

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



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Public Advocacy Division
Housing and Environmental Justice Section

E-Filed

January 26, 2024

Ms. Brinda Westbrook-Sedgwick, Secretary
Public Service Commission
of the District of Columbia
1325 G Street, N.W., Suite # 800
Washington, DC 20005

**Re: Formal Case No. 1017 – In the Matter of the Development and Designation of
Standard Offer Service in the District of Columbia**

Dear Ms. Westbrook-Sedgwick:

The Department of Energy and Environment, on behalf of the District of Columbia Government, respectfully submits the District's enclosed Comments in Response to the Commission's January 17, 2024 Public Notice. If you have any questions regarding this filing, please do not hesitate to contact the undersigned.

Sincerely,

BRIAN L. SCHWALB
Attorney General

By: */s/ Brian Caldwell*
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**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA**

IN THE MATTER OF:)
)
THE DEVELOPMENT AND DESIGNATION OF) **Formal Case No. 1017**
STANDARD OFFER SERVICE IN THE DISTRICT)
OF COLUMBIA.)

**RESPONSE TO JANUARY 17, 2024 PUBLIC NOTICE
BY THE DEPARTMENT OF ENERGY AND ENVIRONMENT
ON BEHALF OF THE DISTRICT OF COLUMBIA GOVERNMENT**

INTRODUCTION

On behalf of the District of Columbia Government (DCG), the Department of Energy and Environment (DOEE, and collectively with DCG, the District) submits these comments in response to the Public Service Commission of the District of Columbia’s (Commission) January 17, 2024 Public Notice seeking comments on Potomac Electric Power Company’s (Pepco) proposed Request for Proposals (RFP) and Power Purchase Agreement (PPA) that Pepco submitted in response to Commission Order No. 21918 (Order). These comments incorporate by reference the District’s previous comments in this docket regarding the RFP and PPA process to serve the District of Columbia’s Standard Offer Service (SOS) load with Tier 1 energy suppliers.¹ The District provides the following additional comments.

COMMENTS

The District has concerns with several provisions proposed by Pepco in the RFP. First, the RFP includes overly restrictive language that may cause prospective bidders to be unnecessarily excluded from consideration because of system size and other related factors, such as the following:

Pepco is seeking energy and environmental attributes on commercially reasonable terms from one or more onshore wind or solar Facilities for an annual target amount of 163,000 MWh. The amount that Pepco purchases per year will be capped at this target amount.

¹ See e.g., Formal Case No. 1017: DCG’s Comments Regarding New Clean PPA Terms (filed June 5, 2023); DCG Comments on SOS WG RFP (filed Nov. 12, 2019); DCG’s Comments on Clean Energy PPA (filed Nov. 9, 2018).

The targeted MWh amount equates roughly to a 50 MW onshore wind Facility or a 70 MW solar Facility. Additionally, Facilities proposed in response to this RFP must be at least 5 MW in size.²

In its prior discussion of how it would respond after the initial SOS Tier 1 RFP failed, Pepco made the following proposal: “Pepco proposes that the Commission issue an order directing Pepco to issue a new Request for Proposals (RFP) with more flexible terms that would attract more bidders to the RFP. Expanding the terms of the RFP to allow for bidding by existing renewable projects, for example, should expand the pool of potential bidders to allow Pepco to select the best option for District customers.”³ As an example of “more flexible terms” Pepco stated “[t]he terms could include, for example, more than 5% of SOS load and/or a longer contract duration.”⁴ The District understands that the Commission’s directive in Order 21918 was to “keep the target quantity at 5%,”⁵ but DOEE agrees with Pepco’s earlier point that making its consideration overly prescriptive could prevent successful implementation under this RFP. As such, the District does not recommend changing the target quantity sought under the RFP, allowing Pepco to enter into a contract that is for more than 5% of SOS load. The District requests that the RFP term be modified so that there is no cap on the total contractable amount, and that the target be maintained at 163,000 MWh.

Similarly, despite its suggesting earlier that the Commission allow for “longer contract durations,” Pepco limits the PPA agreement to terms of only “fifteen (15) years or twenty (20) years.”⁶ DOEE requests that the term length be modified to “at least fifteen years” to allow Pepco the flexibility it had previously indicated was necessary to secure a successful agreement.

² See page 3 “2024 Solicitation for Existing, Repowered, or New Photovoltaic Solar and Wind Power Supply Generation” Issue Date: January 16, 2024.

³ F.C. 1017, Pepco Letter from Dennis P. Jamouneau Re: FC 1017, at pg. 1 (filed April 21, 2023).

⁴ *Id.*, at fn 1.

⁵ F.C. 1017, Order 21918, at pgs 5 - 6

⁶ “2024 Solicitation for Existing, Repowered, or New Photovoltaic Solar and Wind Power Supply Generation”, at pg. 3 (Issue Date: January 16, 2024).

Second, Pepco itself sets overly restrictive Bidder requirements, such as the following term: “Bidders (or their Affiliates) must have participated in the operation or development of wind or solar electricity–generating assets that have a nameplate capacity of not less than three hundred (300) MW in the aggregate in the United States (excluding the Facility).”⁷ Experience is valuable, but this should be a scoring criteria not something that precludes a new market entrant from bidding for this agreement.

Third, the District continues to oppose the inclusion of “existing” renewable energy facilities⁸ in this procurement because existing facilities do not support the additionality goals embedded in the District’s renewable energy policies. At a minimum, existing facilities should be scored lower than new facilities in the procurement.

The District also opposes any ability by Pepco to use this procurement process to potentially lower its Renewable Portfolio Standard (RPS) requirements in a non-transparent manner. The District’s concern stems from the following RFP provision:

Pepco is seeking to purchase RECs attributable to the output of one or more identified facilities. The RECs attributable to the output of the Facility or Facilities must be tracked through the PJM-EIS Generation Attributes Tracking System (“GATS”). Any benefits derived from the RECs after delivery to Pepco shall inure solely to the benefit of Pepco and not to the seller.”⁹

The above-quoted section is vague and should not be included in this RFP as its purpose, which is at best unclear, is separate from the goals of this RFP process. Furthermore, there is no discussion of how this provision would be applied in scoring potential applications. Curiously, the foregoing provision was not included in Pepco’s prior RFP solicitation for this same purpose.¹⁰

⁷ Ibid

⁸ “Proposals are open to existing, repowered, or new Facilities of the following type: onshore wind energy Facilities, offshore wind energy Facilities, and photovoltaic solar energy Facilities.” See page 4 “2024 Solicitation for Existing, Repowered, or New Photovoltaic Solar and Wind Power Supply Generation” Issue Date: January 16, 2024.

⁹ Ibid

¹⁰ See here: <https://edocket.dcpsc.org/apis/api/Filing/download?attachId=181988&guidFileName=b5dbe882-2872-465b-ad68-4f16f171e0c2.pdf>

The RFP should also have definitions or references for terms used in the text. For example, Section 5.7 uses the term “availability guarantee,” which is not defined in the text of the RFP. Schedule 6.11 of the template PPA describes how availability will be calculated. Therefore, the text of the RFP should either refer to PPA Schedule 6.11 or include a definition of “availability guarantee.”

Finally, the District is concerned that the RFP does not include any scoring criteria so that prospective bidders do not know which bidder selection criteria are most important for them to focus on. The draft RFP instead includes overly vague language such as “[p]roposals in this evaluation will be subject to both a price factor evaluation (“Price Factor Evaluation”) and a non-price factor evaluation (“Non-Price Factor Evaluation”). Although the primary factor under the RFP will be price, non-price factors will be considered. Non-price factors are primarily considered in order to determine the viability of the proposed Facility and the ability of the Bidder to deliver a Facility with the proposed level of price and performance.”¹¹ This vague language does not conform to best practices for RFP drafting.¹² DOEE requests that Pepco amend the proposed RFP to include specific numeric scores for each scoring criteria to be evaluated by Pepco in its bidder selection process.

CONCLUSION

For the reasons set forth herein, the District respectfully requests that the Commission direct Pepco to revise the RFP and PPA in accordance with the foregoing comments.

¹¹ See page 8 “2024 Solicitation for Existing, Repowered, or New Photovoltaic Solar and Wind Power Supply Generation” Issue Date: January 16, 2024.

¹² See for example page 9 here: <https://gplpen.hks.harvard.edu/wp-content/uploads/2022/11/Proposal-Evaluation-Tips-and-Tricks-How-to-Select-the-Best-Vendor-for-the-Job.pdf>

CERTIFICATE OF SERVICE

I hereby certify on behalf of the District of Columbia Government that a copy of foregoing Comments in Response to the January 17, 2024 Public Notice was electronically delivered on this 26th day of January 2024, on the following parties:

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