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March 31, 2011

*Via Electronic and U.S. Mail*

Public Utility Commission  
Attn: Filing Center  
550 Capitol St. NE #215  
P.O. Box 2148  
Salem, OR 97308-2148

Re: In the Matter of Public Utility Commission of Oregon Investigation  
Regarding Competitive Bidding.  
**Docket No. UM 1182**

Dear Filing Center:

Enclosed please find the original and two copies of the Opening Comments of the Industrial Customers of Northwest Utilities in the above-referenced docket.

Please return one file-stamped copy of the document in the self-addressed, stamped envelope provided.

Thank you for your assistance, and please do not hesitate to contact our office if you have any additional questions.

Sincerely yours,

/s/ Sarah A. Kohler  
Sarah A. Kohler

Enclosures

cc: Service List

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing change of service request on behalf of the Industrial Customers of Northwest Utilities upon the parties, on the service list, by causing the same to be deposited in the U.S. Mail, postage-prepaid, where paper service has not been waived.

Dated at Portland, Oregon, this 31st day of March, 2011.

/s/ Sarah A. Kohler  
Sarah A. Kohler

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**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM 1182  
Phase I**

In the Matter of	)	
	)	
PUBLIC UTILITY COMMISSION OF	)	
OREGON	)	OPENING COMMENTS OF INDUSTRIAL
	)	CUSTOMERS OF NORTHWEST UTILITIES
Investigation Regarding Competitive	)	
Bidding.	)	
_____	)	

**I. INTRODUCTION**

Pursuant to Administrative Law Judge (“ALJ”) Wallace’s Prehearing Conference Memorandum, the Industrial Customers of Northwest Utilities (“ICNU”) submits these Opening Comments in this phase of the reopened investigation regarding competitive bidding. ICNU believes that the competitive bidding guidelines can be improved through this process, and appreciates the opportunity to provide comments. The Oregon Public Utility Commission (“OPUC” or the “Commission”) has invited comments regarding potential changes to Guideline 1 and Guideline 11 of the competitive bidding guidelines. With regard to Guideline 11, ICNU recommends that any expansion of the role of the IE should not impose additional costs on Oregon ratepayers or constitute acknowledgement or pre-approval of a resource acquisition; additionally, it should provide an explicit reservation that parties may subsequently challenge the prudence of the resource acquisition. ICNU does not believe it is necessary to retain the IE beyond the IE Closing Report, if there is not a utility ownership option on the shortlist. ICNU requests that Guideline 1 be revised to include additional criteria to better ensure that acquisition

of major resources will be subject to competitive bidding and that the utilities cannot artificially size projects to avoid the competitive bidding guidelines. ICNU looks forward to reviewing the comments of other parties and may revise or refine its recommendation in reply comments.

## **II. BACKGROUND**

For over two decades, the Commission has attempted to find a balanced approach to reduce utility self-build bias. Through its Order No. 91-1383, the Commission adopted policies and guidelines regarding competitive bidding. Re An Investigation Into Competitive Bidding by Investor-Owned Electric Utility Companies, Docket No. UM 316, Order No. 91-1383 (Oct. 18, 1991). Since that time, utility self-build bias has persisted, and the Commission has periodically revisited the goals and guidelines through various Commission investigations in an effort to continue to prevent utilities from favoring their own resources over lower cost alternatives.

The Commission initially opened this Docket in 2005 in response to a Petition for Investigation filed by the Northwest Independent Power Producers Coalition. After considering input from the parties, the Commission adopted revised competitive bidding guidelines. Re An Investigation Regarding Competitive Bidding, Docket No. UM 1182, Order No. 06-446 at 15 (Aug. 8, 2006).

The Commission opened UM 1276 to address the bias inherent in the utility resource procurement process that favors utility ownership of generation assets over power purchase agreements with third parties. The Commission did not adopt proposals to provide monetary incentives to encourage utilities to acquire the lowest cost resources, but noted that it accepts “the premise that a bias exists in the utility resource procurement process that favors

utility-owned resources over PPAs.” Re An Investigation Regarding Performance-Based Ratemaking Mechanisms to Address Potential Build-vs.-Buy Bias, Docket No. UM 1276, Order No. 11-001 at 5 (Jan. 3, 2011). The Commission further explained that this bias is in part the product of the structure of incentives under cost of service regulation, and stated that while the existence of bias has been acknowledged, the extent and scope of the bias have not been quantified. Id. In Order No. 11-001, the Commission re-opened UM 1182, finding that further investigation is necessary to determine how to improve the competitive bidding guidelines to more effectively reduce utility self-build bias. Id. at 6.

This Docket has been bifurcated into two phases. The Commission directed the parties to address two issues in Phase I: 1) whether the role of the IE should be expanded by retaining the IE through negotiations and final resource selection (Guideline 11); and 2) whether the threshold for a “major resource” should be lowered to include more projects in the competitive bidding process (Guideline 1). The Phase II comments will be directed at assisting the Commission to make a determination of the appropriate analytical framework and methodologies to use to evaluate and compare resource ownership to purchasing power from an independent power producer (Guideline 10(d)). Additionally, the parties may request the opportunity to raise other issues in Phase II.

### III. COMMENTS

#### 1. **Should the role of the IE be expanded by retaining the IE through negotiations and final resource selection (Guideline 11)?**

Guideline 11 provides that an IE will prepare a Closing Report after the utility has selected the final shortlist, and will provide the detailed bid scoring and evaluation results to the utility, Commission staff, and non-bidding parties in the Request For Proposal (“RFP”) docket.

Docket No. UM 1182, Order No. 06-446, App. A at 4. The Commission has directed parties to provide comments on whether participation of the IE should be extended beyond the submission of the Closing Report, through negotiations and final resource selection. There are advantages and disadvantages in retaining the IE for an extended period of time, and if the potentially negative consequences are adequately addressed, then ICNU supports extended participation of the IE. However, ICNU believes that it is unnecessary to extend the role of the IE when there is no utility ownership option on the shortlist.

Retaining the IE through the negotiation stage may benefit the RFP process by increasing transparency, because it provides a monitor that can potentially identify utility abuses after the identification of the shortlist. However, there are several downsides to retaining the IE throughout the negotiation and final resource selection process, including: 1) additional costs to ratepayers; 2) potentially making the process more cumbersome and expensive; and 3) the risk that the RFP acknowledgement process will be viewed as pre-approval. In addition, if the shortlist does not include a utility ownership option, then the utility presumably should have less of a bias against any bids, and there is less of a need to retain an IE through the end of the negotiations. ICNU believes that these downsides can be addressed, and if they are properly addressed, ICNU would support revising Guideline 11 to retain the IE throughout negotiation and final resource selection when the utility has an ownership option on the shortlist.

ICNU's primary concern with the expansion of the role of the IE is that the benefit obtained by extended participation of the IE may not be worth the cost to customers. In Oregon, ratepayers bear the cost of the IE; thus, involving an IE in the RFP process for a longer period will necessarily result in additional costs to ratepayers. Docket No. UM 1182, Order No.

06-446, App. A at 1-2 (Guideline 5). One way to mitigate the issue of higher costs for ratepayers is to defray the expense of the IE by requiring the bidders to pay a bid fee. This overall approach has been adopted in Utah, and could be applied in Oregon as well. Moreover, shifting the cost of the IE from ratepayers to the bidders (including the utility's shareholders) seems especially appropriate given that the bulk of PacifiCorp and Idaho Power's new resource acquisitions are not occurring in Oregon, and thus, are of limited benefit to Oregon ratepayers.

Retaining the IE through negotiation and final resource selection may impose a burden on negotiations between the bidder and the utility and create additional expense. At this point, the exact details regarding the extended role of the IE are unclear. The Commission can resolve ICNU's concerns by clearly defining the scope of involvement of the IE, which may require modification of Guideline 10 (Utility and IE Roles in RFP Process). In defining the role of the IE in negotiation and final resource selection, the Commission should consider how to balance the interests of the parties in having a fair and transparent process, with the creation of additional costs and work.

A further risk of retaining the IE through the end of the RFP process is that the resulting selection may appear to be pre-approved or acknowledged. The extended participation of an IE should not constitute acknowledgement of the negotiation process or create a presumption of prudence of the negotiations or resource acquisition. Acknowledgment or a determination of prudence of the negotiations and resource selection is not an appropriate role for the IE, and is more appropriate in a forum where the parties may undertake discovery, submit testimony and hold an evidentiary hearing. In addition, ICNU is concerned that the IE may not be able to opine on the fairness or reasonableness of the negotiations in the absence of glaring

instances of bias. If the Commission modifies Guideline 11 to extend the involvement of the IE, ICNU recommends that the Commission include an explicit statement that extended involvement of the IE does not constitute acknowledgement of the negotiation process or final resource selection, and that parties may later challenge the prudence of the particular resource acquisition on any grounds.

ICNU believes that the potential downsides of keeping the IE through the end of the RFP process can be adequately addressed to reduce self-build bias more effectively and minimize harm to ratepayers. If the potential downsides are addressed, ICNU would support the proposal for longer involvement of the IE; however, ICNU recommends that any revisions to Guideline 11 ensure that the value obtained by extended use of the IE is commensurate with or greater than the costs to ratepayers. ICNU further requests that the Commission: 1) clarify the proposed role of the IE in negotiation and final resource selection; and 2) specify that the IE will only be retained beyond the IE Closing Report if there is a utility ownership option on the shortlist.

**2. Should the threshold for a “major resource” be lowered to include more projects in the competitive bidding process (Guideline 1)?**

Guideline 1 requires that a utility must issue an RFP for all major resource acquisitions identified in its last acknowledged Integrated Resource Plan (“IRP”), and defines a major resource to include resources with durations greater than 5 years and quantities greater than 100 megawatts (“MW”). Docket No. UM 1182, Order No. 06-446, App. A at 1. The Commission has invited comments from the parties on whether this threshold should be revised to include smaller projects within the competitive bidding process. ICNU does not take a position on whether the threshold should be lowered, because the real problem is not the level at

which the threshold is set, but rather is the absence of other meaningful criteria to accompany the threshold and make it effective. As a result, the utilities may evade the threshold through “creative” project planning. ICNU recommends that additional criteria be added to Guideline 1 to prevent the utilities from structuring projects in a way that allows them to evade the major resource threshold.

Several of PacifiCorp’s recent wind projects illustrate particularly glaring examples of avoiding the competitive guidelines. The Rolling Hills, Glenrock, and Seven Mile Hill projects were each sized at 99 MW, just under the major resource threshold. PacifiCorp used artificial divisions to break up projects that would otherwise qualify as a major resource to avoid the competitive bidding guidelines. Re PacifiCorp 2009 Renewable Adjustment Clause, Docket No. UE 200, Order No. 08-548 at 22 (Nov. 14, 2008). The Seven Mile Hill project was a 118 MW project, and should have been subject to competitive bidding, but was artificially divided into Seven Mile Hill I (99 MW) and Seven Mile Hill II (19 MW). Similarly, the Glenrock and Rolling Hills projects constitute a 198 MW resource, almost twice the competitive bidding threshold, but were divided into two 99 MW projects, even though they are separated by only one mile. Moreover, the Rolling Hills project was disallowed from rates because the capacity factor was unreasonably low compared to other wind projects. Id. at 19-20. The Rolling Hills project highlights the need for review by an independent third party, because a superior resource could have been acquired if PacifiCorp had complied with the competitive bidding guidelines.

The utilities may easily evade the competitive guidelines by manipulating the timing and size of the projects to avoid the major resource threshold. Even if the threshold were

lowered from 100 MW to 50 MW, the utilities could still artificially restructure their resource acquisition plans so that an otherwise individual major resource would be disaggregated into several 49 MW resources in close proximity. Thus, any reasonable size threshold may have little meaningful impact unless other modifications are made to prevent utilities from artificially breaking up large projects. Modifications that the Commission should consider including are metrics based on proximity, electrical interconnectivity, similarity of the resource (i.e., two neighboring wind facilities using the exact same type of turbine that demonstrate they are part of a larger planned resource), timing of the on-line date of the resource, and other criteria that the Commission deems appropriate. Modifying Guideline 1 to include additional threshold criteria could obviate the need to lower the threshold, and would be more likely to produce a result leading to an actual reduction of utility self-build bias.

#### **IV. CONCLUSION**

ICNU supports revisions to the competitive bidding guidelines that may reduce the utilities' opportunities to acquire higher-cost, utility-owned resources, when there are less expensive resources available. ICNU recommends that any modification to the competitive bidding guidelines not be made if they unnecessarily increase costs to customers. With regard to Guideline 11, ICNU recommends that any expansion of the role of the IE be made without the expansion constituting acknowledgement or pre-approval, and should be made with the explicit reservation that parties may subsequently challenge the prudence of the resource acquisition. Additionally, the IE should only be retained beyond the IE Closing Report if a utility ownership option is on the shortlist and if Oregon ratepayers do not pay for the additional costs. ICNU requests that Guideline 1 be modified to include additional criteria designed to prevent evasion

of the major resource threshold and thereby better ensure compliance with the competitive guidelines. ICNU appreciates this opportunity to submit comments regarding competitive bidding and looks forward to further participation in this docket.

Dated this 31st day of March, 2011.

Respectfully submitted,

/s/ Irion A. Sanger

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