BEFORE THE

LOUISIANA PUBLIC SERVICE COMMISSION

COMMENTS OF THE
COMMISSION STAFF ON
THE SUMMER 2008 REQUEST FOR PROPOSALS
CONDUCTED BY ENTERGY SERVICES, INC.

JULY 11, 2008

I. INTRODUCTION

On June 2, 2008, Entergy Services, Inc. (ESI) issued a draft Request for Proposals (RFP) for limited-term and long-term power supply resources. This submission was made to facilitate a stakeholder process in compliance with this Commissionôs Market-Based Mechanisms (MBM) General Order. That General Order mandates competitive procurement for new capacity resources for jurisdictional electric utilities, subject to certain limited exceptions. This RFP seeks approximately 750 MW of supply from one-year contracts beginning in the Spring 2009, and up to approximately 1,500 MW of intermediate (three- or five-year contracts) or long-term supply resources beginning Spring 2010. In addition, after meeting these ñincrementalò supply needs, ESI will consider additional acquisitions under its ñdisplacementò analysis, which has yet to be fully defined.

In conducting this RFP, ESI has retained the services of Potomac Economics, Ltd. (Potomac), an economic consulting firm, to serve as an Independent Monitor (IM) for the RFP. Potomac will oversee the RFP process, procedures and ESIôs conduct of the RFP to ensure the RFP is conducted in a fair, efficient and unbiased manner. It will also be closely involved in reviewing the bid evaluations and rankings on an ongoing basis. Potomac served as the ñEvaluation IMò in the Entergy 2006 RFP. In the present RFP, Potomacôs responsibilities are extensive, and it is expected to coordinate closely with the LPSC Staff. It is important to note that ESI is <u>not</u> including a self-build option in this RFP but does permit its competitive affiliates to submit bids, thereby triggering the IM requirement.

Prior to the filing of the draft RFP on June 2, ESI had coordinated on the RFP design with both the IM and Staff. Entergy received Commission authorization to accelerate the stakeholder process from the 75 days, as specified in the MBM order, to 59 days. No stakeholder objected to this change. A joint LPSC Technical Conference/ESI Bidders Conference was conducted in Houston, Texas on June 19 from 10 A.M. until mid afternoon. Numerous potential bidders attended and others participated by telephone call-in. At this meeting, presentations were made by the LPSC Staff, the ESI RFP team, and the IM. In addition, a representative of the Independent Coordinator of Transmission (ICT) attended for purposes of answering questions generally on transmission and the ICTôs support role in the bid evaluations. A follow-up teleconference was held on the following Monday, June 23, for the benefit of those unable to attend the June 19 session or those having follow-up questions. The ESI and IM presentation slides have been made publicly available on the ESI RFP web site.

In addition to the presentations, the Technical Conference provided an opportunity for posing questions and submitting comments on RFP design issues. ESIôs practice is to post all questions and answers on its RFP web site so that all potential bidders have access to the same information. To date, Staff has submitted 31 questions and stakeholders an additional 45 questions. Certain responses were separately provided only to Staff on a confidential basis.

Stakeholders were also invited to submit written or informal comments to Staff, but to date, no stakeholder has chosen to do so.[1] This may be because the RFP protocols are very similar to those used in the 2006 RFP.

Staff typically submits written comments concerning RFPs that address both stakeholder comments and Staffös own evaluation of the draft. In this case, our comments necessarily are limited to discussions of Staffös issues, most of which were addressed at the June 19 Technical Conference. These comments in most cases seek clarifications to the draft that Staff believes would be helpful. We request that ESI respond to these comments in writing so that the resolution of Staff comments and suggestions can be documented. In addition, the Staff comments include several follow-up questions.

[1] Staff requested that stakeholders submit their comments on the draft RFP prior to the July 4 weekend. No party has done so, nor has any party submitted comments to ESI.

II. DISCUSSION OF STAFF ISSUES

Staff supports ESIôs initiative to obtain cost-effective limited-term and long-term resources from the wholesale market through an RFP, and we look forward to working closely on this effort with both the ESI RFP Team and the IM. The objectives of the RFP design should be to encourage competitive participation, conduct the RFP in an efficient and unbiased manner and to protect and benefit System ratepayers. In addition, ESI should seek to maximize the savings to its retail customers through the effective use of the wholesale market. In that regard, we believe the following clarifications or modifications to the draft RFP would be helpful.

1. Displacement Analysis

Section 1.3.2 of the main RFP document (page 6) indicated the possibility that ESI will consider acquiring additional resources for ñdisplacementò purposes, after completion of the ñincrementalò acquisitions. However, there is no further explanation of the displacement analysis in the draft RFP. In discussions with Staff, ESI reaffirmed its commitment to include a displacement phase to this RFP although the parameters of this process have not yet been defined. In particular, ESI seeks additional feedback on the evaluation methodology previously used in its 2006 RFP.

Staff requests that additional language be included in the final RFP explaining the displacement analysis plans. ESI should indicate that at the appropriate time a schedule and scope for the displacement analysis will be announced, including a description of the evaluation methodology to be used. Stakeholders at that time should be given an opportunity to ask questions and/or submit comments on the evaluation methodology.

Staff has one additional comment. Both the draft RFP and the response to question #33 state that displacement contracts must be minimally for terms of three years, since existing capacity cannot feasibly be shut down for shorter periods and still provide savings. For capacity displacement acquisition, Staff agrees with this assumption. However, it is possible that a one-year contract can provide net savings solely on an energy basis (i.e., no capacity shutdown savings). ESI should consider the possibility of acquiring one-year contracts beyond the target 750 MW, if doing so will provide further net savings. This need not be done under a separate ñdisplacementò schedule. Moreover, acquiring additional one-year contracts (that provide net energy savings) will not pose a conflict with the longer-term purchases since those supplies are not scheduled for delivery prior to June 2010.

2. **<u>Long-Term Fixed Price Resources</u>**

In December 2007, the Entergy Companies were ordered by the LPSC to conduct two RFPs for fixed-price power. The first RFP, for five-year power, is ongoing, with one bid selected for further evaluation and potentially contract award. The second RFP was intended to be long-term, i.e., at least ten years. The Entergy Companies sought Commission approval to cancel the long-term RFP, in part on the grounds that it would be duplicative of the Summer 2008 RFP. The Commission granted this request, based on the understanding that the fixed-price long-term product could be bid into the summer 2008 RFP.

Staff believes that ESI has complied with the Commission's directive in Section 1.5.1 (pages 12-13) of the draft RFP, which solicits a baseload product. Nonetheless, it would be helpful if language were added to this section making it clear that the solicitation of the baseload product at a fixed dollar per MWh price fully addresses the solicitation of the long-term fixed price product. While technically CCGT owners could have bid this product in the baseload category in the 2006 RFP, it appears that this was not understood by most bidders at the time. Moreover, this type of product may require collateral arrangements different from that described in Appendix F given the greater potential risk of default, as compared to a gas-indexed contract.

3. **Capacity Targets**

The draft RFP states a potential capacity target (at this time) of 1,500 MW for a combination of limited-term and long-term resources. The RFP does not provide any capacity targets by product type, including the very broad categories of limited-term versus long-term. Moreover, the RFP makes it clear that limited-term bids and long-term bids will be ranked in separate categories, not across these two categories. This structure raises a question as to how ESI will select amounts in these two categories to reach the total of 1,500 MW. That is, how much of the limited- versus long-term capacity should be awarded contracts? What is the basis for that decision?

ESI addresses this question, at least in part, in its response to Staff question #4. In that response ESI explains that ESI's clear preference is for long-term resources and that the limited-term resources will be considered only to the extent ESI cannot meet its needs (presumably cost effectively) just with long-term resources. This explicit preference enables ESI to avoid making the long-term versus limited-term contract comparisons. The Staff agrees with this approach to the extent that the incremental need can be met with cost-effective, long-term bids. The RFP should further note that the limited-term bids not selected for award to meet the incremental needs may still be included in the subsequent displacement phase.

4. **<u>Environmental Change of Law</u>**

The draft RFP, for the first time, proposes a provision that would permit bidders to propose pricing modifications to recover some or all costs due to changes in environmental law or regulation that do not exist today but are implemented in the future. Staff believes that providing this contract option is commercially reasonable, as long as the provision is well defined.

Staff has raised the question as to whether the bidderôs treatment of this option should be considered as part of the bid ranking and evaluations. ESIôs response to Staff question #20 clarifies that the bidderôs position on this contract provision, in fact, will be taken into account in ranking bids. Staff agrees with ESIôs position but requests that the evaluation methodology description in the RFP so state.

Unfortunately, ESIôs response to Staff question #20 does not fully clarify the issue. Undoubtedly, the most important potential Environmental Change of Law for the resources in this RFP is probably CO_2 regulation. The problem here is that other ESI responses ï notably, the response to Staff question #6 ï state that the evaluation methodology explicitly will include CO_2 allowance costs (using ESIôs point of view) for ñall existing [Entergy] generation and to the proposals evaluated in the RFP.ö This implies that ESI assumes it <u>must</u> pay CO_2 costs (as incurred) in all cases, regardless as to whether the bidder invokes the Environmental Change of Law provision. If this is the case, then ESI should clarify that such costs will in all cases be part of the contract rates and need not be cited by the bidder under the Environmental Change of Law. If Staffös understanding is incorrect, then ESI needs to clarify the treatment of CO_2 costs.

Also, to the extent that the reference is to other than CO_2 costs (which seem to be an automatic passthrough), it should be made clear that the only Environmental Change in Law costs recoverable by the Seller (invoking this provision) should be new environmental costs that are fully documented, accurate and incremental.

5. **Demand-side Resources and Renewables**

The product definitions in the draft RFP do not accommodate demand-side resources or renewables (at least renewable power supplies that are intermittent). Staff agrees that ESI should not explicitly solicit demand-side resources as part of this RFP, and there is presently no specific renewable portfolio or target policy (other than certain limited pilot programs) approved by the LPSC. At page 21 of the draft RFP, ESI invites potential third-party supplies of these resources to submit information on their product offerings for future consideration.

Staff generally agrees with ESIös approach, but we suggest going one step further. The RFP should invite such suppliers to provide indicative bids (though not using the electronic bid submission process). ESI, of course, would be under no obligation to transact or acquire any specific amount of these resources. However, in the event that ESI finds an indicative bid to be compelling, this mechanism provides a potential opportunity to negotiate the acquisition of such a resource. Moreover, the RFP language should provide potential suppliers of these resources with assurances of confidential treatment, comparable to ESIôs treatment of other bidders.

6. **IM Scope of Work**

The RFP package provides a highly detailed scope of work for the IM, specifying the tasks that the IM will perform and its responsibilities. The Staff expects to work closely with the IM throughout this process. The IM can provide valuable assistance to Staff in conducting its oversight responsibilities given the IMôs ñhands on,ò day-to-day involvement with RFP activities. The IM therefore is in a unique position to keep Staff informed of important developments. Moreover, both the IM and Staff can benefit from discussions of issues and potential disputes that may arise.

Staffôs only concern with the IM scope of work document is ensuring that Staff has full, unfettered access to IM members and, similarly, that the IM has full access to regulatory Staff. In that regard, we would like to clarify the scope of work language to ensure that the IM has full discretion to consult with regulatory Staffôs whenever the IM deems it to be advantageous. This would include the IM having the right to request Staff review of the IM draft evaluation report. Please note that Staff is not requesting a reciprocal right of review, even though the IM would serve as a Staff witness in any LPSC regulatory proceeding where the IM report is deemed to be needed (such as a certification case).

In addition to the above, the IM scope of work should be clarified to state that the IM has the explicit responsibility to report any unresolved conflicts to Staff on a timely basis. Also, any IM requests to ESI for additional analysis should be documented.

7. **Evaluation Modeling Assumptions**

The critical RFP modeling assumptions are not presently available, but ESI commits to making them available to the IM prior to the bid submission date. Staff believes this arrangement is acceptable, and we further request that this material be provided contemporaneously to Staff for its review. In response to Staff question #5, ESI has committed to doing so, and we deem this response to be satisfactory. ESI further states that material is considered confidential and will not be available to bidders.

8. **Model Contracts**

In contrast to past RFPs, as well as RFPs from other utilities, the draft RFP filing package does not include model contracts. However, the filing does include detailed term sheets for each product type that covers many of the key contract provisions. Further, the response to Staff question #17 clarifies that the contracts will be based upon the EEI Master Agreement combined with the RFP product term sheets (and other RFP provisions such as collateral). This is undoubtedly familiar to bidders since ESI has used this contract vehicle in the past for numerous PPAs.

While Staff appreciates ESI's clarification, we suggest modifying the RFP language accordingly. Moreover, ESI should further indicate that any bidder exceptions to the standard contract should be noted in the Special Considerations section of the bid form.

9. **Credit and Collateral**

Staff requests that ESI consider reducing counterparty requirements for collateral over the life of a contract. This will provide savings to the supplier and is justified because ratepayer default exposure is much lower closer to the back of the contract. We note that ESI's response to Staff question #13 agreed to consider this arrangement.

On another issue, ESI states that competitive affiliate bidders may not propose a parental guarantee from Entergy Corporation as the means of meeting its credit or collateral requirement. Staff fully agrees with this commitment. (Response to Staff question #11)

10. **Debt Imputation**

Credit rating agency imputation of debt for long-term contracts is potentially an important issue but one that can generate some controversy. Staff has requested that bid evaluations be developed with and without the debt imputation cost assignment, and ESI has agreed to do so. This will allow Staff and the IM the opportunity to understand the role (if any) that debt imputation plays in bid ranking, cost effectiveness and bid selection.

Staff also requested (as did stakeholders) a sample calculation of the debt imputation cost. Such an example was provided in response to Staff question #9. However, this example employed input parameters that are hypothetical, not necessarily the figures that actually would be used (e.g., debt/equity cost rates, risk factor percentage). Staff therefore requests that the final RFP include on updated example employing the actual input parameters that ESI intends to use in its evaluation. In the alternative, the updated sample calculation should be posted on the RFP website.

11. **Intercompany Allocations**

Once capacity is acquired through an RFP, it must be allocated or assigned in some manner among the six Entergy Operating Companies. This may be of limited (or no) interest to bidders (or the IM), and is not an RFP issue per se. However, it is of great interest to Staff. In that regard, Staff requests that ESI keep Staff fully apprised of the allocation options that it is considering and evaluating, and this should be done prior to ESI submitting its recommendations to the Operating Committee. This will provide Staff with an opportunity to provide feedback to ESI prior to the submission of any recommendations for decisions. It appears that ESI has agreed to do so in its response to Staff question #19. This does not require any modification to the draft RFP.

III. <u>MISCELLANEOUS QUESTIONS</u>

In addition to Staff comments discussed in the previous section, we have several follow-up questions based on responses so far posted on the RFP website.

(1) The response to Staff question #23 shows the System’s reliability requirement (in MWs) declining significantly from 2007 to 2008 on a weather-normalized basis. Please explain this decline.

(2) The response to Staff question #31 indicates that ESI is uncertain regarding the inclusion of EAI in the ProSym modeling after 2013. Please update Staff regarding ESI’s decision. Also, what would be the rationale for including EAI after 2013?

(3) With regard to plant asset acquisitions, the response to stakeholder question #53 indicates that EET will make assumptions concerning property taxes. Why not obtain this information directly from the bidder, since the bidder undoubtedly knows the property tax obligation of his project?

(4) The response to stakeholder #47 states that the evaluation of transmission supplemental upgrades includes the revenue requirements for those upgrades <u>only</u> for the term of the contract. Why? For example, if a ten-year contract requires supplemental network upgrades, won’t ratepayers be charged for that during years (11) through (30)? Shouldn’t that be recognized as a ratepayer cost?

(5) In response to stakeholder question #32, what is the rationale for not permitting flexibility for O&M or start charges for limited-term contracts?

IV. CONCLUSION

Staff appreciates the opportunity to comment on the draft RFP, and we look forward to working with the IM and ESI in reaching resolution on our issues in the final RFP or at the appropriate time. Throughout this process Staff welcomes the opportunity to discuss any stakeholder concerns.

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