Security, only after the best ranked Proposals were eliminated. Had Stanly submitted a Proposal with a price that reflected a realistic understanding of the cost of solar panels, and thus a more expensive pricing proposal, it too would have been invited to post Proposal Security later in the process.

Throughout the CPRE evaluation process Stanly sought leeway that was not requested by other MPs. While Stanly was required to provide Proposal Security in December 2018, it was unable to meet the requirement until February 2019. Stanly received more leeway than any other Market Participant regarding meeting the Proposal Security requirement. The RFP required the Proposal Security be provided within seven days of being notified a Proposal was advanced to the Competitive Tier. See: CPRE Tranche 1 RFP at 8. To assist Stanly, and in the interest of securing the least cost supply for customers, the IA and Duke tolerated repeated failures by Stanly to provide conforming Proposal Security. Ultimately, it took two months for Stanly to finally meet the

³ See: Accion Response to Motion for Return of CPRE Proposal Security dated February 20, 2020 at 3.

requirement.⁴ The IA notes that other successful MPs met the seven-day requirement without difficulty.

All bidders were permitted to withdraw from consideration at the point when Proposal Security was due. Indeed, twenty Proposals were withdrawn rather than providing the necessary security. Stanly chose instead to proceed, even after having an additional two months to determine whether it had a firm commitment on the cost of solar panels.

Stanly asserts that “other third-party bidders” were harmed, but offers no evidence to support the claim. Indeed, no other Tranche 1 third-party MP refused to sign a PPA that was offered by Duke.

In the final analysis, Stanly seeks to eliminate the Proposal Security requirement. The full impact of altering the Tranche 1 RFP is unknown. How many of the twenty Proposals that withdrew rather than posting Proposal Security would have been successful? Should the IA now complete a Tranche 1, Step 2 analysis of all Proposals, including those that declined to provide Proposal Security?⁵ If the Commission were to retro-actively eliminate the Proposal Security requirement, how many Proposals in Tranche 2 would have moved to Step 2? Applying the same approach to Tranche 2, without the Proposal Security, would MPs in Tranche 2 have withdrawn even after being offered PPAs? While Stanly is focused on trying to negate its Proposal Security Bond, it would be inappropriate to view this in a vacuum. The potential ramifications for other

⁴ Stanly was first notified of the requirement to post Proposal Security on December 6, 2018. The IA and Duke permitted a delay in meeting the required Non-conforming bonds were submitted on January 4, 2019, and on January 22, 2019. The only conforming bond was submitted on February 5, 2019.

⁵ During the two months Stanly delayed in providing Proposal Security, 4 other Proposals met the requirement. Of those, 2 signed PPAs.

Proposals, and the viability of competitive solicitations in North Carolina, must be also be considered.

III. Conclusion

Lost in Stanly's arguments is a simple fact: Stanly's Proposal was one of the best ranked of all those received in Tranche 1. The Proposal Security requirement is intended to confirm the sincerity of each bidder, and to secure the least cost options for customers. Stanly's failure to execute the PPA deprived Duke's customers of the benefit of lower cost service. Further, Stanly was afforded two months to submit Proposal Security, when the RFP required it be provided in seven business days. Notwithstanding the extraordinary latitude, and the extra time to decide whether it could meet the pricing in its Proposal, Stanley failed to secure a firm commitment for solar panels, which subsequently lead to the MP failing to execute the PPA provided by Duke.

The heart of Stanly's argument is that the Proposal Security should be illusory, and that it should have been permitted to participate in the entire CPRE evaluation process, learn how well it's Proposal ranked, and then be permitted to withdraw without a negative financial impact.⁶ Having gained market intelligence from the Tranche 1 evaluation process, Stanly submitted a more expensive Proposal in Tranche 2 and was awarded a PPA. Stanly would have the Commission compound the MP's gain by denying customers the partial offset of the \$1 million Proposal Security payment: a requirement clearly specified in the RFP to prevent MPs from withdrawing at the last moment in exactly the manner that Stanly did. Proposal Security is a critical component of the competitive procurement process in that it discourages the behavior such as was exhibited

⁶ Stanly received a PPA in Tranche 2 with pricing that differed from its Tranche 1 Proposal. One could surmise that Stanly used the Tranche 1 evaluation process to refine its understanding of how to provide a competitive Proposal it could support.

by Stanley in the instant case, which if permitted would disrupt the orderly procurement of least cost resources to serve customers.

Respectfully submitted,

Accion Group, LLC
Through Its Attorneys
THE CRISP LAW FIRM, PLLC



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CERTIFICATE OF SERVICE

I certify that a copy of Accion Group, LLC's, The CPRE Independent Administrator, Response to The Petition for Reconsideration by Stanly Solar LLC, has been served by electronic mail, hand delivery, or by depositing a copy in the United States mail, postage prepaid, properly addressed to parties of record.

This the 5th day of January, 2021.



Jack P. Crisp, Jr., Esquire