

Black Hills/Colorado Electric Utility Company, LP
Non-Intermittent Resource Solicitation
Questions and Answers

Q&A Released on 4/29/09

Q042909-1. Please confirm that the Right of First Offer (RoFO) in Section 2.6 of the RFP remains mandatory (i.e., not at the bidder's option) under this RFP.

A. Section 2.6 states that the Model PPA includes a Right of First Offer (“RoFO”) which specifies, in addition to other terms and conditions that the Company may purchase the facility if and when the facility owner is interested in selling the facility to a third party during the term of the PPA. The RoFO is covered in Section 20.17 of the PPA and Exhibit J to the PPA.

Bidders may propose changes to the Model PPA. As stated in section 4.2 of the RFP, “For bidders proposing a PPA, proposals must describe the bidder’s exceptions and/or changes to the Model PPA.” See detailed instructions regarding Exceptions to the Model PPA on page 11 of the RFP. Form 13 is provided for exceptions to the Model PPA.

Note, however, as stated on the cover page of the Model PPA:

Bidders should provide specific exceptions to any applicable model term the bidder does not want to accept. The exception should include a price impact on the bid if the exception is rejected by BH/CO Electric. Bidders are advised that the Commission stated in Decision C09-0004 in the PSCo resource plan docket that, “With respect to any disadvantages in negotiations created by contract modifications, we find that contract changes may indeed place a bidder in a disadvantaged position, depending upon the change requested. For example, if a bidder proposes to remove a term that protects ratepayer interests, then other bids that retain this term will maintain an advantage over a bid with the term removed.”

The Model PPA does not contain an end-of-term or other purchase option. Bidders, at their option, may offer the Company an end-of-term or other purchase option that specifies that the Company can purchase the facility (or the stock of the facility owner) for its appraised fair market value at a specified time or times during, or at the end of, the PPA term.

If an end-of-term or other purchase option is offered, care should be taken not to trigger a capital lease determination. See Section 2.7 of the RFP.

**BHCE 2009 RFP
FAQ 042909**

Q042909-2. The Colorado PUC Electric Planning Rules allow investor-owned electric utilities to purchase up to 30 MW of capacity and associated energy without going through a competitive bidding process. Would Black Hills/Colorado Electric Utility Company, LP enter into separate negotiations with a developer or seller for the purchase of a long-term baseload resource of less than 30 MW?

A. No. The Commission in its Phase I Order concluded that there should be no minimum limit to bid for the current competitive solicitation.

Note that the RFP that the Company filed in its resource plan docket on October 21, 2008, provided, among other things, that for a project to be eligible under the RFP it must have a net summer-rated capacity of at least 30 MW. The October 21, 2008, RFP also stated that, “The Company proposes to evaluate resources of 30 MW or less in size outside of this RFP on a case by case basis.”

However, due the Commission’s Phase I Order, the Company removed the 30 MW minimum from the RFP for the current competitive solicitation. As a result, the Company will not be entering into negotiations outside of this competitive solicitation process for the purchase of long-term baseload resources of less than 30 MW to meet its January 1, 2012, resource need. The Company encourages developers or sellers of eligible projects of less than 30 MW to submit bids for such proposals.

Section 2.2 of the RFP identifies what will be considered as Eligible Project Resources.